



The process of legislation drafting regional rules formation process in southwest Maluku region, Indonesia

Alexander Dadiara, Noor Tri Hastuti

Faculty of Law, Universitas Wijaya Kusuma Surabaya, Surabaya, Indonesia

Abstract

Law No. 32/2004 confirms the decentralization of local government, where regions have autonomy in regulating government affairs except in certain fields. Community involvement in the formation of local regulations is important, although the government still supervises the implementation of independence to maintain a balance between autonomy and supervision. This research will examine the formation of local regulations in Maluku, Indonesia. Southwest Maluku Regency as an autonomous region implements regional autonomy based on decentralization to develop the region and meet the aspirations of the community, with the formation of Regional Apparatus that follow the principles of organizational design for efficiency and effectiveness. It uses normative research methods to analyze Indonesian national laws and regulations in the formation of laws and regulations. Thus, this study concludes that the formation of regional regulations still refers to the Indonesian national regulations.

Keywords: Legislation drafting, regional rules, formation process

Introduction

Law No. 32 of 2004 on Regional Government Indonesia has changed the system of Government in the regions by strengthening the decentralization system (Regional Autonomy). This change implements Article 18 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which mandates that 'The provincial, district, and city governments regulate and administrate their government affairs according to the principles of autonomy and assistance'.

Regions have the authority to make regional regulations to regulate their government affairs. Regional authority includes all authority in the field of government, except in the fields of foreign policy, defense, security, justice, national monetary and fiscal affairs, and religion as stipulated in the provisions of Article 10 paragraph 3 of Law Number 32 of 2004 concerning Regional Government ^[1].

In particular, mandatory affairs that become the region's authority are regulated in the provisions of Article 13 and Article 14, which are further regulated by Government Regulation 38 of 2007 concerning the Division of Government Matters between the Government, Provincial Regional Governments, and Regency / City Governments ^[2]. In the implementation of Regional Government, the Government has also established Government Regulation Number 41 of 2007 concerning Regional Apparatus Organizations. To perform local government affairs as referred to in the Government Regulation, the Local Government requires a set of Laws and Regulations ^[3].

On the other hand, the development of higher laws and regulations that are used as a reference by the Designer or formulator of laws and regulations 'forces' them to be able to always follow these developments concerning their duties as Designer or formulator of laws and regulations at the regional level. The development of these laws and regulations includes Law No. 28 of 2009 on Regional Taxes and Levies and Law No. 12 of 2011 on the Formation of Laws and Regulations.

In the formation of local regulations, government openness is needed, with the openness of the government to the public, it is possible for public involvement to participate, both from the process of drafting regulations to the enactment of a regulation. Public participation in the formation of laws and regulations in the form of regional regulations in Article 96 of Law Number 12 of 2011 concerning the Formation of Legislation, that the public has the right to provide input orally or in writing in the formation of laws and regulations. Oral and/or written input as referred to can be done through public hearings, work visits, socialization and/or, seminars, workshops, and/or discussions.

As a Region of Autonomy, to realize the philosophical, sociological, and juridical meaning, the Southwest Maluku Regency has the authority to establish Regional Regulations, in line with this authority in relation to the formation of legal products in the regions, the authority to form Regional Regulations is attributively the authority of the Regional Government ^[3].

The authority of attribution assigned by the 1945 Constitution of the Republic of Indonesia, the authority of the Regional Government of Southwest Maluku Regency is to establish Regional Regulations and other regulations aimed at implementing autonomy and assistance tasks. The meaning of 'establishing' above constitutionally means that the Regional Government has the right to establish Regional Regulations based on government affairs that have been determined by norms, standards, procedures, and criteria. Based on the provisions of laws and regulations, the formation of Regency / City Regional Regulations can originate from the DPRD or the Regional Head ^[4].

In this respect, the content of the 1945 Constitution of the Republic of Indonesia adheres to both horizontal and vertical divisions of power. The horizontal division is actualized in the form of state institutions and their inherent powers, while vertical division is carried out between the Central Government and Regional Governments through regional autonomy and decentralization policies. However,

regions with broad autonomy do not mean that they are free to exercise their authority, and supervision from the government is still carried out, as Bagir Manan asserts that Supervision (toezicht, supervision) is an indispensable element of autonomy ^[4]. The difference between the freedom and independence of autonomy on the one hand, and supervision on the other, are two sides of the same coin in a unitary state with a system of autonomy (decentralization).

The autonomy of independence and freedom can be seen as a check or control on the tendency towards excessive centralization. Conversely, oversight is a control against excessive decentralization. There is no autonomy without an oversight system ^[5]. This may include supervision by the government of Regional Regulations, special regions and/or further elaboration of higher laws and regulations. As part of the system of laws and regulations, the content material of Local Regulations cannot be out of the framework established by Law Number 12 of 2011. This paper will examine the juridical stages of the process of forming Local Regulations in Southwest Maluku Regency.

Research Methods

Concerning the substance of the legal issues studied, this research is normative research, which is research that mainly examines positive legal provisions and legal principles, and explains and estimates the direction of future legal developments. This is because this research is legal research. After all, legal science has a special character (it is a sui generis discipline). It is research to analyze laws and regulations, especially concerning the process of forming and monitoring local regulations in Southwest Maluku Regency, Maluku Province.

Discussion

Local regulation legislation

Local regulations are one of the tools in carrying out social transformation and democracy, as a manifestation of local communities that are able to respond to rapid changes and challenges in the current era of autonomy and realization of good local governance as part of sustainable development in the regions. Therefore, the ability to formulate Local Regulations that can create multiple effects is required. On this basis, the formation of Local Regulations must be planned as well as possible. Through the formation of planned, aspirational, and quality Local Regulations in the form of a Regional Legislation program, it can be expected that Local Regulations will be the main driver for the fundamental changes needed by the region.

The Regional Legislation Program, which is also one of the regional policies containing a list of several regional regulations that will be made in one year in order to be planned, integrated, and systematized, must also be prepared in a participatory manner. The study of Legislation is usually approached dichotomously, namely on the one hand some solely study it from a normative juridical optic and on the other hand there are no less those who approach it from a socio-political perspective ^[6].

At this point, it will proceed to the juridical stage, which concerns the formulation or judging of a legal regulation. This stage involves intellectual activities of a purely juridical nature and is handled by personnel with specialized legal education ^[7]. Legislation is not just an activity in formulating norms in legal texts carried out by a group of

people who have the authority to do so. Still, its reach extends to the struggle and interaction of socio-political forces that surround and are around it. In the knowledge of law, 'legislation has a relatively dichotomous meaning, which can mean the process of law formation, and can also mean legal products. Local Regulation is one type of legislation and is part of the national legal system based on Pancasila. Local Regulations have a very strategic position because they are given a clear constitutional foundation as stipulated in Article 18 paragraph 6 of the 1945 Constitution of the Republic of Indonesia ^[8].

Through the preparation of the Regional Legislation Program, it is expected that the Regional Regulations will be planned, integrated, and systematic so that they will be useful for the community and can minimize the existence of problematic Regional Regulations. For example, based on data from the Ministry of Home Affairs, as many as 1983 Local Regulations were cancelled, there are still thousands of Local Regulations that are recommended to be evaluated and/or cancelled. The cancelled local regulations are generally local regulations on local taxes and levies. As of July 2009, 1152, local regulations on local taxes and levies have been cancelled.

Law Number 10 Year 2004 on the Formation of Legislation still has shortcomings and has not been able to accommodate the development of community needs regarding the rules for the formation of good laws and regulations so it was finally replaced by Law Number 12 of 2011 on the Formation of Legislation. This is one of the means to achieve expectations, so that in the future the formation of various laws and regulations can run more orderly and better, and each law and regulation under its purpose, function, and content material, to facilitate further implementation.

Formulation of draft local regulations in the local government environment

The Regional Government of Southwest Maluku Regency already has a Legal Foundation for the Formation of Legal Products in the Region, namely, Regional Regulation of Southwest Maluku Regency Number 2 of 2021. Furthermore, the provisions of Article 1 point 16 of the Regulation of the Minister of Home Affairs, Number 80 of 2015 define the Formation of Regional Regulations for the making of regional laws and regulations which include the stages of planning, preparation, discussion, stipulation, promulgation, and dissemination.

The first initiative to plan the drafting of a Local Regulation generally comes from a work unit/SKPD (Regional Government Work Unit)/OPD (Regional Apparatus Organisation) / leading sector within the Regional Government of Southwest Maluku Regency. Sometimes this idea can also come from the Legal Department which proposes to the leading sector to plan the drafting of Local Regulations to regulate certain issues due to the lack of information reaching the leading sector ^[9].

The drafting of local regulations in Southwest Maluku Regency begins when the Regent orders the initiating Regional Apparatus to draft local regulations based on regional government program ^[10]. In preparing the draft local regulation, the Regent forms a local regulation drafting team which is determined by a Regent decree ^[11]. The Head of Regent may include related vertical agencies and/or academics in the membership of the drafting team. The

drafting team is led by a chairman appointed by the initiating Regional Apparatus. In the event that the team leader is another appointed official, the head of the initiating Regional Apparatus remains responsible for the content material of the draft local regulation prepared ^[12].

In preparing the draft local regulation, the drafting team may invite researchers and/or experts from universities or community organisations as needed. The head of the drafting team shall report to the regional secretary on the progress and/or problems encountered in the drafting of the local regulation to obtain direction or decision. The draft local regulation that has been prepared is given a coordination stamp by the head of the drafting team and the initiating Regional Apparatus. The head of the drafting team submits the results of the draft local regulation to the Regent through the regional secretary for harmonisation, rounding, and stabilisation of conception.

Preparation of regional regulation drafts within the house of representatives of Southwest Maluku Regency

The drafting of Regional Regulations by the House of Representatives of Southwest Maluku Regency is regulated in Regional Regulation of Southwest Maluku Regency Number 2 of 2021 concerning the Formation of Regional Legal Products. Draft Regional Regulations that have been submitted by members of the DPRD, commissions, joint commissions are submitted in writing to the leadership of the DPRD accompanied by explanations or information and/or academic papers ^[13]. Explanation or statement as intended contains: a. main ideas and content material regulated, b. list of names; and, c. signature of the proponent. Submission of the draft local regulation is given a main number by the secretariat of the DPRD.

The draft submission of the local regulation as referred to is given a main number by the secretariat of the DPRD. If the draft local regulation regulates: a. APBD; b. revocation of local regulations; or c. amendment of local regulations that are only limited to changing some materials, the submission of the draft local regulation is accompanied by an explanation or statement containing the main ideas and content material regulated. The Head of DPRD submits the draft of the local regulation to the local regulation formation agency for review. The review is conducted in the context of harmonizing, rounding up, and stabilizing the conception of the draft local regulation ^[13]. The DPRD's leadership submits draft local regulations prepared by the DPRD to the Regent for discussion. If, in one session period, the DPRD and the Regent submit draft local regulations on the same material, the DPRD's draft local regulations shall be discussed, and the Regent's draft local regulations shall be used as material for comparison ^[14].

Draft local regulations originating from the DPRD or Regent are discussed by the DPRD and Regent to obtain joint approval. Such discussion is conducted through 2 (two) stages of discussion, namely level I talks and level II talks. Submission of draft local regulations originating from the DPRD or Regent is accompanied by an Academic Paper or Explanation/Description. The Chairman of the DPRD submits the draft local regulations to local regulation formation agency for review. The results of the study are submitted to the Chairman of the DPRD in the form of recommendations. The Chairman of the DPRD informs the results of the study to the Consultative Body for scheduling purposes.

In the event that the Regent is temporarily or permanently absent by statutory provisions, the discussion of the draft local regulation shall be carried out by the Acting Task Force, Daily Executive, Temporary Acting or Acting Regent. In discussing the draft local regulation must obtain written approval from the Governor. The Acting Task Force, Daily Executive, Temporary Acting or Acting Regent. In discussing the draft local regulations must obtain written approval from the Governor ^[15]. The provisions of Law Number 12 of 2011 regulate the discussion of Provincial Regulations which *mutatis mutandis* also applies to the discussion of Regency / City Regulations. In this case, it is related to the joint discussion carried out through the levels of discussion ^[16].

The levels of discussion are carried out in commission/committee/agency/equipped meetings of the Regency DPRD specifically dealing with the field of legislation and plenary meetings ^[17]. Draft local regulations that have been discussed in commission, joint commission, or special committee meetings must be initialled by the head of the commission, joint commission, or special committee that has discussed the draft local regulation along with the Legal Section before being submitted to the Governor for facilitation.

The Regent's joint approval with the DPRD on draft local regulations that do not go through the evaluation stage is carried out after the results of facilitation from the Governor are received. In the event that agreement cannot be reached by deliberation for consensus, the decision shall be made based on a majority vote. In the event that a draft local regulation does not receive joint approval between the DPRD and the Regent, the draft local regulation may not be submitted again in the DPRD trial during that session. Draft local regulations that do not receive joint approval between the DPRD and the Regent are stated in the official report.

Conclusions

That the establishment of Regional Regulations in Southwest Maluku Regency has been carried out in reference to Regional Regulation of Southwest Maluku Regency Number 2 of 2021 concerning the Formation of Regional Legal Products. In that regard, the Regional Regulation is an elaboration of the authority granted by the provisions of higher laws and regulations, namely: Law Number 12 of 2011, Law Number 23 of 2014 concerning Regional Government, Minister of Home Affairs Regulation Number 80 of 2015 and Minister of Home Affairs Regulation Number 120 of 2018.

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14. Refer to Article 33 of the Regional Regulation of Southwest Maluku Regency Number 2 of 2021 concerning the Formation of Regional Legal Products
15. Refer to Article 34 of the Regional Regulation of Southwest Maluku Regency Number 2 of 2021 concerning the Formation of Regional Legal Products
16. See Article 34 paragraph (3) of the Regional Regulation of Southwest Maluku Regency on the Formation of Regional Legal Products.
17. See Article 36 of the Regional Regulation of Southwest Maluku Regency Number 2 of 2021 concerning the Formation of Regional Legal Products.