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Legal Study of Procedures for Forming Regional Regulations in the Concept of Regional Autonomy in Indonesia

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Abstract

Research purposes to find out the basis and criteria for the formation of regional regulations in the implementation of regional autonomy. To find out the steps for the formation of regional regulations in the conception of regional autonomy in Indonesia. Research results show that the basis and criteria for the formation of regional regulations in the implementation of regional autonomy are regulated in UU no. 12 of 2011 concerning the Formation of Legislative Regulations which were promulgated on 12 August 2011, these Legislative Regulations are one of the important aspects of national legal development in order to create a good national legal system, where regions have the authority to make regional policies to regulate their government affairs Alone. Regional authority includes all authority in the government sector, except for foreign policy, security, justice, national monetary and fiscal, and religion. The steps for forming regional regulations in the concept of regional autonomy in Indonesia include the stages of planning, drafting, discussing, ratifying or enacting, and promulgating. (Article 1 number 1 Law No. 12 of 2011). Therefore, the thing that needs to be paid attention to is whether the Draft Regional Regulations or Regional Regulations have gone through the stages in accordance with the Law on the Formation of Legislative Regulations or not.

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1. Introduction

Indonesia is a country that adheres to a regional or decentralized government system which gives authority to autonomous regions to regulate and manage their own households in accordance with the principles of autonomy and assistance duties. This concept of regional autonomy has been regulated in the 1945 Constitution of the Republic of Indonesia, which was then strengthened by the enactment of Law Number 23 of 2014 concerning Regional Government. In this context, the formation of Regional Regulations becomes a concrete form of regional autonomy, which allows regional governments to make regulations that suit their local needs and characteristics.

Regional autonomy has provided many changes and brought progress to autonomous regions, both newly formed and long-established regions. The concept of regional autonomy has given authority to regional governments to regulate and manage regional interests in accordance with the mandate of the law. Meanwhile, local government the organizer of government affairs, both by the Regional Government and DPRD according to the principle of autonomy and assistance duties with the principle of the widest possible autonomy within the system and principles of the Unitary State of the Republic of Indonesia as intended in the 1945 Constitution. Regional autonomy is a principle recognized in the Indonesian constitution and regulated in Law -1945 Constitution. Regional autonomy gives regional governments the authority to regulate and manage the interests of local communities in accordance with the aspirations and characteristics of their region. In the context of regional autonomy, the existence of regional regulations in principle plays a role in encouraging maximum decentralization (Rawasita, et al, 2009). From the perspective of political empowerment, the goal of decentralization can be seen from two sides, namely regional government and central government. The aim of decentralization from the regional government side is to realize political equality, local accountability and local responsiveness. Meanwhile, the aim of decentralization from the central government side is to realize political education, provide training in political leadership and create political stability (Hidayat, 2006).

Governor, Regent, or Mayor, and regional apparatus as elements of regional government administration. The Provincial Regional Government consists of the Provincial Regional Government and the Provincial DPRD, while the Regency/City Regional Government consists of the Regency/City Regional Government and the Regency/City DPRD.

Law Number 32 of 2004 concerning Regional Government has changed the regional government system by strengthening the decentralization system (Regional Autonomy). This change is an implementation of Article 18 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which mandates that: "Provincial, district and city governments regulate and manage government affairs themselves according to the principles of autonomy and assistance duties." There for implementation of regional government authority, according to Law no. 32 of 2004 concerning regional government, in Article 1 paragraph (2) which regulates that in carrying out government affairs by the regional government and the Regional People's Representative Council according to the principle of autonomy and assistance duties with the broadest possible principle of autonomy within the system and principles of the Unitary State of the Republic of Indonesia as intended in the 1945 Constitution of the Republic of Indonesia.

Obligatory affairs which fall under regional authority are regulated in the provisions of Article 13 and Article 14 which are then further regulated by Government Regulation Number 38 of 2007 concerning the Division of Government Affairs between the Government, Provincial Regional Governments and Regency/City Governments. In the framework of implementing Regional Government, the Government has also established Government Regulation Number 41 of 2007 concerning Regional Apparatus Organizations. To carry out regional government affairs as intended

in the Government Regulation, the Regional Government requires a set of Legislative Regulations. The authority to form Regional Regulations lies with the Regional Head and the Regional People's Representative Council. Regional Regulations are stipulated by the Regional Head after obtaining joint approval from the Regional People's Representative Council.

Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia which reads: "Regional Governments have the right to establish Regional Regulations and other regulations to carry out autonomy and assistance duties." Law Number 32 of 2004 concerning Regional Government (Article 25 letter c, Article 42 paragraph (1) letter a, and Article 136 paragraph (1)) then further regulates this matter. Article 25 letter c: "Regional Heads have the duty and authority to enact Regional Regulations that have received joint approval from the DPRD." Article 42 paragraph (1) letter a: "The DPRD has the duty and authority to form Regional Regulations which are discussed with the Regional Head to obtain mutual approval." Article 136 paragraph (1): "Regional regulations are stipulated by the Regional Head after obtaining joint approval from the DPRD."

Efforts to create an effective legal system, structuring legal institutions, supported by the quality of human resources, culture and legal awareness of the community must continue to improve. This is in line with the updating of legal material which is structured in a harmonious manner, and continuously updated in accordance with the demands of developing needs.

Important breakthroughs made by the central government in supporting the realization of an effective legal system and improving good governance at both the central and regional levels; one of which is Law Number 12 of 2011 concerning the Formation of Legislative Regulations. Number 23 of 2014 replacing Law no. 32 of 2004 concerning Regional Government, has brought new consequences regarding the implementation of concurrent government affairs between levels of government in the regions. New consequences in regional governance with the enactment of Law no. 23 of 2014, for example, regarding the mapping of concurrent government affairs between levels of government. There have been several fundamental changes related to the division of concurrent government affairs. There are several concurrent government affairs which were previously the authority of districts/cities which later changed to provincial authority.

2. Methods

This research will use a qualitative approach by conducting a literature study to collect related data and information. Data will be analyzed descriptively to describe concepts, procedures, implementation and impacts of the formation of regional regulations in the context of regional autonomy in Indonesia.Various approaches and techniques in qualitative research, including applications in the field of education and law (Bogdan, 2007).

3. Results and Discussion

Basis and Criteria for Forming Regional Regulations in the Implementation of Regional Autonomy

Law Number 12 of 2011 concerning the Formation of Legislative Regulations which was promulgated on 12 August 2011 is a refinement of Law Number 10 of 2004 concerning the Formation of Legislative Regulations. This is an important aspect of national legal development in order to create a good national legal system (Jimly School, 2023). Regions have the authority to make regional policies to regulate their own government affairs. Regional authority includes all authority in the government sector, except for foreign policy, defense, security, justice, national monetary and fiscal, and religion.

On the other hand, many regional regulations have been made problematic, so they cannot be implemented and the regional regulations have even been revoked because they conflict with statutory orders.Many people do not understand the stages in the formation of Regional Regulations, especially stakeholders who often force regional regulations to be created and stipulated without going through the actual formation stages. Even though a regional regulation is not an urgency for the community, it is an order from higher statutory regulations and is within the framework of implementing regional autonomy and assistance tasks, so it can be said that the regional regulation is only based on a dream last night and the next day it is immediately proposed to become a regional regulation. (Moniun, 2013).

The formation of regional regulations is one of the main pillars for the implementation of regional government. To create good regional regulations, it is necessary to pay attention to the basics and criteria for forming regional regulations. The basics for forming good regional regulations consist of 2 (two), namely: (1) Hierarchy of Legislative Regulations; and (2) Community Participation.

A. Hierarchy of Legislative Regulations

The hierarchical theory of statutory regulations comes from Hans Kelsen, explains that legal norms are tiered in a hierarchical order, where a lower norm applies, is sourced and based on a higher norm, and so on until a norm that can be explored further and is hypothetical and fictitious, namely the basic norm (grund norm). Furthermore, the theory developed by Nawiasky, which emphasizes that there are 4 (four) large groups of norms sequentially from top to bottom, namely fundamental norms (staatsfundamentalnorm), basic rules (staatsgrundgesetz), formal laws (formell gesetz), and rules implementation that is parallel to the rules of autonomy (verordnung and autonome satzung).

Fundamental norms are predetermined (presupposed) by society. Basic rules are rules that are basic, still general, still in outline, and are still single norms that are not accompanied by secondary norms. Implementing regulations that are parallel to autonomy regulations function to implement the provisions of the law (Sinaga, 2005).

The difference between implementing rules and autonomous rules is that implementing rules are based on delegation, while autonomous rules are based on attribution of authority to form statutory regulations. Attribution forms legal regulations(attributie van wetgevingbevoegheid)is the granting of authority to form statutory regulations given by the Constitution or Law to a state or government institution. This authority is inherent continuously so that it can be exercised at any time while still observing the limits given, while delegation to form statutory regulations is the delegation of authority to form lower statutory regulations. This authority is given only temporarily, so the authority is only delegated.

B. *Society participation*

Community participation in the formation of regional regulations is a form of good governance in accordance with the principles good governance, including community involvement, accountability and transparency (Santoso,2001). Apart from that, with community participation, the resulting regional regulations can reflect the social realities that generally apply in society. Basically, the urgency of community participation in the formation of regional regulations is (Hamidi, 2011):

a. Gathering the knowledge, expertise or experience of the community so that the regional regulations made truly meet the requirements of good regional regulations;

b. Guarantee that regional regulations are in accordance with the realities that exist in society, fostering a sense of ownership (sense of belonging), sense of responsibility (sense of responsibility), and accountability (sense of accountability) of regional regulations;
c. Develop trust (trust), respect and community recognition of regional government. Sherry Arnstein also stated that community participation in the formation of a regional regulation is a community power to influence the final results of government policy, namely manipulation, therapy, information, consultation, suppression, partnership, delegation of power, and community control.

In connection with this, according to Sirajuddin, the level of community participation in the formation of regional regulations is divided into (Sirajuddin, 2006):

a. The first level, which is categorized as no participation (non-participation), namely the level called manipulation and therapy;
b. The second level, which is categorized as pseudo participation (degree of takenism), namely the levels called mitigation, consultation, and information. At this level the public is listened to and allowed to express their opinions, but they have no capacity and no guarantee that their views will be seriously considered by policy makers.
c. The third level, which is categorized as community power (degree of citizen power), namely the level of partnership, delegation of power, and community control. At this level the community has influence in the policy determination process.

Community participation in the juridical formation of regional regulations is regulated in Article 96 of Law no. 12 of 2012 concerning the Formation of Legislative Regulations as follows:

a. The public has the right to provide oral and/or written input in the formation of statutory regulations;
b. Oral and/or written input is carried out through: (a) Public hearings; (b) Work visits; (c) Socialization; (d) Seminars, workshops and/or discussions;

For someone who studies the process of drafting a regional regulation, besides having to understand the importance of community participation in the process of forming a regional regulation, he also needs to be equipped with knowledge about the criteria for drafting an effective regional regulation. This is intended so that the regional regulations that are made can bring about effective changes in people's lives. The criteria for an effective Regional Regulation consist of (Usfunan, 2003): (a) Detailed definition of the Regional Regulation; (b) Regional regulations can encourage desired behavior; and (c) Regional regulations must be clear and precise in describing and determining the regulated behaviors;

Steps in Forming Regional Regulations in the Concept of Regional Autonomy in Indonesia

1. Identify the Problem

For regional regulation designers, the first step in designing regional regulations is to ask questions about the types of problems faced by society and try to find ways to solve problems that exist in society. Problems can cover many things, including degradation and deviation of resources, utilization conflicts between parties which result in social unrest and so on. Apart from identifying problems, drafters of regional regulations also identify the causes of problems (root problems) and the parties affected by these various problems, such as traditional fishermen and other small fishermen, medium and large scale fishermen, tourists, the large scale advertising industry, and other large scale industries. In addition, drafters of regional regulations should understand the consequences that may arise from handling certain problems. For example, will everything be applied

fairly? Are there certain parties who benefit greatly and on the other hand at the expense of other parties? By only dealing with a number of problems, won't it create new problems?

2. Scientific Research

The second step that a regional regulation designer needs to take after identifying the problem is to conduct research. In this case, research is carried out according to the principles of rational, critical, objective and impersonal science. According to Ann and Bob Seidman, research is needed for drafters of legislative regulations for three reasons:First, a research report will guarantee the decision-making process from which the draft legislation begins. Second, the suggested outline acts as a map to guide the drafter in gathering and organizing the available evidence. Third, research reports provide quality control for legislators and other parties who need to review draft laws (including draft regional regulations).

Jimly Asshiddiqie also emphasized the importance of a research report for drafting laws (including draft regional regulations), namely:First, an adequate research report will provide justification for the ongoing policy formation process. Second, the research report also functions as a map that will guide the designer in compiling and systematizing a broad framework of policies that will be implemented based on the available conditions. Third, the presence of research reports will also ensure that designers will develop a logically structured set of norms. Apart from that, the urgency of the research report is also to provide an illustration that the draft regulation in question was not prepared because of momentary interests, sudden needs, or lack of deep thought (Asshidiqie, 2005).

In this regard, there are several things that need to be considered when preparing a research report, namely:

a. Solutions offered in the Research Report
b. Summary Research Report
c. Using Correct Language Rules in Research Reports

3. Techniques for Drafting Regional Regulations

The technique for drafting a Regional Regulation consists of:

a. The parts of a Regional Regulation are title, preamble, chapter, section, paragraph, article and Paragraph A local regulation includes a scheme created to address a particular social problem. Legislative theory teaches that dealing with a social problem is done by including a scheme. This is intended to tell the principal actors what they must do and what they can plan.
b. Write sentences in the Regional Regulations
    1. Describing the Perpetrator: A Guide to Determining “Who”
    2. Use of the Single Form in Regional Regulations
    3. Defining Action: A Guide to Determining the “What”
    4. Ways to Maintain Clarity, Accuracy and Consistency
    5. Legal Language in Preparing Regional Regulations

4. Discussion of regional regulations in the DPRD

Planning for the preparation of Regional Regulations is carried out in the Regional Legislation Program. The Regional Legislation Program, hereinafter referred to as Prolegda, is a program planning instrument for the formation of Provincial Regional Regulations or Regency/City Regional

Regulations which are prepared in a planned, integrated and systematic manner. Planning for Provincial Regional Regulations is carried out in the Provincial Prolegda. The preparation of the Provincial Prolegda is carried out by the Provincial DPRD and the Provincial Regional Government. The Provincial Prolegda is determined for a period of 1 year based on the priority scale for the formation of the Provincial Regional Regulation Draft.

The preparation and stipulation of the Provincial Prolegda is carried out every year before the stipulation of the Draft Provincial Regional Regulation concerning the Provincial APBD. The priority scale criteria for preparing the list of draft regional regulations in Prolegda are based on: a. Higher Legislative Orders; b. Regional development plans; c. Implementation of regional autonomy and assistance tasks; and d. Aspirations of regional communities.In the Prolegda an open cumulative list can be included consisting of: a. As a result of the Supreme Court decision and the Provincial Regional Revenue and Expenditure Budget. And in certain circumstances, the DPRD or Governor can submit a Draft Provincial Regulation outside the Provincial Prolegda, which consists of: a. to overcome extraordinary circumstances, conflict situations, or natural disasters; b. As a result of collaboration with other parties; and c. Other certain circumstances that ensure the urgency of a Draft Provincial Regional Regulation that can be jointly approved by the Provincial DPRD apparatus which specifically handles the field of legislation and legal bureaus.

Discussion of draft Regional Regulations in the DPRD, both on the initiative of the Regional Head and on the initiative of the DPRD, is carried out with the Regional Head. Discussion of the draft Regional Regulation refers to the relevant Council Rules and Regulations. Discussion of Draft Regional Regulations in the DPRD is carried out by the DPRD together with the Regional Head. This joint discussion is carried out through various levels of discussion, which are held in meetings: commission, committee, DPRD apparatus which specifically handles the field of legislation, and plenary. Further provisions regarding the procedures for discussing the Ranperda are regulated in the Regional People's Representative Council Regulations.

Draft regional regulations can be withdrawn before being discussed jointly by the DPRD and the Regional Head. Withdrawal of Draft Regional Regulations by the DPRD is carried out by Decision of the DPRD Leadership accompanied by the reasons for the withdrawal. Withdrawal of the Draft Regional Regulation by the Regional Head, shall be conveyed in a letter from the regional head along with the reasons for the withdrawal.

Regional regulations being discussed can only be withdrawn based on the joint agreement of the DPRD and the Regional Head. The recall was carried out at a meeting to discuss the Draft Regional Regulation between the DPRD and the Regional Head accompanied by mutual agreement.

5. Determination of Regional Regulations

Draft Regional Regulations that have been jointly approved by the DPRD and the Regional Head are submitted by the DPRD Leadership to the Regional Head to be adopted as Regional Regulations. Submission of the Draft Regional Regulation is carried out within a maximum period of 7 (seven) days from the date of mutual approval.

The Draft Regional Regulation that has been submitted is stipulated by the Regional Head by affixing his signature within a period of no later than 30 (thirty) days after the draft regional regulation is jointly approved. If within this time period the draft regional regulation is not signed by the Regional Head, the draft regional regulation is legally a regional regulation and must be promulgated by including it in the Regional Gazette. The formulation of the ratification sentence reads "This regional regulation is declared valid", by including the legal date.

6. Promulgation of Regional Regulations

Regional regulations come into force after they are promulgated. This promulgation is a formal requirement for regional regulations to obtain permanent and binding legal force. By promulgating regional regulations, a legal assumption or fiction arises, that everyone is deemed to have known about them. The promulgation of regional regulations must go through a certain method and the legal method is the promulgation carried out by the Regional Secretary by placing it in the Regional Gazette.

Promulgation of regional regulations is determined as follows:

a. Series A: Regional Regulations on APBD
b. Series B: Regional Regulations on Taxes
c. Series C: Regional Regulations on Retributions
d. Series D: Regional Regulations on Institutions
e. Series E: Regional Regulations that regulate material other than Regional Regulations letters a to d.

7. Dissemination of Regional Regulations

Regional regulations that have been promulgated must be disseminated widely so that they are known to the public. The dissemination of regional regulations is the obligation of regional governments. This dissemination can be done by:

1. Announcement via the news (RRI, regional TV) by the Head of the Provincial Legal Bureau or Head of Regency/City Division;
2. Direct socialization by the Head of the Legal Bureau/Head of the Legal Department or can also be carried out by the initiating work unit, higher education institution, competent non-governmental organization.
3. Socialization through seminars and workshops (Semiloka)
4. Socialization via the internet (E-Parliament). For this reason, the Regional Government and DPRD should have website facilities so that the public can easily access all developments in the activities of these two institutions.

5. Conclusion

The conclusions are stated as follows. First, the basis and criteria for the formation of regional regulations in the implementation of regional autonomy are regulated in UU no. 12 of 2011 concerning the Formation of Legislative Regulations which were promulgated on 12 August 2011, these Legislative Regulations are one of the important aspects of national legal development in order to create a good national legal system, where regions have the authority to make regional policies to regulate their government affairs Alone. Regional authority includes all authority in the government sector, except for foreign policy, defense, security, justice, national monetary and fiscal, and religion.

Second, the steps for forming regional regulations in the concept of regional autonomy in Indonesia include the stages of planning, drafting, discussing, ratifying or enacting, and promulgating. (Article 1 number 1 Law No. 12 of 2011). Therefore, the thing that needs to be paid attention to is whether the Draft Regional Regulations or Regional Regulations have gone through the stages in accordance with the Law on the Formation of Legislative Regulations or not.

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References

Ann and Robert B. Seidman in I Gde Atmadja, Legislative Drafting Training Material held by the Sinar Z Buz Marikum Legal and Human Rights Research Institute, at Natour Bali Denpasar, 30 June-5 July 2003.

Arther H. Moniung. (2013). *Stages of Forming Regional Regulations.*http://manado.tribunnews.com/2013/08/16/phase-pembesaran peraturan-region Accessed, 22 December 2023.

Bogdan, R.C., & Biklen, S.K**(20**07). Qualitative Research for Education: An Introduction to Theories and Methods. Pearson Education, Inc

Jasim Hamaidi and Budiman NPD Sinaga, Formation of Legislative Regulations in the Spotlight, Tatatnusa, Jakarta, 2005.

Jimly Asshidiqie, Concerning Laws in Indonesia, Secretariat General and Registrar of the Constitutional Court of the Republic of Indonesia, Jakarta, 2006.

Josef Mario Monteiro, Regional Government Law, Conceptions, Authorities, Organizations, Villages, Village Legal Products and Regional Regulations, Pustaka Yustisia, Yogyakarta, 2016.

Mas Achmad Santoso, Good Governance and Environmental Law, ICEL, Bandung, 2001.

Reny Rawasita, et.al., Assessing the Social Responsibility of Regional Regulations, Center for Indonesian Law and Policy Studies (PSHK), Jakarta, 2009, p. 60.

Sirajudin, et al, Legislative Drafting: Institutionalization of Participation Methods in the Formation of Legislation, Corruption, Malang, 2006.

Solly Lubis, Legal Sciences, Mandar Maju, Bandung, 2009.

Syarif Hidayat, Decentralization for Regional Development, Jentera: Regional Regulations 14th Year IV Edition, October-December 2006.