

## THE URGENCY OF CREATING REGIONAL REGULATIONS FOR SUPPORTING THE IMPLEMENTATION OF REGIONAL AUTONOMY

Lies Ariany dan Risni Ristiawati

Lecturers of Law Faculty at Lambung Mangkurat University who are taking Doctoral Program (S3) of Sharia Studies at UIN Antasari  
Email: [liesa.pisces@gmail.com](mailto:liesa.pisces@gmail.com), [lies.ariany@ulm.ac.id](mailto:lies.ariany@ulm.ac.id)

**Abstrak:** Pemerintah daerah dilaksanakan berdasarkan prinsip otonomi yaitu memberi dan melaksanakan rumah tangga itu sendiri. Untuk alasan ini, penelitian ini adalah studi hukum normatif untuk memeriksa lebih lanjut tentang pelaksanaan otonomi daerah dan pendekatan lain yang dapat dianalisis dengan menggunakan pendekatan perpustakaan menggunakan pendekatan Statuta dan pendekatan konseptual. Hasil penelitian menunjukkan bahwa salah satu cita-cita dan rasionalitas penting pelaksanaan otonomi daerah adalah membuat proses lebih dekat dengan masyarakat, tidak hanya di pemerintah pusat. Untuk alasan ini, perlu mengisi ruang sehingga pemerintah dapat mengambil inisiatif sendiri untuk membuat keputusan tentang lingkungan masyarakat melalui peraturan di tingkat pemerintah daerah. Ini adalah konten materi dari Peraturan Daerah pada dasarnya untuk mengakomodasi manfaat masyarakat di daerah dalam rangka mencapai kebahagiaan dan kemakmuran yang didistribusikan secara merata kepada orang-orang di daerah tersebut.

**Kata Kunci:** *Peraturan daerah, otonomi, desentralisasi*

**Abstract:** The Regional government which carried out based on the principle of autonomy as wide as possible implies that the regions are given the authority to regulate and manage all their own affairs. So, this study tried to conduct a study of normative law to further examine the nature of the implementation of regional autonomy, and the second tried to analyze the role of regional regulations in order to support the implementation of regional autonomy through library research using the statute approach and conceptual approach. The results of the study indicated that one of the important ideals and rationalities for implementing regional autonomy was to make the policy process closer to the society, not only in the central government. For this reason, authority needs to be given so that local governments can take their own initiative to make decisions regarding the interests of the local community through laws at the local government level. Thus, the contents of the Regional Regulations are to accommodate the interests of the people in the regions in order to achieve happiness and prosperity that is distributed equally to the people in the area.

**Keywords:** *Regional regulations, autonomy, decentralization*

### Introduction

The end of the reformation in the Republic of Indonesia has brought changes in the system of governance. Reformation is characterized by the demand for good

governance which requires accountability, transparency and public participation in every public policy. This is the most important thing for regional autonomy in Indonesia, both procedurally and



substantially. It is the reaffirmation of democratization after a long destruction due to centralization for creating the good governance locally and nationally.

In the implementation of good governance it is necessary to develop indicators of success for the implementation of good governance itself. It is very important because it measures, evaluates accountability in implementing a policy, a program or a project, the performance of a business, an organization and activities/business in government management and development. For this reason, the implementation of good and responsible governance will only be achieved when the implementation of politic, economy and administration has equal and synergic networks and interactions. Such interactions and partnerships are usually only able to be developed if there is trust, transparency, participation, and clear and definite regulations, good governance will also be developed under authoritative leadership and clear vision.

Seen from the perspective of state-society relations, it can be said that one of the main objectives of regional autonomy is to open greater access to civil society to participate both in the decision-making process and in its implementation. One of

the important ideals and rationals of implementing regional autonomy is to make closer policy making process to citizens and stakeholders, so that they can participate in the policy making process easily and intensively. By moving the policy from the center to the region, it is expected that the policy making process will become (1) more transparent, and (2) higher community participation and stakeholders, so that public policy truly serves for public and not only for the elite bureaucracy and politicians.

Moh. Hatta argued that autonomization did not only for implementing democracy, but also supporting the development of its own initiative to make decisions for society. By developing its own initiatives, the democracy will be achieved, called government from, by and for the people. By this, the people not only determine their destiny, but also improve their own destiny.

Regional autonomy based on the broadest principle of autonomy implies that the regions are given the authority to handle and manage all their programs. Autonomous regions have the authority to make policies for giving services, increasing participation, developing initiatives and empowering community to enhance



people's welfare. The regional policy making is done through regional regulations and other regional legal products as legal frameworks of regional policies.

Expectation for change through the implementation of decentralization is not able to overcome the socio-economic crisis, but quick post-reform changes have created new problems. Various misconception interpretations and implications of decentralization were argued by many parties, as such as government officials at the central and regional levels (legislative and executive), academics and community leaders (tradition, religion and culture), which resulted various polemics in society.

The society thought that government's administrative implementation was too complicated and strict. The community also thought that the people's behalf must be regulated in all laws and regulations. Managing regional potentials is by giving local government the right to form regional regulation. The making of regulations aims to accommodate the needs of the region by taking into account the community's needs and special characteristics of the region.

Thus, decentralization implies as an acknowledgement from central policy maker on the potential and capabilities of regions by involving every region representative to govern and develop, and by accustom themselves to use rights balance with the obligations for creating democratic society. In other words, implementing a decentralized system is to create good habits in absorbing, formulating and making decisions to solve problems that occur within the region itself without damaging the planning and implementing of national policies.

The policy making that given to the regions gives freedom to form legislation at the regional level. On the other hand, to implement regional autonomy in a democratic legal country should also be accompanied by responsibility. It must be managed and used properly by local governments. Local governments should not careless in implementing regional autonomy and in creating democratic legal country. It is necessary to have great arrangement, in this case for creating regulations, especially regional regulations. It must be initiated from the ideas, the planning, to the enactment.

Ideally, a regional regulation must be made in a good planning, in integration and systematic manner, so that the regional



regulation can be immediately implemented and it provides direct benefits to the society and local government for creating good regional regulations. In this paper, the author examined more about how a regional regulation was formed in creating a better local government. The problems that were related to the role of regional regulations in order to support the implementation of regional autonomy.

### **Research Methodology**

The type of this research was normative legal research, using statute and conceptual approach which focused on library research. This library research also used secondary data derived from 2 (two) legal materials, as such as primary legal material and secondary legal material. Furthermore, this research was also analytical descriptive, because from this research it was expected that a holistic, deep, and systematic explanations would be obtained.

### **Discussions: Creating Regional Regulations for Supporting the Implementation of Regional Autonomy**

In order to make implementation of regional autonomy well and produce equitable development, it is necessary to have support from a good rule of law. Moreover, Indonesia is one of the

countries with the concept of welfare state. This is in line with the broad regional autonomy for accelerating welfare of its people through improved services, empowerment and community participation. In addition, through autonomy, the region is expected to be able to increase its competitiveness by using democracy principles, equity, justice, privilege and specialty, and diversity of regions within the Republic of Indonesia.

In line with the concept of welfare state, the law is placed as a rule in the administration and governance, whereas the objectives of the law are: "*...opgelegd om de samenleving vreedzaam, rechtvaardig, en doelmatig te ordenen*" (Managing a peaceful, fair and meaningful society). It means that the target of the law is the creation of country, government and social activities based on justice, peace, and benefit or meaningfulness. In a rechtsstaat (the rule of law), the existence of law is used as an instrument in managing the life of the country, government and society.

Regarding to above explanation, autonomy has the meaning of freedom or independence (zelfstandigheid), but it is not liberty (onafhankelijkheid). Limited freedom or independence is a form of giving a responsible opportunity. In giving



responsibility there are two elements. They are:

1. Giving assignments which means a number of mandatory work and the authority to carry it out;
2. Giving trust in the form of authority to think and determine the way how to complete the task.

In line with this, the government can run effectively if it matches the real situation in the country and part of the country, like geography and demography as well as customs, culture, the level of intelligence of the society, economic development and others. A decentralized system can also prevent the focus power only for certain area or people. This system also contains acknowledgement from central policy maker policies on the potential and capabilities of the region by involving every region's representatives for carrying out governance and development.

Indonesia with its enormous territory and a large population is no longer possible to carry out direct democracy by all citizens, but the effort to create mechanisms in involving as many people as possible must be maintained. Independent and democratic autonomous government in every region will bring government closer to its people, so that the various

needs of different people can be served fairly.

Finally, to harmonize the concept of a unitary state and *rechtsstaat*, then there must be trust between the citizen and the government. The citizen should believe that the government will not misuse its power, whereas the government believes that its policy will be obeyed and admitted by its people. A *rechtsstaat* means that all country or government's actions must be based on legal regulations or can be accountable legally.

Hugo Krabbe thought that a country should be a *rechtsstaat* and every action must be based on law or accountable to the law. If we look further back, the concept of sovereignty based on law was a reaction to the principle of the state sovereignty. According to the state sovereignty theory, everything is carried out in every policy, because the country has unlimited power. The followers of this theory assumed that the law was just the concrete will of the country. In the next development, experts considered that the state sovereignty was not realistic. Finally, they turned to law supremacy as the highest sovereignty.



Therefore, Hans Kelsen related to the basic functions of the country or the power in a country suggested that::

*“As we have seen, there are not three but two basic function of the state: creation and application (execution) of law, and these function are not coordinated but sub-and supra-ordinated. Further, it is not possible to define boundary line separating these function from each order, since the distinction between creation and application of law-under lying the dualism of legislative and executive power (in the broadest sense)- has only a relative character, most act of state being at the same time law creating and law applying acts.”*

From what was stated by Hans Kelsen above, there were only two functions (not country tools or equipments) of power that exists in a country: the function of legal creation and the implication of law. The two functions were not equal, meaning that one function was a subordinate and the another was a superordinate. The superordinate function of power was the function of country's power in the creation of law, whereas the subordinate was the function of country's power in the implication of the law. The simple reason was it was impossible to implement or apply the law if there was no law to be implemented, it means that the function of law creation must first work (there were laws that had been formed by instruments that carry out the function as a

creator) then the function of law implementation could be done.

Therefore, in line with the concept of a rechtsstaat. In order to carry out everything that is related to regional business, it should be based on the rule of law, especially when our country is known as a rechtsstaat . As the result, the regions is given the authority to regulate its law based on regional regulations. Regional authority to form regional regulations is a manifestation of regional autonomy.

Article number 18 of Republic Indonesia 1945 Constitution believes in the existence of regional authority based on regional autonomy. An autonomous region, which refers to a region, is a legal community which has regional boundaries that authorized to regulate and manage regional governance and the local community based to their own initiatives and the people's aspirations in the Republic of Indonesia. One of the main reasons for decentralization is solely that it gives the possibility for regulating the same problem differently in different regions. A Consideration that make such difference in the nation is based on geography, national, and religion. The greater the territorial and the more varied the social conditions, the more decentralized it will be on territorial decentralization.



Related to this, the existence of regional regulations in regional autonomy is very important, because regional regulations are a logical consequence of regional authority to regulate and manage their own business. Thus, the regional regulation is a *conditio sine quanon* (absolute requirement) in implementing regional autonomy. Furthermore, in Article number 18 paragraph (6) of The Republic Indonesia 1945 Constitution stated that "Regional Government has the right to legalize regional regulations and other regulations for autonomy and its sub-tasks." In line with above description, not all government business are regulated and administered by the central government, but they can be submitted to be regulated or implemented by lower units in the form of autonomy and sub-tasks. Government's matters that have been given and become regional matters are followed or accompanied by the authority, so that regions can have the authority to regulate and manage government's matters by forming their own legislation (*legislatieve bevoegheid*, and legislative power). The regulations made by a region apply to the region / territory.

Regional regulations are one of the products of regional legislation established by heads of regent and province, and the

Provincial and District Municipal Services Representatives. Regional authority in establishing regional regulations legally is confirmed in Article 236 of Law Number 23 Year 2014 concerning Regional Government which states:

1. To implement Regional Autonomy and Co-Administration, A Regions creates Regional Regulations.
2. The Regional Regulation as referred to paragraph (1) is formed by the District Municipal Services Representatives with the agreement of the head of the Region.
3. The Regional Regulation as referred to in paragraph (1) contains:
  - a. implementation of Regional Autonomy and Additional Assignment; and
  - b. further elaboration of the higher laws regulations.
4. In addition to the content as referred to paragraph (3), the Regional Regulation can contain local content suitable to the rules of the legislation.

Moreover, the development of regions is not easy because it requires sufficient knowledge and understanding, especially about the techniques of its development, so the regional regulations formed do not oppose to laws and society.



For this reason Law No. 12 year 2011 concerning the Creation of Legislation is used as a guideline in drafting a good legislation.

In order to support the implementation of regional autonomy, the regional regulations are so important in the implementation of regional autonomy that the preparation needs to be programmed, also the necessary support of legal instruments can be made systematically, directed and planned based on clear priority. Besides for systematic purpose, It is made also to avoid many revoked and canceled regulations because of conflict with higher-level regulations.

For maintaining the stability of law and legislation without confusion, or overlapping among regulations and contradicting to the higher laws and regulations, according to bahder Johan Nasution and Solly Lubis there are three foundations used in creating regulations: Philosophical Foundation, Juridical Foundation, and Political Foundation. Amiroeddin Syarif also mentioned the philosophical foundation, juridical foundation, and sociological foundation as the foundation used in forming regulations.

Bitner S. Pakpahan combined four foundations: 1) philosophy (related to the foundation, ideology, values (legal ideals)), 2) sociology (related to conditions or empirical reality for having effective binding power), 3) the legal basis as a base for the authority to make laws and regulations, and 4) the political foundation to ensure that the policies issued by the Regional Government can run correctly suitable to the objectives.

As a foundation in implementing regional governance, a regional regulations is a demand between the center and the the region based on the principle of autonomy. The work of government in the regions by outlining the rules in the legislation requires the existence of regional regulations that suitable to the potential and diversity of the region.

Regional regulations as a form of legislation is manifestation of several constitutions based on the 1945 Constitution, as such as:

1. Democracy led by the wisdom of deliberations among representatives.
2. Social justice for the whole of the people of Indonesianq

Regional regulations as laws and regulations bind every person generally without identify to certain individuals. In



other words, regional regulations apply to every legal subject that fulfills the elements in a pattern of behavior.

In partial governance approach in the regions, the state believes the existence of regions as part of the country that carry out governance in the regions. Submission of the matter is also submission of the authority to form regional regulations to government officials in the region. The point is that the regional regulations in order to achieve the greatest happiness for the community, must be respected by the central government as the matters of regional government officials in seeking happiness and prosperity for the people in the area.

### Closing

For having good implementation of regional autonomy and producing fair development, it will be necessary to be supported by a good rule of law. Consequently, the existence of regional regulations is important to support the implementation of regional autonomy, so the creation of regional regulations needs to be programmed and supported by legal instruments. Thus, it is clearly systematic, directed and planned based on a clear priority. Not only to make regional regulations systematically, but also to avoid

many revoked and canceled local regulations because they oppose to the higher-level regulations.

### References

#### Books

- Dwiyanto, Agus. 2002. *Reformasi Tata Pemerintahan dan Otonomi Daerah, Ringkasan Eksekutif*. Yogyakarta : Pusat Studi Hukum dan Kebijakan Universitas Gadjah Mada.
- Hidayat, Syarif. 2002. *Refleksi Realitas Otonomi Daerah dan Tantangan Ke Depan*, Jakarta : Pustaka Quantum.
- HR., Ridwan. 2006. *Hukum Administrasi Negara*. Jakarta : Rajagrafindo.
- Ibrahim, Anis. 2008. *Legislasi Dalam Perspektif Demokrasi : Analisis Interaksi Politik dan Hukum dalam Proses Pembentukan Peraturan Daerah di Jawa Timur*. (Disertasi). Semarang : Program Doktor Ilmu Hukum Universitas Diponegoro.
- Lubis, M. Solly. 1995. *Landasan dan Teknik Perundang-undangan*. Bandung : Mandar Maju.
- Kelsen, Hans. 1973. *General Theory Of Law and State*. New York : Russel and Russel.
- Manan, Bagir. 2005. *Menyongsong Fajar Otonomi Daerah*. Yogyakarta : Pusat Studi Hukum Daerah UII.
- Nasuiton, Bahder Johan. 1991. *Teknik dan Cara Pembentukan Peraturan Perundang-undangan Negara*. Bandung : Penerbit Tarsito.
- Rozaki, Abdur (et.al). 2004. *Memperkuat Kapasitas Daerah dalam Membangun Otonomi, Naskah Akademik dan Legal Drafting*. Yogyakarta : IRE Press.



- Rumokoy, Donald A. 2001. *Perkembangan Tipe Negara Hukum dan Peranan Hukum Administrasi Negara di Dalamnya, terpetik dari buku Dimensi-dimensi Hukum Administrasi Negara*. Yogyakarta : UII Pres.
- Syafrudin, Ateng. 2006. *Kapita Selekta Hakikat Otonomi dan Desentralisasi Dalam Pembangunan Daerah*. Yogyakarta : Citra Media.
- Syarif, Amiroeddin. 1987. *Perundang-undangan: Dasar, Jenis dan Teknik Membuatnya*. Jakarta : Penerbit Bina Aksara.
- Journal's Articles and Research**
- Helan, Yohanes Golot Tuba. 2006. *Implementasi Prinsip Demokrasi Dalam Pembentukan Peraturan Daerah Di Era Otonomi Daerah*. (Disertasi). Bandung : Program Pascasarjana Unpad.
- Purnomo, Chrisdianto Eko. 2008. *Pembatasan Kekuasaan Presiden Dalam Rangka Menwujudkan Pemerintahan Konstitusional Di Indonesia*. (Tesis). Bandung : Program Pascasarjana Unpad.
- Siar, Lendy. 2001. *Pengaturan dan Pelaksanaan Pengawasan Preventif Terhadap Peraturan Daerah*. (Tesis). Bandung : Tesis Program Pascasarjana Unpad.
- Sedubun, Victor Juzuf. 2010. *Kajian Filsafat Hukum Tentang Pembentukan Peraturan Daerah*. Jurnal Sasi Vol.6 No.3 Bulan Juli-September 2010.
- Yogyakarta : Makalah Universitas Gadjah Mada, 26 Desember 2005.
- Hatta, Moh. dalam Bhenyamin Hossein, "Perimbangan Keuangan antara Negara dan Daerah Otonom dalam Rangka Memperkokoh Integrasi Nasional", makalah disampaikan pada Seminar Hukum Nasional ke-VII. Jakarta : Badan Pembinaan Hukum Nasional-Departemen Kehakiman RI, 12-15 Oktober 1999.
- Pakpahan, Bitner S.. 2000. *Perumusan Substansi Perda*. (Makalah).
- Syafrudin, Ateng. 1983. *Pasang Surut Otonomi Daerah*. Bandung : Orasi Dies Natalis Fakultas Hukum Universitas Parahyangan.
- Syafrudin, Ateng. 1992. *Masalah Hukum Dalam Pemerintahan Daerah*, makalah untuk pendidikan non gelar untuk anggota DPRD Tingkat II se Jawa Barat di FISIP Unpad 28 Desember 1992. Bandung : FISIP Unpad.

## Papers

- Effendi, Sofian. 2005. *Membangun Good Governance: Tugas Kita Bersama*.

