



Ratio Legis Regulatory Authority of the Regional Representative Council of the Republic of Indonesia (DPD RI) in Supervision of Draft Regional Regulations and Regional Regulations

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Abstract

In this study conducted a study of the ratio legis regulation of the authority of the Regional Representative Council of the Republic of Indonesia (DPD RI) in Supervision of Draft Regional Regulations and Regional Regulations contained in Article 249 paragraph (1) letter j of Law Number 2 of 2018 concerning the Second Amendment to Law Number 17 of 2014 concerning Regional People's Consultative Assembly, People's Representative Council, Regional Representative Council, and Regional People's Representative Council (MD3 Law). This research is normative legal research with a statutory and conceptual approach. The results of this study are the legislative authority ratio of the DPD RI in supervising the draft of regional regulations and regional regulations to strengthen the function of the DPD RI within the framework of the unitary state of the Republic of Indonesia, especially in maintaining the harmonization of regulations at the central level with regulations at the regional level in the form of draft regional regulations and regional regulations.

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

Introduction

The reform has had a wide impact on the state administration system in Indonesia. One of them is the concept of regional autonomy which is presented in Law No. 22 of 1999 concerning Regional Government and Law No. 25 of 1999 concerning Financial Balance between Central and Regional Governments. One of the basic concepts of regional autonomy in the two laws is the transfer of as much government authority in domestic relations to the regions as possible. Except for finance and monetary, foreign policy, judiciary, defense, religion, and some areas of government policy that are national strategic in nature, all other areas of government can be decentralized (Haris, S., 2003).

The realization of regional autonomy policies in Indonesia cannot be separated from the decentralization on which it is based (Nadir, S., 2013). Decentralization is a concept that implies the delegation of authority from the central government to lower levels of government to manage its territory. Decentralization aims to enable the government to further improve the efficiency and effectiveness of its service functions to all levels of society. This means that decentralization shows a vertical building of the form of state power (Nadir, S., 2013).

Regional autonomy brings local government authority to make regional regulations. Regional regulations are one of the important instruments to translate the independence of regional governments in developing their regions according to the potential of each region. In 2016, 3,143 district and city regulations were canceled by the central government to strengthen the nation's competitiveness in the era of competition (PSHK Indonesia, 2011). These regional regulations are considered to hamper regional economic growth and lengthen bureaucratic paths, hinder investment, and ease of doing business (Cabinet Secretariat of the Republic of Indonesia, 2016).

Law No. 23 of 2014 provides a framework for executive oversight of Provincial and/or Regency/City Regional Regulations in two mechanisms. First, preventive supervision through executive preview contained in Law No. 23 of 2014 and Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 80 of 2015 concerning the Establishment of Regional Legal Products. This supervision is known as evaluation and facilitation by the Central Government (in this case the Minister of Home Affairs) for provincial Raperda, and the Governor as the representative of the central government for draft district/city regional regulations.

The provision regarding repressive supervision through executive review was later annulled through the Decision of the Constitutional Court of the Republic of Indonesia Number 137/PUU-XIII-2015 which canceled the executive review authority of the governor as the representative of the Central Government to examine and cancel Regency/City regulations. This was followed by the Decision of the Constitutional Court of the Republic of Indonesia Number 56/PUU-XIV-2016 which canceled the executive review authority of the Minister of Home Affairs to examine and cancel Provincial Regulations. Thus, there is no authority to examine regional regulations that are owned by the executive power.

With the enactment of Law No. 2 of 2018, the DPD has a new authority, namely monitoring and evaluating draft regional regulations and regional regulations. The monitoring and evaluation regulated in Article 249 paragraph (1) letter j of Law No. 2 of 2018 provide strengthening of the authority of the DPD, especially in the area of regional autonomy. With this new authority, the DPD can supervise the regional regulations and regional regulations in the Provincial Government, and/or Regency/Municipal Governments.

With the authority to supervise these regional regulations and regional regulations, the DPD translates them into DPD Regulation Number 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, the DPD has the authority and duty to monitor and evaluate draft regional regulations and regional regulations.

Based on the problems described in this article, the author examines the ratio legis regulatory authority of the regional representative council of the Republic of Indonesia (DPD RI) in supervision of draft regional regulations and regional regulations.

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). 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

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.

The agency prioritizes the element of “gathering” to discuss public issues and negotiate, prioritizing the representation of its members. So it can be ascertained that the agency is a symbol of a sovereign people. These sovereign people have a “will”. The decisions are taken by the agency, whether of a policy or legal nature, are binding on the entire community.

With the development of the idea that sovereignty is in the hands of the people, the legislature becomes an institution that has the right to implement that sovereignty by determining general policies and putting them into law. The legislature represents the majority of the people and the government is accountable to it.

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 formation of the Regional Representative Council in the constitutional system in Indonesia is constitutionally regulated in the 1945 Constitution, precisely in the third amendment, which occurred in

the annual session of the MPR which was held between November 1, 2011, to November 10, 2011 (Soemantri, S., 2002). However, when examined through the history of institutions in the constitutional system in Indonesia, the existence of a representative institution domiciled to represent regional interests existed before the third Amendment was carried out (Hartati, 2018).

Although we must admit that the representative institution has a different name and characteristics when compared to the DPD. However, at least, based on the previous representative institutions, the formation of the DPD is directed to have a better position and function than the previous regional representative institutions. This can be seen from several views, both those expressed by PAH I members of the People's Consultative Assembly Working Body, statements by the Chairman and several members of the first period DPD, and several views of other legal and political experts (Hartati, 2018).

In the process of amending the 1945 Constitution, the idea emerged that the representation system in Indonesia should be changed from a one-chamber (unicameral) system of representation to a two-chamber (bicameral) representation system by increasing the status of regional envoys in the MPR RI to become its institution, parallel to the DPR, to fight for the aspirations and interests of the regions at the central level because so far regional interests have been ignored by the central government as a result of the political system created by the government as mentioned earlier.

Meanwhile, delegates from groups in the MPR RI, related to the government's political practice which tends to appoint group representatives from relatives and people who support their political interests, are proposed to be abolished (Mahmuzar, 2019). According to Moh. Mahfud MD, the concept of the group so far is very vague and always causes political manipulation and noise, (M. Mahfud MD., 2003) is not by what is meant by the explanation of Article 2 paragraph (1) of the old 1945 Constitution.

Slamet Effendy Yusuf gave an opinion that there are three basic assumptions about the need for regional representation to be maintained in the Indonesian Representative Body towards a two-chamber representative institution, namely:

- a. So that there are cultural, historical, economic, and political linkages between the population and the region/region;
- b. To create a mechanism of checks and balances and avoid being arbitrarily by one of the representative institutions; and
- c. To avoid the existence of a monopoly in making laws and regulations so that the laws produced by the legislature are more perfect.

By Article 249 paragraph (1) letter j of Law Number 2 of 2018 concerning MD3, DPD-RI has the duty and authority to monitor and evaluate Raperda and Perda. In this case, it can be concluded that DPD-RI and Perda have an interrelated relationship to run the regional autonomy system, where DPD-RI conducts monitoring and evaluation of the Raperda and Perda which are instruments used by local governments to carry out their duties and authorities in the system. regional autonomy.

The granting of authority from the central government to local governments is the origin of the birth of regional autonomy, which aims to regulate and manage certain affairs as their household affairs (Rahmawan, T.I., 2018). In the theory of a unitary state, sovereignty is only owned by the central government and local governments do not have it.

Regardless of the extent of the autonomy granted to the regions, the final responsibility for administering regional governments will remain with the Central Government. Although Regional

Regulations are one type of statutory regulation that is independent by their content, because they are a unified legal system and are generally applicable in certain areas, it is proper to pay attention to the principles of formation and material of statutory regulations (Asshiddiqie, Jimly, 2015). Regarding the discussion of the relationship between the Central Government and the regions, the meaning of supervision has an important and strategic role in maintaining the integrity of governance in a unitary state (Nursyamsi, F., 2015).

In-Law Number 23 of 2014 concerning Regional Government, the Government, in this case, the Minister of Home Affairs and governors are given the authority to carry out executive previews. Executive preview, in this case, is the authority of the central government (Governor and Minister of Home Affairs) in supervising regional regulations before the regional regulations are ratified and enacted.

This authority is confirmed in Article 91 paragraph (2), and Article 245 paragraphs (1) and (3), in these articles explaining that the central government (Governor and Minister of Home Affairs) has the authority to evaluate Raperda which regulates RPJPD, RPJMD, APBD, changes to APBD, accountability for APBD implementation, Regional Taxes, regional levies and regional spatial planning, regional taxes and regional levies.

The central government (governors and ministers of home affairs) in supervising regional regulations has considerations, including if the regional regulations conflict with the public interest and or the laws and regulations above. The Regional Government Law defines that contrary to the public interest is a policy that results in disruption of harmony between citizens, disruption of public services, and disruption of public peace/order as well as discriminatory policies. Meanwhile, contrary to the laws and regulations above, the content of regional regulations deviates from the provisions of a higher hierarchy.

Law Number 23 of 2014 concerning Regional Government also stipulates that in the context of repressive supervision the Minister of Home Affairs (Mendagri) is given the authority to cancel regional regulations (Perda) that conflict with the public interest or other laws and regulations. This Law Number 23 of 2014 concerning the Regional Government explicitly authorizes the Minister of Home Affairs (Mendagri) and the Governor to cancel regional regulations (Perda) that are contrary to higher laws and regulations, public interest, and or decency.

The cancellation of a regional regulation is the authority of the government about carrying out the supervision process to 76 regions. This supervisory authority by the central government to local governments is a consequence of the form of the unitary state adopted by Indonesia (Sayuthi, M., 2018).

The presence of regulation regarding the authority of the Minister of Home Affairs (Mendagri) in canceling this regional regulation (Perda) caused a commotion in the public eye, especially after this law was passed, the Ministry of Home Affairs (Kemendagri) announced the cancellation of 2,143 regional regulations (Perda) which were considered problematic.

The Ministry of Home Affairs (Kemendagri) assesses that as many as 3,143 regional regulations (Perda) that are problematic can hinder acceleration in facing competition to increase investment. The thousands of canceled regional regulations (Perda) are considered to have hampered the spirit of diversity and unity in the nation and state. Thousands of regional regulations (Perda) that are considered problematic are regional regulations (Perda) that hinder regional economic growth, lengthen bureaucratic paths, hinder the licensing process, hinder the ease of speech, and conflict with higher legislation.

With the addition of the authority of the Regional Representatives Council (DPD) after Law Number 2 of 2018 concerning the People's Representative Council, People's Representative Council, Regional Representatives Council, and Regional People's Representative Council came into effect,

making the Regional Representatives Council from the positive side as a state institution that Previously it was only looked down upon or only as an auxiliary (auxiliary) of the duties of the House of Representatives, now has the strengthening of the function and authority to supervise the Draft Regional Regulations and Regional Regulations, no longer only supervises the implementation of the Draft Law on Regional Autonomy.

This authority makes it easier for the central government, in this case, the Minister of Home Affairs, to supervise the draft regulations and regional regulations. The results of the supervision carried out by the Regional Representatives Council will make the supervision more thorough because it is carried out by two state instruments and the results of the supervision carried out will make many options for consideration before being ratified.

Conclusion and Suggestion

Ratio Legis of the DPD RI in supervising the draft of regional regulations and regional regulations to strengthen the function of the DPD RI within the framework of the unitary state of the Republic of Indonesia, especially in maintaining the harmonization of regulations at the central level with regulations at the regional level in the form of draft regional regulations and regional regulations.

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