



Forming a Responsive Local Law in the National Legal Framework

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Abstract

This research uses normative legal research which mostly uses international journal literature. This will make writing more comprehensive and up to date information. The regional authority is attributively regulated in Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia in conjunction / juncto with Article 236 paragraph (1) of Law Number 23 of 2014 concerning Regional Government. Based on these two provisions, autonomous regions are authorized to form Regional Regulations in the context of implementing regional autonomy and co-administration tasks. Related to this, Philipus M Hadjon stated that regional autonomy is the authority to form authority arrangements and the formation of principles, as well as procedures for carrying them out. Autonomous regions are given the authority to regulate in the form of Regional Regulations which function as the basis for the implementation of autonomy.

Keywords: *Development; National Law Framework*

Introduction

Based on Article 18 paragraph (2) and paragraph (5) of the 1945 Constitution of the Republic of Indonesia, each region is granted the widest possible autonomy. The essence of regional autonomy is the granting of authority to autonomous regions to regulate and manage government affairs which are the authority of the regions in accordance with local community initiatives. From a legal perspective, regulating means the act of creating legal norms[1] that are generally accepted and usually abstract, while managing means actions in the form of administration, management, service, and supervision.

From this regulatory authority, autonomous regions are authorized to create legal norms[2] that form the basis for implementing government affairs under their authority. According to Law Number 23 of 2014 concerning Regional Government, government affairs which are under the authority of the regions are referred to as concurrent affairs. Concurrent affairs are divided into 2 (two) namely mandatory affairs and optional affairs. Mandatory affairs are government affairs that are mandatory in nature to be carried out by autonomous regions which are divided into 2 (two) namely mandatory affairs related to basic services and those not related to basic services. Meanwhile, the choice of affairs is an optional affair which is highly dependent on the potential of each autonomous region.

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Regional authority in the formation of Regional Regulations is attribution authority, but its position is not as *main legislation*. Regional regulations are more *delegated legislation* than the existing provisions in the *main legislation* (laws). Theoretically, this is because in a unitary state there is no delegation in making legal norms that bind citizens. The authority to make state legal norms is single and undivided which is only held by the center in this case the House of Representatives. In line with this, HAW Widjaya stated that the main regulatory function is not included in the affairs that can be decentralized.[4] Therefore, Regional Regulations are a national legal entity with other legal products, so that they contain the meaning and consequences that Regional Regulations as *sub-ordinate legislation* must be in accordance with legal products determined by the center.

In the perspective of the welfare state, regional regulations must function as *agents of social changes*, so that they can be used as instruments to accelerate the realization of community welfare in the regions. Regional regulations should not only be instruments for autonomous regions to maintain social order that is coercive (repressive). However, Regional Regulations should be responsive by accommodating the interests of the local community, so that the Regional Regulations are sociologically accepted by the community. On the other hand, Regional Regulations should not only be formed to address temporary legal needs, but must be far-sighted. Regional regulations must accommodate the interests of the community in the future, not only the current community. Regional regulations must be conceived as a way to achieve goals, not as an end. Therefore, it's necessary to draft a responsive (populist) Regional Regulation, so that it can accommodate the present and the future while remaining within the framework of national law.

Research Method

This research uses normative legal research which mostly uses international journal literature. This will make writing more comprehensive and up to date information.[5]

Experiment and Result

The Position of Regional Regulations in the National Legal System

As explained above, autonomous regions are given attributive authority to form Regional Regulations with the main function as the basis for implementing autonomy. Regional autonomy and regional regulations are like two sides of a coin that cannot be separated. The authority to form regional regulations exists because regions are given regional autonomy. Thus, regional regulations are one of the essence of regional autonomy.

Regarding the position of Regional Regulations in the national legal system, it can be seen in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations which regulates the hierarchy of laws and regulations. The hierarchy of laws and regulations in the Article is as follows:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Decree of the People's Consultative Assembly;
- c. Laws / Government Regulations in Lieu of Laws;
- d. Government Regulations;
- e. Presidential Decree;
- f. Provincial Regulations; and
- g. Regency /City Regional Regulations.

Regarding the position of Regional Regulations in the hierarchy above, the author provides the following:

1. The power to bind laws and regulations in accordance with their hierarchy. The legal implications are (1) Regional Regulations must use higher norms as the source of the formation of their content, and (2) Regional Regulations as lower norms must not conflict with laws and regulations a higher invitation (higher norm).
2. Although the authority to form Regional Regulations is the attribution authority, the position of Regional Regulations is highly dependent on higher laws and regulations. The juridical validity of Regional Regulations is highly dependent on higher legislation. Changes in the legal politics of the Central Government through changes to laws and regulations, will have a broad impact on Regional Regulations.
3. Regional Regulations are divided into 2 (two) namely Provincial Regulations and Regency/City Regional Regulations. These provisions place Provincial Regulations in a higher position than Regency/City Regional Regulations. Such an arrangement will have legal implications in the form of (1) reducing the autonomy possessed by the Regency/City. As if the autonomy possessed by the Province is stronger than the autonomy of the Regency/City, (2) Regency/City Regional Regulations may not conflict with the Provincial Regulations. With this concept, Provincial Regulations are a source or reference for Regency/City Regional Regulations even though the authorities in concurrent affairs are different between Provinces and Regencies/Cities. In the future, this provision needs to be amended because it's not in accordance with the principle of regional autonomy and in practice it creates legal confusion and uncertainty.

Preparation of Responsive Regional Regulations

Etymologically, the Indonesian Dictionary defines the term responsive as "responsive; moved; is reacting (not ignorant).[6] According to the Cambridge Dictionary, the term responsive is defined as "saying or doing something as a reaction to something or someone especially in a quick or positive way-quick to act, esp to meet the needs of someone or something".[7] Thus, responsiveness can be interpreted as an attitude or quick action to answer someone or meet someone's needs. In law, responsive law was first popularized by Phillippe Nonet and Phillip Selznick. There are 3 (three) legal models in society, namely "(1) law as the servant of repressive power, (2) law as a differentiated institution capable of taming repression and protecting its own integrity, and (3) law as a facilitator of response to social needs and aspiration".[8] The first model is called repressive law because "law is subordinated to political power". The second type is called autonomous law because it's "law independent of politics; separation of power". While the third type is referred to as responsive law because it's "legal and political aspiration integrated; blending of powers".[8]

The essence of responsive law is the creation of substantive justice, not on formalistic justice or procedural justice. For this reason, public participation in making legal products is absolute. Community participation is opened as wide as possible. The more public participation in making a legal product, it can be guaranteed that the legal product will be more responsive, because it's based on the values that

exist in society. With this broad community participation, obedience to the law is based on awareness, not based on fear of sanctions threatened by the authorities.[9]

From the explanation above, the question will arise how to formulate a regional regulation that is responsive but still within the framework of national law? There are at least 3 (three) ways to prepare responsive Regional Regulations, namely as follows:

- a. Prioritizing the principle of openness and the principle of community participation.
- b. Exploring the noble values that live and are adhered to by the local community.
- c. It must be based on and adequate academic assessment that is sourced from a scientific research.

Prioritizing the principle of openness and the principle of community participation.

Article 5 Number 12 of 2011 concerning the Establishment of Legislation determines one of the principles of establishing good legislation (*beginsele van behoorlijke regelgeving*) is the principle of openness. Based on this principle, the process of drafting Regional Regulations starting from planning, preparation, preparation, and discussion must be transparent and open. The public must be given the widest possible access and opportunity to provide input, criticism, and suggestions in the process of drafting Regional Regulations. Therefore, regional regulations can be said to be of high quality if they involve community participation in their preparation. On the other hand, the preparation of Regional Regulations which is only based on the closed political agreement of its constituents, by ignoring or closing community participation, is a Regional Regulation that is not qualified.

Actually, normatively, Article 96 of Law Number 12 of 2011 concerning the Establishment of Legislations has given the community the right to participate in the preparation of Regional Regulations. However, this participation is still formal, procedural and symbolic, because in practice whether the results of participation are included by the makers of Regional Regulations as legal norms or not is difficult to track. In the future, it is necessary to regulate substantive community participation so that the preparation of Regional Regulations becomes responsive to realize justice for the people in the region.

Exploring the Noble Values That Live and Are Adhered to by the Local Community

One of the contents of the Regional Regulation is the content material in order to accommodate the special conditions of the region. This is related to the "can be implemented" principle. The characteristic of responsive Regional Regulations is that in their implementation, community obedience to Regional Regulations is not based on coercion from regional institutions, but is based on awareness, so that obedience arises from personal self. Therefore, in order to realize a responsive Regional Regulation, special regional conditions (local customs) need to be accommodated so that the Regional Regulation can be implemented. However, it should also be considered, that in accommodating the content of a Regional Regulation based on conditions of regional specificity, it must be based on national law, if the specificity of the region is contrary to national law, then it cannot be used as material for the content of Regional Regulations.

Must be Based On an Adequate Academic Assessment Sourced from A Scientific Research

To support the two things above, it is necessary to compile a responsive Regional Regulation within the framework of national law, supported by an academic text sourced from the results of scientific research. For this reason, Article 56 paragraph (2) of Law Number 12 of 2011 concerning the Establishment of Legislations has required that the preparation of Regional Regulations must be

accompanied by an Academic Paper, except for certain Regional Regulations such as Regional Regulations concerning Regional Revenue and Expenditure Budgets.

The urgency of academic texts in the preparation of Regional Regulations within the framework of national law for several reasons, namely as follows:

- a. With the existence of an academic text, scientifically the Regional Regulation can be justified because it's based on a scientific research.
- b. Through research in academic texts, it can be seen the aspirations of the community and the specifics of the region that can be used as content material so that it can support the principles of openness and community participation.
- c. Judging from the principle of national legal unity, regional regulations will be created whose norms don't conflict with higher laws and regulations, because academic texts also analyze laws and regulations related to the prepared regional regulations.

Conclusion

Autonomous regions are given the authority to regulate in the form of Regional Regulations which function as the basis for the implementation of autonomy. For this reason, responsive Regional Regulations are needed, so that the content of the Regional Regulations is in accordance with the participation and needs of the community in the national legal framework. For this reason, there are 3 (three) ways that need to be done to create responsive Regional Regulations within the framework of national law, namely 1) prioritizing the principle of openness and the principle of participation from the community, 2) exploring noble values that live and are obeyed by the local community, and 3) must be based on an adequate academic assessment originating from a scientific research.

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