



Legal Implications of Regulating the Authority of the Regional Representative Council of the Republic of Indonesia (DPD RI) in Supervising Draft Regional Regulations and Regional Regulations

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Abstract

This article aims to analyze the legal implications of regulating the authority of the Regional Representative Council of the Republic of Indonesia (DPD RI) in supervising the draft regional regulations and regional regulations in Indonesia. This is based on the existence of a conflict of norms in Article 249 paragraph (1) letter j of Law Number 2 of 2018 with the Constitution, especially regarding the authority of the DPD RI itself. This study uses a normative juridical research method with a statutory and conceptual approach. The result of this study is the existence of legal uncertainty in the supervision of draft regional regulations and regional regulations. Because Article 22D paragraph (1) to paragraph (3) of the Constitution does not provide and does not mention the authority to monitor and evaluate draft regional regulations and regional regulations as stipulated in Article 249 paragraph (1) letter j of Law N 2 of 2018.

Keywords: *Authority; Draft; Legal Implication; Regional Representative Council; Regional Regulation; Supervision*

Introduction

The Regional Representative Council of the Republic of Indonesia (DPD RI) has new authority in Article 249 paragraph (1) letter f of Law No. 2 of 2018 which is to carry out supervision in the form of monitoring and evaluating draft regional regulations and regional regulations established by regional governments. Law No. 2 of 2018 seems to give a signal and an adjustment to the Decision of the Court of the Republic of Indonesia Number 92/PUU-X/2012 which has implications for the interpretation of Article 22D paragraph (1) and paragraph (2) with Article 20 and Article 5 paragraph (1) Indonesian Constitution (Widiarto, AE, 2015).

The decision of the Court of the Republic of Indonesia Number 92/PUU-X/2012 states the constitutional authority of the DPD RI in:

- a. Submitting a bill;
- b. Participate in discussing the bill;
- c. Bill approval;
- d. Preparation of National Legislation Program; and
- e. Consideration of the bill.

In addition to the five things mentioned above, the Constitutional Court also stated that the DPD RI has the authority to submit and discuss the Law on Revocation of Government Regulations instead of Laws and general explanations and explanations of article by article of Law No. 27 of 2009 and Law No. 12 of 2011 related to the constitutional authority of DPD RI, must also be considered to conform to the understanding and interpretation given by the Constitutional Court (Widiarto, AE, 2015).

In the context of strengthening the DPD with the enactment of Law No. 2 of 2018, it gives meaning to the urgency of the DPD's authority which has been considered one eye (Indonesiainside.id, 2019). The construction of the Indonesian state administration after the amendment to the 1945 Constitution of the Republic of Indonesia placed every state institution in the same position.

In the 1945 Constitution of the Republic of Indonesia, there are 6 (six) State Institutions that truly reflect the institutionalization of state power, the President as a form of executive power, the MPR, DPR, and DPD as a form of legislative power, and the Supreme Court and the Constitutional Court as a form of judicial power. This balanced position is the result of an agreement to reconstruct Indonesia's constitutional system which places the MPR as the highest state institution into an agency that has the same position as other state institutions (Toding, A., 2017).

The presidential system then became an option in the Indonesian constitutional system. In building a good presidential system, the results of the amendment to the 1945 Constitution of the Republic of Indonesia gave birth to the DPD as one of the state institutions that have a picture of legislative authority (Asshiddiqie, J., 2007). With the authority to supervise these regional regulations and regional regulations, the DPD RI translates them into DPD RI Regulation No. 3 of 2019 concerning Monitoring and Evaluation of Draft Regional Regulations and Regional Regulations.

The regulation was formed to create a harmonious, harmonious, and sustainable relationship between the center and the regions within the framework of the Unitary State of the Republic of Indonesia. As the implementation of regional representative functions, DPD RI has the authority and duty to monitor and evaluate regional regulations and regional regulations. Article 1 point 1 and number 2 of DPD RI Regulation No. 3 of 2019 defines monitoring and evaluation, in full are:

1. Monitoring is the activity of observing, identifying, and compiling Draft Regional Regulations and Regional Regulations that have the potential to conflict with the principles of establishing laws and regulations.
2. Evaluation is the activity of analyzing, and reviewing Draft Regional Regulations and Regional Regulations to become recommendations.

The author sees a conflict of norms in the above-mentioned setting. The authority of the DPD RI in Article 249 paragraph (1) letter j of Law No. 2 of 2018 which is then translated into DPD RI Regulation No. 3 of 2019. This is a conflict with the authority of the central government (the ministry of home affairs) and the governor as the representative of the central government which is regulated in

Articles 267 to 274 of Law No. 23 of 2014. There is also a conflict with the repressive oversight mechanism through judicial review at the Supreme Court.

In line with that, Article 22D paragraphs (1) to (3) of the Indonesian Constitution also do not provide supervisory authority in the form of monitoring and evaluating draft regional regulations and regional regulations as stipulated in Article 249 paragraph (1) letter j of Law No. 2 of 2018.

Research Methods

This type of research is juridical normative (normative legal research). The approach of this research is to use a written legal rule approach (statue approach) and conceptual approach. The written legal rule approach is carried out by examining laws and regulations related to legal issues and the philosophical content of regulation and to study the consistency and suitability of the existing provisions of one law with other laws (Marzuki, P.M., 2008). The technique of analyzing legal materials is carried out using descriptive analysis methods, namely by systematically compiling and categorizing legal materials.

Research Result and Discussion

Regional Regulation (Perda) is a regulation made by the head of the province and regency/city together with the Provincial and Regency/City Regional People's Representative Councils (DPRD), in the realm of implementing regional autonomy which becomes the legality of the execution of the regional government (Indrati, MF, 2007).

Regional regulations are a tangible manifestation of the implementation of regional autonomy owned by regional governments and basically, regional regulations are a further elaboration of higher laws and regulations, by looking at the characteristics of each region.

Independence in autonomy does not mean that regions can make laws and decisions that are independent of the national legal system. Legislation at the regional level is an inseparable part of the unity of the national legal system. Therefore, there should be no laws and regulations at the regional level that conflict with laws and regulations of a higher level or the public interest (Manan, B., 1995).

The main purpose of regional regulations is to empower the community and realize regional independence, and the formation of regional regulations must be based on the principles of the formation of legislation in general, among others; Taking sides with the interests of the people, upholding human rights, having environmental and cultural insight (Abdullah, H.R., 2005).

The legislature is also known as the legislature. The Big Indonesian Dictionary defines the legislature as a body or council authorized to make laws. Furthermore, it suggests the historical aspect (background) of the emergence of the legislature. The legislature or legislature reflects one of the functions of that body, namely to legislate, or make laws.

To reform the structure of the legislative body in Indonesia into two chambers (bicameral) consisting of the People's Representative Council (DPR) and the Regional Representative Council (DPD). With this bicameral structure, it is hoped that the legislative process can be carried out based on a double inspection system that allows the representation of the interests of all the people to be relatively channeled on a broader social basis.

The change of the New Order regime to the Reform Order in 1998 resulted in changes to the Indonesian political system. One of the changes is by making constitutional amendments to the representative structure with the birth of a new state institution within the structure of the representative body called the Regional Representatives Council (hereinafter referred to as DPD). The DPD is formed as an institution that represents the interests of the people in the regions on a provincial basis.

The third amendment to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia). Based on these changes, Indonesia seems to adopt a bicameral structure (two-chamber parliamentary organization structure) by making the Regional Representative Council (DPR) a national-based representative institution and the DPD as a provincial-based representative institution (Manan, F., 2015).

The bicameral system of the legislature is not equipped with the same strong authority, the third amendment to the 1945 Constitution of the Republic of Indonesia instead adopts the idea of a "bicameral" parliament that is "soft" (BPHN, 2021).

The problem with the authority of the DPD RI is that it is contrary to Article 22D paragraph (1) to paragraph (3) of the Indonesian Constitution which states that:

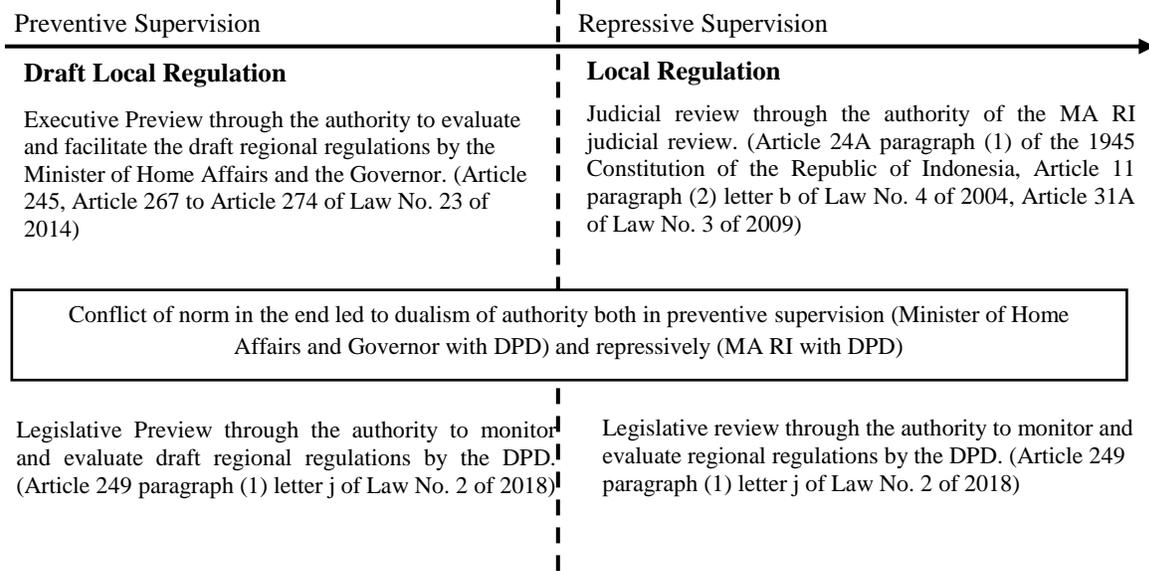
1. DPD may submit to the DPR a draft law (RUU) relating to regional autonomy, central and regional relations, the formation and expansion and merger of regions, management of natural resources and other economic resources, as well as the balance of central and regional finances, and related to the balance of central and regional finance.
2. DPD participates in discussing bills related to regional autonomy; central and regional relations; formation, expansion, and merging of regions; management of natural resources and other economic resources, as well as central and regional financial balance; and provide consideration to the DPR on bills relating to taxes, education, and religion.
3. DPD can supervise the implementation of laws concerning: regional autonomy, the formation, expansion, and merger of regions, central and regional relations, management of natural resources and other economic resources, implementation of the state budget for revenues and expenditures, taxes, education, and religion and submit the results of its supervision to the DPR as consideration for follow-up.

The provisions in Article 22D paragraph (1) to paragraph (3) of the 1945 Constitution of the Republic of Indonesia do not provide and do not at all mention the authority to monitor and evaluate regional regulations and regional regulations as stipulated in Article 249 paragraph (1) letter j of Law No. 2 of 2018.

The problem that the authors found was related to the supervision of draft regional regulations and regional regulations through the new authority of the DPD regulated in Article 249 paragraph (1) letter j of Law No. 2 of 2018 which was later translated into DPD Regulation No. 3 of 2019 is the conflict of norms (conflict of norms). The norm conflict is between the authority of the DPD regarding the supervision (monitoring and evaluation) of draft regional regulations and regional regulations in Article 249 paragraph (1) letter j of Law No. 2 of 2018 with the authority of the Central Government (Mendagri) and the Governor as the representative of the central government as regulated in Article 245, Article 267 to Article 274 of Law No. 23 of 2014 concerning the supervision of draft regional regulations and regional regulations (evaluation).

In addition, there is a conflict of norms on the authority to supervise regional regulations carried out by the DPD with a repressive supervisory mechanism through judicial review at the Supreme Court of the Republic of Indonesia. Although the two authorities produce different products, the DPD produces recommendations while the Supreme Court of the Republic of Indonesia produces a decision that can annul local regulations that contradict the regulations above. The following is a description of the conflict of norms that the author describes in a Figure 1:

Figure 1. Conflict of Authority Norms Supervision of draft regional regulations and regional regulations



Source: Primary Legal Materials (processed: 2021)

With the conditions described above, the conflict of norms in the preventive supervision of the Raperda contained in the executive preview of the Minister of Home Affairs and the Governor with the legislative preview of the DPD, as well as the conflict of norms on the authority of the repressive supervision of the regional regulations contained in the judicial review on the MA RI with a legislative review on the DPD.

In the end, it creates legal uncertainty in the form of the dualism of authority, both in preventive supervision for regional regulations and repressive supervision for regional regulations. The authority of the Central Government to annul a Perda that has been annulled by the Constitutional Court can allow for a gap between the Central Government and regional governments due to the difference between the interests of the center and the interests of the regions.

Thus, the granting of authority and duties to monitor and evaluate draft regional regulations and regional regulations can be seen as an effort to optimize the role of the DPD to maintain a harmonious relationship between the central government and regional governments. Therefore, the scope of authority and duties of the DPD to monitor and evaluate draft regional regulations and regional regulations needs to be formulated appropriately (Rahmawan, T.I., 2018). Determining the scope of authority and duties of the DPD to carry out monitoring and evaluation can essentially look at the aspects contained in the guidelines for implementing DPD supervision with some adjustments.

Based on DPD Regulation Number 6 of 2012 concerning Guidelines for the Implementation of Supervision, there are 2 (two) aspects that are supervised, namely the juridical aspect and the socio-political aspect. Supervision of the juridical aspects is placed on the suitability of the content material,

preparation techniques, principles of formation, scope, and framework, with statutory regulations. Meanwhile, supervision of socio-political aspects focuses on the effectiveness of the implementation of legal products that are supervised (Rahmawan, T.I., 2018).

Conclusion and Suggestion

The legal implication of regulating the authority of the Regional Representatives Council (DPD) in supervising the draft regional regulations and regional regulations in Article 249 paragraph (1) letter j of Law No. 2 of 2018 is legal uncertainty in the supervision of regional regulations and regional regulations. This is due to a conflict of norms in Article 249 paragraph (1) letter j of Law No. 2 of 2018 which is then translated into DPD Regulation No. 3 of 2019 with the authority of the Central Government (Mendagri) and the Governor as the representative of the central government as regulated in Article 245, Article 267 to Article 274 of Law No. 23 of 2014 concerning the supervision of the Raperda (evaluation).

In addition, there is a conflict of norms on the authority to supervise regional regulations carried out by the DPD with a repressive supervisory mechanism through judicial review at the Supreme Court of the Republic of Indonesia. Lastly, the provisions in Article 22D paragraph (1) to paragraph (3) of the 1945 Constitution of the Republic of Indonesia do not provide and do not at all mention the authority to monitor and evaluate Raperda and Perda as regulated in Article 249 paragraph (1) letter j of Law No. 2 of 2018.

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