FULFILLMENT OF REGULATORY IMPACT ASSESSMENT PRINCIPLES IN DEVELOPING POST OF JOB CREATION ACT

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FULFILLMENT OF REGULATORY IMPACT ASSESSMENT PRINCIPLES IN DEVELOPING POST OF JOB CREATION ACT

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ABSTRACT

The preparation of laws and regulations in Indonesia is regulated in Law No. 12 of 2011 concerning the Establishment of Legislations which explains the steps taken in forming rules and regulations invitation. The regions issued by the regions, often called regional regulations are still legal drafting, emphasizing conformity and compliance with higher laws. In this case, it can be seen that the role of aspirations and participation in policy formation has not yet involved the public, so in other words, it has not been seen as necessary. *Regulatory Impact Assessment* (RIA) is a method of formulating policies with an approach expected to accommodate all requirements in the preparation of legislation and can be used as a systematic evaluation system of regional regulations to become more qualified, effective, and efficient.

Keywords: *Regulatory Impact Assessment (RIA), Formation of Regional Regulations*

INTRODUCTION

The formulation of regulations and public policies is often seen as merely an exercise of governments' power to regulate. Regulations are usually issued not out of necessity. Many local governments issue regulations on a field/affair simply because 'the sector is under the regional government's authority or because 'the industry has not been regulated. Regulations issued in an unfavorable manner above have a significant negative impact on society and the business world. Regional regulations occupy a considerable position and become an essential point in the process of state life. A strong justification is that regional regulations are legal products, not only the executive's domain *(executive act).* but is a joint product between the Regional People's Representative Council and the Regional Government led by the governor for the province, the regent for the district, and the mayor for the city (Jimmly Asshidqie, 2007).

The position of Regional Regulations becomes critical when the Indonesian state administration system changes from centralized to decentralized, where local governments are required to be able to develop themselves effectively and efficiently in administering their government. In addition, the pattern of governance in the context of decentralization requires innovations field of government as a whole. Therefore, the need to formulate a legal basis as these various innovations becomes necessary. The essence of decentralization and regional autonomy is granting more authority by the central government to the regions (Syaukani, Afan Gaffar dan Ryaas Rasyid, 2007). With the existing rule, local governments, can maximize the resources they have in a more accurate and focused manner on the interests of local communities. In solving problems in the community, which essentially will make a policy regarding this matter in the form of a Regional Regulation, the Indonesian government has issued Law Number 12 of 2011 concerning the Establishment of Regulations Legislation.

This Law is intended to create order and improve the quality of laws and regulations in Indonesia, one of which is a regional regulation. Various terms and conditions have been included in this Law, namely those related to the system, principles, procedures for preparation and discussion, techniques for preparation, and promulgation. As a *guideline for the regional* formation of regulations in this Law are the directions for forming laws and regulations. The construction of a provincial statute must fulfill two principles for creating an excellent regional rule, namely the formal principle and the material principle, and contain other codes that follow the legal field regulated by the relevant provincial Law (Syaukani, Afan Gaffar dan Ryaas Rasyid, 2007). According to Article 5, the formation of laws and regulations must be based on the construction of good laws and regulations. These principles are divided into two categories. The first is the seven principles specified in Article 5, which are called formal principles, and the second is the ten principles specified in Article 6 paragraph (1) which are called material principles.

In addition, there are also essential things that are prerequisites for guaranteeing the quality of regional regulations, namely the existence of public participation informing the provincial laws. These participatory principles and processes must be met to maintain the regional quality restriction, both in terms of the process and the substance of the regional rule itself. However, technically, further instructions to fulfill these principles were not found—likewise, the mechanism for participation. Publicis submitted to the Regional People's Representative Assembly rules and regulations. Therefore, it is still challenging to achieve a local regulation that Law idealizes. There is a more advanced thought in Law Number 12 of 2011 concerning the Establishment of Legislation.

Community participation is referred to as a community right. The public has the right to provide input on a draft regulation initiated and its document prepared. Furthermore, this Law mentions ways to capture the aspirations of the community, which include, among others, through public hearings, working visits to ensure openness and ease of access for the public with interest in the legislation being proposed by the government. the legislature as the proponent of the regulations is obliged to place the draft regulation is in a place that is easily accessible to the public. However, the process built based on the existing rules will be challenging without a paradigm shift in thinking for the legislators. Thus, the need for a framework of thought and good experience for preparing laws and regulations from various parties whose existence and practice have been tested is essential to study and apply in Indonesia.

Based on the experience of countries that are members of the OECD (*Organization for Economic Co-operation and Development)* in improving the quality of its regulations, it is done by consistently applying the RIA method in its formation. *The Recommendation of the Council of the OECD on Improving Government Regulation* in 2005 emphasizes the role of the technique *Regulatory Impact Assessment* (RIA)in ensuring that the most effective and efficient policies are systematically selected (Asian Development Bank,2003). In addition, RIA also systematically and consistently examines the effects of government actions and communicates information to decision-makers.

It is motivated by the assumption that the government formulates regulations to achieve a goal. Therefore, before deciding on the law, the regulator should know how well the chosen means (regulation) can help achieve the objectives and know other impacts that the rule may cause (Asian Development Bank,2003). As a method that provides *a guideline* frameworks formulation of legislation, RIA consists of seven steps or stages is to formulate the problem, set goals, identify alternative measures, analyze benefits and costs, consulting *stakeholders* in every step, strategy implementation, and write down all analysis processes in an RIA report (Asian Development Bank,2003). Public consultations are carried out at each stage through discussions with *stakeholders* and dissemination of publications on the draft RIA report to the public.

Judging from the steps shown by the RIA method, it can be said that the RIA method is a method that is reasonably practical, simple, logical, and systematic in formulating a regulation. Therefore, RIA is one of the methods offered to improve the quality of existing laws in Indonesia. In line with the main idea described in the background above, the formulation of the problem in this research is: What is the urgency of RIA in the formation of laws and regulations? How is the application of the RIA method in the construction of regional rules?

RESEARCH METHODS

This research is a study of legal science with a normative juridical approach. In this approach, analysis of secondary data in the form of documents or literature is carried out by collecting information obtained through laws and regulations, written data, books, seminar results, research results, studies, and other writings or references, as well as tracing data and information through the website relating to the issues discussed in this paper. The secondary data collected for processing and analysis consists of: a. primary legal sources in statutory regulations and legal documents; b. secondary legal authorities in the form of books, research results, papers, study results, and articles on the ideas of legal experts; c. tertiary legal sources in the form of legal dictionaries, encyclopedias, and other information regarding land reform issues. The secondary data that has been obtained is then analyzed qualitatively and presented to conclude.

OVERVIEW THEORY

Theories used in this paper include: The theory of the ideal state, The theory of legal development, and The theory of justice. One question that often bothers political and state thinkers are, what exactly is a country? According to their understanding and

understanding, there are almost as many definitions of the state as there are thinkers, which cannot be separated from the situation and conditions and the realities that live around them, which are in the context of their history and culture.

Lexically, the state means 1) an organization in an area that has the highest legal power and is obeyed by the people, 2) a social group that has a specific area or area organized under effective political and government institutions, has political unity, is sovereign so that it has the right to determine its national goals (Tim Penyusunan Kamus Pusat Pembinaan dan Pengembangan Bahasa Indonesia, 1989).

> Musdah Mulia, in his book *Islamic State: Political Thought Husain Haikal* states:
> "the state is a social institution created by humans to fulfill vital needs. A country must have at least three elements, namely territory, population, and government. From these three elements, it can be seen that the government is the essential element of a country. The reason is that even though there is already a group of individuals who inhabit an area, a state cannot yet be created if there are a handful of people who are authorized to regulate and organize this ordinary life" (Musdah Mulia, 2001).

Meanwhile, according to Antonio Gramsci, "The state is a complex number of practical and theoretical activities, in which the ruling class not only justifies and maintains domination but organizes it to win active coercion against outside powers (Nazar Patria dan Andi Arief, 1999). Plato argues that the state and humans have similarities. Therefore the issue of morality must be the essential thing that must be considered in the state's life. It must even be the most critical to the existence of the life of the rulers and all citizens as human beings. For Plato, the ideal state is an ethical community to achieve virtue and goodness. This is the meaning of the state, according to Plato.

Furthermore, according to Plato, the ideal state is essentially a family. He said: "… in your country you are all brothers." (J.H. Rapar, 1991). Therefore, every citizen must have a familial attitude that reflects the existence of harmony and harmony between others—both among the government elite and the people. Talking about Development Law Theory, basically, in the history of legal development in Indonesia, one of the legal theories that have attracted a lot of attention from experts and the public is the *Legal Development Theory* from Prof. Dr. Mochtar Kusumaatmaja, SH, LL.M. There are several crucial arguments as to why *the Development Law Theory* has attracted a lot of attention, which, when described globally, are as follows: *First, Development Law Theory* to date is a legal theory that exists in Indonesia because Indonesians created it by looking at the dimensions and culture of Indonesian society.

Therefore, by measuring the dimensions *of the legal theory of development, it* was born, grew, and developed following Indonesian conditions. *Second,* dimensionally, *the Development Law Theory* uses a frame of reference on the life *way of* the Indonesian people and nation based on the Pancasila principle, which is familiar, so the norms, principles, institutions, and rules contained in *the Development Law Theory* are relatively a dimension that includes *structure* (structure), *culture* (culture) and *substance* (substance) as stated by Lawrence W. Friedman: *Third,* the *Theory of Development Law* provides the basis for law as a "means of community renewal" *(law as a tool of social engineering). Law* as a system is

indispensable for the Indonesian nation as a developing country (Lawrence W. Friedman, 2002).

In the process, Mochtar Kusumaatmadja added that there was a pragmatic goal (for development) as input from Roscoe Pound and Eugen Ehrlich where there was a correlation between Laswell and Mc Dougal's statement that cooperation between legal scholars and practical law bearers was ideally able to give birth to legal law enforcement *theory (theory about). Law), a view* that has a pragmatic dimension or practical utility. Mochtar Kusumaatmadja brilliantly changed the notion of law as a *tool* into law as an *instrument* for developing society. The main ideas that underlie the concept are that order and order in development and renewal efforts are desirable, even necessary. In the sense of norms, that law is expected to direct human activities in the direction desired by development and renewal.

Therefore, it is necessary to provide facilities in the form of unwritten legal regulations that must be by the laws that live in society. Furthermore, Mochtar argues that the notion of law as a means is broader than law as a tool because:

1. In Indonesia, the role of legislation in the legal reform process is more prominent, for example, when compared to the United States, which places jurisprudence (especially decision *the Supreme Court's)* in a more critical place.
2. The concept of law as a *"tool"* will result in results that are not much different from applying *"legalism"* as was held during the Dutch East Indies era. In Indonesia, an attitude shows the community's sensitivity to rejecting the application of such a concept.
3. If *"law"* here includes international law, then the concept of law as a means of reforming society has been applied long before this concept was officially accepted as the basis for national legal policies (Shidarta**,** 2006).

Facing the transitional conditions faced by the country, where problems overlap, all emergencies, and full of complications, law enforcement officers are required to take breakthrough steps in implementing the law, not just applying black and white regulations. Especially so when the various law provisions are inconsistent, overlapping, and even disharmony between one another.

So we need brave, visionary, and creative legal actors to include when sectoral egoism emerges between government institutions with overlapping powers. They must find justice and truth among existing legal norms and based on sound moral logic. However, the weakness of the adherents of legal positivism seems to deny the existence of other legal systems outside the law, which is de facto developing and widely used by the community. The weakness of national law, which is always late in responding to the dynamics of society, needs to be answered by bringing up legal options.

Furthermore, the State needs to establish several sustainable development strategies to achieve the national goals, especially in the social sector. The State is more assertive, none other than to meet the needs of people's lives and maintain

their lives with the aim that people can feel actual participation from the government as people's representatives, as explained by Alston: *"In terms of the right to sufficient basic needs particularly right to food, Alston describes two approaches, i.e., maximalist and minimalist approach. The maximalist refers to adequate food, while the minimalist refers to freedom from hunger"* (Alston, 1984).

Meaning that society in terms of the right to an adequate basis is in dire need of the right to food, Alston (1984) describes two approaches, namely the maximalist approach and the minimalist approach. Maximalism refers to sufficient food, while minimalism relates to freedom from hunger. Efforts to achieve sustainable development through the provision of adequate food, for example, can be compared to efforts to fight AIDS. However, this theory was refuted by Nelson Mandela "*Nelson Mandela argues that two approaches are essential to combat AIDS, i.e., practical and political (Mandela, Undated). Providing sufficient food is a practical approach and altering an unjust economic structure is a political approach; both efforts are necessary for eradicating unsustainable development, in this case for eliminating poverty"*. It turns out that both theories need to be added regarding efforts to eradicate unsustainable development, in this case, to eliminate poverty.

From the explanation above, it is clear that several things state that the sense of justice associated with honesty is stronger than the same feeling instilled by other conceptions. First, unconditional concern for other people and institutions for our benefit is vital in the contract view. The various limitations in the principle of justice guarantee equal liberty for everyone and ensure that our claims will not be ignored and rejected in favor of the more significant number of benefits, even for the sake of the whole society (John Rawls, diterjemahkan oleh Uzair fauzan, Heru Prasetyo, 2019). Are justice as *fairness* and expediency as rationality congruent? It will still be shown that under any circumstances of an ordered society, a person's rational life supports and strengthens his sense of justice.

In the framework of making laws to realize the National Goals of the State, which protect the entire Indonesian nation. According to Daniel S. Lev, the most decisive in the process of law formation is the conception and political power, namely that law is more or less always a political tool, and that the place of law in the State depends on the political balance, the definition of power, the evolution of political ideology, economics, social and so on (Daniel S. Lev, 1990).

Although the legal process referred to above is not identified to establish law, the process and dynamics of law formation often experience the same thing, namely the conception and political power that prevails in society, which significantly determines the construction of a legal product. So to understand the relationship between politics and law in any country, it is necessary to study the cultural background, economy, political power in society, the state of state institutions, and their social structure, in addition to the legal institutions themselves. It is realized that there is an absent space for the entry of a political process through political institutions to form a legal product (Frenki, 2011).

1. The urgency of RIA in the formation of laws and regulations

RIA can examine the motives behind the policy choices made so that policies are populist by involving the regulators in consultation with stakeholders. Analysis of risks, costs, and benefits and applying transparency and accountability can examine the dominant interests behind policies. *As a policy evaluation tool, regulatory Impact Analysis* (RIA) aims to systematically assess the negative and positive influences of proposed or ongoing regulations.

RIA is a method of formulating policies that accommodates the community's desires and needs without having to abandon the government's willingness to provide regulation for a problem that occurs in the community. There are several reasons why the formulation of policies requires public participation. First, for democratic philosophical reasons, every approach is applied to certain parties in society for their opinions and inputs. Even their objections need to be considered by policymakers. Second, policymakers' practical reasons, insight capabilities, and knowledge mastery are limited, so it is necessary to involve the community. The third reason is the effectiveness of implementation.

The assumption is that the more involved the community is in the formation process, the higher the sense of belonging and community support for a policy, thus encouraging its implementation and enforcement effectiveness. The three pillars of reason are in line with the RIA method in realizing participatory regional approaches. Therefore, the RIA method as an instrument for learning regional policies in the form of regulations has two balanced directions, namely *top-down* and *bottom-up*, so communication between the community and the government is always built.

This approach is critical to be adopted to encourage the creation of *good regulatory governance*, where regulation can be an alternative to get the best solution. This is important In reality; regulations tend to burden stakeholders, which backfires on the government and the broader community because regulations are often made "multi-face" without paying attention to various aspects of society. The RIA method is a form of review of the government's rules of the game by paying more attention to problems in the community *(problem focus).* The involvement of the community/public as stakeholders is necessary for conducting a review/review of RIA-based regulations.

RIA as a regulatory review method is structured systematically and practically. This method is easy to implement for governments with goodwill to improve the regulatory climate that substantially impacts the regional economic environment, especially on structuring a good investment climate. Support from policymakers (executive and legislative) is essential to support the performance of the RIA Team in the regions. The following analysis methods are often used in analyzing RIA documents.

1. **Self benefit-cost analysis and integrated analysis The**
   the research is based on a framework of identified trade-offs and maximum benefits across various policy objectives resulting in regulations that maximize the most significant advantage with cost solutions Lowest.
2. **Cost-effectiveness analysis**

RIA policy is stated with alternative approaches that must be chosen based on cost-effectiveness. Thus, an RIA policy analysis should contain clear criteria to guide choices.

2. **Partial Analysis The**
   the analysis is emphasized to avoid the risk of bias in each group. The partial research highlights that all specific impacts will be integrated into the larger analytical framework.
3. **Risk assessment and uncertainly analysis The**
   the analysis emphasizes prevention as a policy choice based on uncertainty, risk assessment, and regulatory sensitivity.

The analysis emphasizes prevention as a policy choice based on uncertainty, risk assessment, and regulatory sensitivity. RIA's always favored economic value drive benefits *cost analysis*BCA'sas the most inclusive and socially responsible method of public decision making. BCA is an old method used by governments to assess investment projects such as roads and dams and was adapted to the policy-setting problems of the 1970s.

While there are persistent concerns over over-monetizing the impact, this could legitimately be a problem that is easy to spot. Mainstream cost-benefit analysis used in RIA today is therefore *soft* of BCA,

where quantitative metrics are combined and presented systematically. There is no country where modern BCA emphasizes the monetization of all cost-benefit analyses. *Soft* BCA is the best-adapted method to protect various interests. One of the main advantages of cost-benefit frameworks is that they cover a wide range of impacts across the spectrum of the socioeconomic environment, thus in this realm conforming to the universal political demand that RIA methods address the broader public interest. BCA also offers the critical advantage of comparing costs and benefits occurring at various points in time (Jacob, H Scoot, 2007).

However, in some countries, diversification is driven partly by competitiveness issues and partly by political intent to serve vocal constituencies. This has led to the fragmentation of methods into competing policy agendas. In such cases, RIA is weakened by a more reliance on partial analysis methods, uncertainties, and discrepancies that are not based on a logical view of the use of RIA in public policy. Reliance on such methods creates a risk of systematic error in public policy. Reliance on such methods creates a risk of systematic error in policymaking. Such mistakes reduce the benefits of government action and increase the likelihood of policy failure (Jacob, H Scoot, 2007).

The conclusion is that governments should develop what the European Commission calls an integrated impact analysis. Economic, social, and environmental impacts are assessed together in a transparent cost-benefit framework. RIA becomes the framework within which trade-offs are identified in this approach, and benefits are maximized across various policy objectives.

2. The application of the RIA method in the construction of regional rules

The Regulation Impact Assessment (RIA) is an instrument that allows determining the consequences of introducing new regulations. It should be emphasized that RIA is carried out whenever the adopted decision involves State

intervention and is carried out before the draft law is enacted. RIA can show that non-legislative action is the best solution for specific social and economic issues. RIA is one of the critical factors in drafting good quality legislation because it helps provide arguments in favor of the planned regulation.

In particular, RIA can help avoid the production of redundant laws and reduce the bureaucracy that burdens the State's finances. A vital component of a thorough regulatory assessment is the analysis of the problems identified, which make up the starting point for any further analytical work. Both of it start with the preparation of a problem analysis under the conditions of a proper evaluation of the impact of the regulation.

This is one of the conditions for choosing the best possible form of behavior for public institutions concerning the problem or process of the law. When presenting a situation requiring regulatory action (rather than a new law), we must precisely define its nature and size and explain its causes (i.e., identify the incentives that affect the subjects involved and the reactions they generate).

Definition of the problem with a clear presentation of the rationale behind the proposed solution method and allowing an explanation of the causes of the problem in question: indicating possible market imperfections, government policies, etc. We must examine the source of information about the problem under study, especially whether it is identified in the administration or follows from external data, such as research reports, opinion of the public and partner circles, or whether it involves other external factors.

Problems are often “two-faced” and affect different groups of subjects in different ways. In such cases, all aspects of the situation should be carefully investigated and given special attention to intensify the negative interactions between the groups. The main elements in the regional community, namely the government, the community, and the business world, essentially have the same ultimate goal, namely improving the welfare of the community. Each element may have its purposes or expectations (expectations). The government has a plan to increase regional income. People want the prices of cheap, of good quality, and readily available, and the availability of jobs. The business world enjoys a conducive business climate and ease of doing business activities. However, all of these elements agree that in the end, their actions must be able to realize an increase in the welfare of the community.

In this regard, the making of regulations by the government should not only be seen as the implementation of government authority, but the function of making regulations should be an essential instrument that supports the realization of public welfare. In its efforts to issue regulations, the government must balance the protection of the public interest and the burden that those affected by the law must bear. On the one hand, regulations must protect the community's interests, such as environmental sustainability, public health, security, and order, and sufficient funds to provide public services. On the

other hand, regulations should not burden the community too much to hinder the community and the business world from helping the government improve welfare and prosperity.

The main challenge for the government is how to make existing and future regulations to support the creation of a conducive climate for the community, the business world, and the government in carrying out their activities. The challenge in formulating regulations is how to make the regulations that are made to make the region still have high competitiveness compared to other areas. In the national context, how do regulations continue to make Indonesia competitive at the international level?

Mova, the Director of the Center for Regulatory, Policy, and Governance, explained the Risk-based approach or known as the creation *Risk-Based Approach (RBA)*, used in drafting the Omnibus Law. There are two scopes of regulation that use RBA analysis, namely, related to categorization of licensing/registration and aspects of supervision. Mova found seven problems in the implementation of this RBA implementation: "*First,* The format *Omnibus* can confuse risk assessment, *second,* the risk has not been considered *volatile*, *third,* It has not been considered *cumulative/systemic risk*, *fourth,* determine the type of risk a priori and *top-down"*. *Fifth*, the academic text has not discussed the obstacles to implementing risk-based regulations. *Sixth*, compliance records should be considered in the aspect of supervision, and the last criticism is related to the licensing burden, which should distinguish from permit documents.

Mova further stated that risk-based regulation is a positive step in regulatory reform efforts in Indonesia. However, it should be done sectorally, "*bottom-up*" and should not use the format *Omnibus*. Gumilang, a lecturer at FEB UGM, Gadjah Mada University. presents the results of his study on the application of cost-benefit analysis in the Job Creation Act. "Cost-Benefit analysis cannot stand alone and requires complementing other analytical tools such as *Regulatory Impact Assessment* (RIA) and policy impact evaluation" (Pusat Studi Hukum dan Kebijakan Indonesia (PSHK), 2020) .

In the Academic Manuscript, the Draft Law on Job Creation considers health, security, environmental, moral, cultural, and financial risks. However, it does not consider governance, operational, technological, legal, property, and commercial risks in a risk-based assessment. He further revealed that during the COVID-19 Pandemic situation, it was an excellent time to review the Academic Papers and the Job Creation Act. The making of this regulation must be carefully planned. It must involve broad public participation so that its formation certainly cannot be done in a short time.

So far, in the preparation of legal products, it is more legal drafting, emphasizing conformity and compliance with higher laws and regulations. The RIA method is more than that. With RIA, regional policymakers have been able to calculate from the start how much the costs will be and the benefits derived from a drafted regulation. Thus, policymakers can assess which regional rules are productive and counterproductive to the business world and the public interest. In short, RIA is expected to help build populist policies oriented to all stakeholders' interests, effective, credible, and responsive.

CONCLUSION

Based on the results of the research, it can be concluded from the results that:

a. The urgency of implementing the RIA method in forming a regional regulation is following the development planning process, both medium-term and annual work plans. It states that governments should develop what the European Commission calls an integrated impact analysis. Economic, social, and environmental impacts are assessed together in a transparent cost-benefit framework. RIA becomes the framework within which trade-offs are identified in this approach, and benefits are maximized across various policy objectives. RIA will be more effective in the process provided that it consistently applies two essential things that are a concern for the RIA method, namely carrying out all stages of RIA as a whole to become a logical and systematic framework of thinking in building arguments needed for the formation of a regional regulation as outlined in an RIA report or academic text. And conducting adequate public consultation with stakeholders can be essential at every stage.

b. So far, in the preparation of legal products, it is more legal drafting, emphasizing conformity and compliance with higher laws and regulations. The RIA method is more than that. With RIA, regional policymakers have been able to calculate from the start how much the costs will be and the benefits derived from a drafted regulation. Thus, policymakers can assess which regional rules are productive and counterproductive to the business world and the public interest.

RECOMMENDATIONS

RIA concept as a guide in drafting a regulation has differences with other public policy analysis concepts. The RIA concept emphasizes the determination of various alternative arrangements to assess the benefits and costs of each alternative configuration for the

activity of making Regional Regulations. In short, RIA is expected to help build populist policies oriented to all stakeholders' interests, effective, credible, and responsive.

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