

DEMOCRATIC ESTABLISHMENT OF REGIONAL LAW REGULATIONS

Sumiaty Adelina Hutabarat

Budi Darma University

Keywords	Abstract. Regional legal products in the form of decisions and regulations of regional governments can be caught as legal products that are legally flawed, although each formation of regional laws and regulations must always pay attention to the concept of the rule of law, the principle of democracy in the development of legislation. Based on research, the existence of regional laws and regulations made by local governments are in accordance with good legal principles, in accordance with Law Number 10 of 2004 concerning statutory regulations. The principle of democracy has been applied in the formation of regional legal arrangements with regional heads contained in the draft blood regulations that are proposed to come from the regional government and the DPRD for an integrated and systematic planning process for legislation and regulations.
-----------------	---

Email : sumiatyadelina@gmail.com	Copyright 2022 Fox Justi : Jurnal Ilmu Hukum
---	---

1. INTRODUCTION

In line with the increasingly popular nuances of democracy in various fields of community life, nation and state, including within the scope of local government, of course the nuances of democratization are also closely related to the formation of democratic regional legal regulations. criticize and participate in the formation of regional regulations. This makes a difference. These issues include, among other things, is not the position of the ruler or local government relatively stronger than the people in the region, and also conceptually, namely the use and implementation of general principles of good legislation.

The existence of Law number 32 of 2004 concerning regional government, on the one hand offers many opportunities for local governments to create it which is then packaged in the form of local laws and regulations. But on the other hand, excessive use of the principle of freedom can cause local governments to be trapped in a counter-production or negative attitude, which in turn can result in legal products in the form of regional regulations or regional regulations. Therefore, the existence of the principle of freedom of action in the regional government system becomes a dilemma, namely on the one hand it can be positive to anticipate the vacuum of regional legal regulations, on the other hand. On the other hand, it can be negative if it produces legal products that are legally flawed. In this regard,

2. METHODS

The type of research used in this research from the point of view of its nature is empirical juridical law research, research based on an inventory of positive laws, the discovery of legal principles and the discovery of inconcretto laws, which are complemented by observations of the operationalization of law empirically in society. This research requires data on library materials which, according to Soerjono Soekanto and Sri Mamudji, secondary data includes official documents, books, research results in the form of reports, diaries and so on.1 This study requires library data which according to Soerjono.

Soekanto and Sri Mamudji, secondary data includes official documents, books, research results in the form of reports, diaries and so on. Therefore, secondary data in this study was obtained through literature study, namely by studying books, laws and regulations, and all forms of writing related to the object of research. As a knowledge activity, legal research is carried out to solve legal problems, in this case it requires the ability to identify legal problems, regarding legal

reasoning, analyze the problems encountered and then provide solutions to these problems. As Cohen said, legal research is the process of finding laws that apply to people's life activities

3. RESULT AND DISCUSSION

A. Implementation of Democratic Regional Law Regulations by Regional Governments

To determine whether a country can be said to be a state of law, two kinds of principles are commonly used, namely the principle of legality, and the principle of protection of everyone's freedom and human rights.³ The principle of legality is a very important element of a state of law. all government actions must be based on and sourced from the law. The ruler may not go out of the rails and the boundaries that have been set in the law. The limits of state power are stipulated in law, but to be called a state of law it is not enough that a state must act solely within the lines of power granted to it by law. The mechanism for the formation of regional regulations begins with preparing a draft regional regulation, discussion of the draft regional regulation and the stipulation/ratification of the draft regional regulation into a regional regulation can come from the regional head and can be from the DPRD initiative proposal preceded by a hearing format. The discussion of the draft regional regulation that actually comes from the region or comes from the DPRD initiative proposal is carried out in a meeting meeting.

The determination of the draft regional regulation (perda) is carried out at the stage of the fourth (final) discussion session meeting to become a regional regulation. DPRD approval. The formation of regional regulations is carried out by the regional secretary, and is placed in the regional gazette. Regional head decisions are made by regional heads. Regional head decisions are regulatory in nature in regional sheets, while regional head decisions are *beschikking* are not promulgated in regional sheets. The regional head's instructions are determined by the regional head. Every local law regulation has its basics. Meanwhile, regional head decisions are carried out by regional heads. Decisions of regional heads regulate (*regeling*) in regional gazettes, while decisions of regional heads that regulate stipulations (*beschikking*) are not promulgated in regional gazettes. The regional head's instructions are set by the regional head.

Each Regional Regulation has a basis for consideration in its preparation, regional legal regulations in the form of philosophical, physiological, political, economic and juridical. Consideration, "considering", while the juridical basis is placed in the preamble "remember". Each regional law regulation entirely contains a juridical basis. While the sociological, philosophical, political and economic foundations are listed according to the types of material arrangements and regional legal regulations. If the Regional Regulation concerns regional taxes (Series A), then the basis for consideration of the Regional Regulation contains a sociological basis, or philosophy and juridical basis. Whereas in the type of Regional Regulation that regulates serial regional levies (Series B), the basis for consideration of the regulations for the formation of Regional Regulations contains a sociological or philosophical basis and a juridical basis. The type of Regional Regulation that regulates permits (Series C), then the basis for consideration of the formation of the Regional Regulation contains a sociological and/or philosophical and/or economic basis and a juridical basis.

Types of Regional Regulations that regulate the field of regional financial management and APBD/ATPBD (Series D) contain a sociological and/or philosophical basis and/or an economic basis and a juridical basis. and Series D, then the basis for consideration of its formation includes a sociological and/or political basis as well as a juridical basis. The juridical basis of regional law regulations contains a formal juridical and material basis. The formal juridical basis concerns the authority to make legal products such as: (a). Law number 15 of 1950 concerning the creation of the district and the environment of the special region of Yogyakarta; (b) Law No. 32 of 2004 with amendments to Law No. 12 of 2008 concerning regional governments, (c). Each regional law regulation contains all the material from an arrangement. The form of the arrangement of regional legal regulations, the types of regional regulations are: a) regional head decisions; b) Instructions to the regional head consisting of the following parts: 1) naming/title; 2) opening; 3) torso; 4) cover; 5) attachments (if needed). The naming/title section contains information as type, number, year regarding the name of the regulated legal regulation. The opening part of regional regulations

consists of phrases with the approval of the DPRD, decides and stipulates. While the opening of the regional head's decision and the regional head's instructions the word decide is replaced with the word instruct. The body of regional regulations consists of general provisions, regulated materials, investigation provisions, criminal provisions, criminal provisions, transitional provisions and closing provisions. Not all regional regulations contain provisions for investigation, criminal provisions and contain provisions for investigation, criminal provisions and criminal and transitional provisions. For example, some regional regulations can be mentioned. Examples can be mentioned several regional regulations as follows: Regional Regulation Number 12 of 2000 concerning Regional Apparatus Organizations and Regional Regulation Number 9 of 2000 which was amended by Regional Regulation Number 5 of 2001 concerning the Basic Principles of Regional Development in 2000-2004. Perda number 1 of 2002 concerning regional strategic plans for 2002-2004. PERDA No.1 of 2002 concerning Regional Strategic Plans for 2002-2004. The formulation of the body parts of Regional Regulations and Regional Head Decrees that are regulating (regelling) are formulated with a grouping system and some are not grouped. The formulation of the body of regional legal regulations with a grouping system is carried out in the order in which groups of chapters are used with articles without sections and paragraphs, chapters with sections and articles without paragraphs, chapters with sections and paragraphs consisting of articles. Meanwhile, regional legal regulations that are not grouped only consist of provisions of articles. Meanwhile, Regional Head Decrees which are stipulation (beschikking) and Regional Head Instructions are formulated in a dictum.

The component of the vision that needs attention is the vision of democracy and justice which is formulated as follows: democracy is the embodiment of a prosperous society that always upholds democratic values, the rule of law, equal rights and obligations as well as the opportunity to participate in the life of the community, state and nation. Justice is the manifestation of society upholding the values of justice, by giving something to those who have the right and carry out their obligations, for example increasing law enforcement enforcers and increasing democratic awareness (Attachment of PERDA No. 1 of 2002 concerning Restra 2002 Series B).

B. The existence of the principle of democracy for the formation of regional regulations

The drafting of executive regional legal regulations has never provided space for the people to express their aspirations. All aspirations are channeled through DPRD because it is for the people to convey their aspirations. All aspirations are channeled through the DPRD because the people have chosen their representatives in the DPRD, namely DPRD members. Based on the aspirations of the people, the DPRD can convey to the executive in leadership meetings, with opinions and coordination meetings. If members feel the need for a regional legal regulation, they can prepare a Draft (Perda) by

The existence of participatory democratic regional law regulations is seen from the implementation of the principle of openness in the formation of regional legal regulations. In the initial discussion, the procedures and mechanisms for the formation of regional legal regulations have been described in detail. Procedures and mechanisms for the formation of regional legal regulations by type based on the type of regional regulation. The formation of Regional Regulations is different from the procedures and mechanisms for the formation of Regional Head Decrees. In the procedure for establishing regional regulations. In the procedure for the formation of Regional Regulations, there are several stages, namely the preparation stage, the discussion stage and the final stage of stipulation. Draft regional regulations can come from the regional head and can come from the initiative of the DPRD (Head of the Legislation Subdivision) Legal Section of the Regional Secretariat). Draft regional regulations originating from regional heads, the main points of which are draft regional regulations are prepared by the work unit. It is then submitted to the legal department to obtain a juridical response regarding the material, composition or form and language. Then it is handed back to the agency or work unit that puts it forward for perfection. After that, it is submitted to the regional head for approval (Head of the Regional Secretariat Legislation Section). The draft Regional Regulation that has received approval from the regional

head is then submitted to the DPRD with a letter from the regional secretary. Then plan for regional regulations to be held before the discussion. The pre-discussion was followed by work units working on the Raperda, related work units, DPRD which are usually represented. Implementation of the principle of openness as a prerequisite for community participation in the formation of regional regulations is still lacking. The implementation of the principle of openness in the formation of regional legal regulations is not active. The principle of transparency is only carried out at the discussion stage of the Draft Regional Regulation. This is in accordance with the provisions of the DPRD Regulation which states that DPRD meetings are fully open to the public, except at the request of a minimum of 2/3 (two thirds) of all members or DPRD leaders deem it necessary to declare a closed meeting because it involves state secrets.

Whereas ideally, openness in the procedure for the formation of regional laws and regulations allows the public to know the procedures for their own formation and to know the material regulated and to know the existence of regulations. local laws regarding this matter. Transparency in the procedure for establishing regional regulations allows the community to participate in thinking about content material that must be regulated in a legal regulation by conveying their aspirations directly. Transparency In the procedure for establishing regional laws and regulations, it is possible for the public to participate in deliberation at each stage of the Discussion Session on the draft Regional Regulation, both at the pre-discussion (executive) level and at the legislative body (DPRD) level. Openness in the procedure for establishing regional laws and regulations allows the community to participate in decision making in the context of its implementation. If there is room to participate in deciding, then people will feel morally bound or legally there is an obligation or obligation to be responsible for the implementation of regional regulations. Based on these various descriptions, it can be seen that: a. The regulation of community participation in the formation of regional laws and regulations is still very short, namely in the TATIB DPRD, but the community is not given the opportunity to participate directly, but is limited only as spectators. Community participation is more meaningful as community empowerment to participate in discussing, criticizing, responding, and contributing to support and/or rejection of regional policies that are packaged in regional laws and regulations. Based on these various descriptions, it can be seen that: a. The regulation of community participation in the formation of regional laws and regulations is still very short, namely in the TATIB DPRD, but the community is not given the opportunity to participate directly, but is limited only as spectators. Community participation is more meaningful as community empowerment to participate in discussing, criticizing, responding, and contributing to support and/or rejection of regional policies that are packaged in regional laws and regulations. Based on these various descriptions, it can be seen that: a. The regulation of community participation in the formation of regional laws and regulations is still very short, namely in the TATIB DPRD, but the community is not given the opportunity to participate directly, but is limited only as spectators. Community participation is more meaningful as community empowerment to participate in discussing, criticizing, responding, and contributing to support and/or rejection of regional policies that are packaged in regional laws and regulations. but limited only as a spectator. Community participation is more meaningful as community empowerment to participate in discussing, criticizing, responding, and contributing to support and/or rejection of regional policies that are packaged in regional laws and regulations. but limited only as a spectator. Community participation is more meaningful as community empowerment to participate in discussing, criticizing, responding, and contributing to support and/or rejection of regional policies that are packaged in regional laws and regulations. but limited only as a spectator. Community participation is more meaningful as community empowerment to participate in discussing, criticizing, responding, and contributing to support and/or rejection of regional policies that are packaged in regional laws and regulations.

4. CONCLUSION

Regional laws and regulations in their formation by local governments are in accordance with the principles of good legislation, in accordance with the law of the Republic of Indonesia Number 10 of 2004 concerning the Establishment of Legislations. The principle of democracy has been applied in the formation of regional laws and regulations by the Regional Head which is

contained in: the proposed regional regulation draft from the Regional Government and DPRD; the process of making laws and regulations is planned, integrated and systematic.

REFERENCE

- Moeloeng, Lexi, Metode Penelitian Kualitatif, Bandung, 2000
- Philipus M, Pengkajian Ilmu Hukum Dogmatik (Normatif)' Fakultas Hukum Universitas Airlangga, Surabaya, 2005.
- Peter Mahmud Marzuki, Penelitian Hukum, edisi Revisi, Jakarta Kencana Prenada Media Group, 2016.
- Syaukani, dkk, , Otonomi Daerah dalam Negara Kesatuan, cetakan kesatu, Pustaka Pelajar, Yogyakarta. 2002
- Salam, Dharma Setyawan, Otonomi Daerah dalam Perspektif Lingkungan, Nilai dan Sumber Daya, Jambatan, Jakarta, 2002.
- Siong Gouw Giok, Pengertian Tentang Negara Hukum, Jakarta 2000
- Teguh Yuwono (ed), Manajemen Otonomi Daerah, Clogapps, Diponegoro University, 2001
- Utrecht, Pengantar Hukum Administrasi Negara Indonesia, PT.Ichtiar, 1996
- Yudoyono, Bambang, Otonomi Daerah, Pustaka Harapan, Jakarta, 2002.