THE IMPLEMENTATION OF THE PRINCIPLES OF GOOD MAKING RULES IN MAKING REGIONAL REGULATIONS

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Abstract
The governmental affairs carried out by the regional government are regulated by Regional Regulations. This has resulted in regional regulations increasingly having a strategic position in the life of the nation and state, this has the consequence of carrying out government affairs that can be good if the formation of local regulations is done well and backfire if done improperly. To be good at making local regulations, it must pay attention to the principles of making local regulations. This paper try to explain what principles can be applied in making local regulations in Indonesia? The formation of regional regulations to be able to apply properly must pay attention to the principles which are referred to by Law 23/14 as the principle of law that grows and develops in society.
Keywords: Local Government, Regulations, and Principles.

Introduction

The word application in the title above implies the imposition or subject of practice. Whereas the principles of the legislation are interpreted as a basis or something that becomes the foundation of thought in making written decisions issued by the competent authority which contains rules of general binding behavior. The principles of making laws and regulations are ethical values that live and develop in the environment of legislators that serve as a guide for legislators to carry out their functions and as well as a touchstone for judges in conducting Judicial review, and seen from the form there are written and some are not written still abstract in nature and can be explored in the practice of community life (Moelyono, 1988).

Whereas the regional regulation as regulated in Article 236 of Law Number 23 the Year 2014 concerning Regional Government is formed by the DPRD with the agreement of the Regional Head in the context of carrying out regional autonomy and co-administration tasks.Thus the limits of the title stated are the imposition or subject of practicing something become the foundation of thinking both written and unwritten, including abstract ones and must be explored in the life of the community in making written decisions issued by the Regional Head and the Regional People's Representative Council which contains rules of conduct in carrying out publicly binding household affairs.

Local Government which is a sub-system of the national government administration system has the authority to regulate and manage its households. The authority to manage and manage this household contains 3 (three) main things, i.e.:

1. assigning tasks and authorities to settle something that has been delegated to the local government;
2. giving trust and authority to think, take initiative, and determine their ways of completing the task;
3. to think, take initiative, and make decisions, involving the community both directly and through the Regional House of Representatives (Retnami, 2000).

The three things that cause the term decentralization in the administration of government in Indonesia are often interpreted as a means of implementing regional autonomy. Hans Kelsen argues that decentralization is one form of state organization, therefore decentralization is closely related to the understanding of the state. According to Hans Kelsen, the state is a legal order (Kelsen, 1973). Thus decentralization concerns the legal system in a country. Decentralization as a basis for organizational structure can be found in the form of a unitary state or a federal state.

The simultaneous formation of an autonomous region is the birth of an autonomous status based on the aspirations and objective conditions of the people residing in a particular region. This aspiration was realized with the implementation of decentralization. Decentralization is also called autonomy, because autonomy is given to the community and not to the region or regional government (Hoessein, 2001).

Decentralization is intended to improve services to the community and the implementation of development evenly throughout the territory of Indonesia. The Central Government or the upper level Regional Government may no longer interfere in the administration of functions that have been submitted to the regions, except in the form of guidance, coordination and supervision. Thus decentralization is transformed into an autonomous region, as a legal community unit that is authorized to regulate and manage government affairs according to their own initiatives based on community aspirations, while regional autonomy is the authority to regulate and manage local government affairs according to their own initiatives based on community aspirations, in accordance with regulations current regulation.

The governmental affairs carried out by the regional government are regulated by Regional Regulations. This has resulted in regional regulations increasingly having a strategic position in the life of the nation and state or in other words the role of regional regulations in carrying out government affairs is very large. The strategic position of regional regulations in carrying out government affairs can be good if the formation of regional regulations is done well and backfires if done poorly. In order to be good in making regional regulations, it must pay attention to the principles of making local regulations, among others regulated in Article 237 of Law 23/14 which must be guided by the provisions of laws and regulations and legal principles that grow and develop in society. With this background, this paper tries to explain what principles can be applied in making local regulations in Indonesia?

Discussion

One who put forward the rule of law is Paul Scholten, by distinguishing the levels of elements of the rule of law. Elements that are considered important are called principles, and their derivatives are called aspects. The main elements (principle) of the state of law understood Scholten, are (a) there is a right of citizens to the state, which contains two aspects; first, individual rights are in principle outside the authority of the state; secondly, the limitation of the right is only with the provisions of the law, in the form of generally accepted regulations; (b) there is a separation of powers. Scholten, by following Montesquieu put forward three state powers that must be separated from each other, namely the power of lawmakers, the power of implementing laws, and the power of judging (Scholten, 1949).

Scholten (1949) criticized the views of Montesquieu, who regarded the judge as the sole implementer in the application of the law. According to him this view has been abandoned, by giving an example of the United States system, which determines that

the President is also the executor of the law. In addition, the Supreme Court, in addition to its duties to adjudicate, also has the authority to supervise the law. Based on the description above, it can be concluded that the concept of the rule of law or the state is based on the law (rechtsstaat or the rule of law), which contains the principles of legality, the principle of separation (distribution) of power, and the principle of an independent judicial power; all of which aim to control the state or government from the possibility of arbitrary behavior, or abuse of power (Azhari, 1992).

The principle of the rule of law is always supported by the teachings of the people's sovereignty. This was stated by Sjahran Basah (1986) that the rule of law and people's sovereignty are a harmonious integral duet that gave birth to monodualism.In a sovereign state of people and based on law (democratic rule of law) (Manan and Magnar, 1993), implies that power is limited by law and at the same time states that law is supreme compared to all existing instruments of power (Manan, 1994). In other words, the state places law as the basis of its power and administration Such power in all its forms is exercised under the rule of law, In other words, the state which places the law as the basis of its power and the implementation of that power in all its forms is carried out under the rule of law (Attamimi, 1992).

This democratic rule of law in carrying out the functions that exist in the state uses the dispersal of power. Both horizontal and vertical dispersal. Vertical transmission of power breeds decentralization of power. The relationship between decentralization and democratic rule of law is stated by Yamin (1992): “In a democratic state structure, it is necessary to divide the power of the central government itself (horizontal) and the division of power between the center and the regions. The principle of democracy and decentralization is contrary to the principle that wants to gather everything at the center of government”.

The above opinion shows that regional autonomy and decentralization are part of a state that embraces democracy, because without autonomy and decentralization the state is no longer democracy but can become autocracy (Guruh, 1999).Decentralized system by giving autonomy rights to Regions in carrying out government is more an impetus to form a democratic government in which all people are responsible (Manan, 1974).

In this connection, Moh. Hatta states:

> “According to the people's sovereignty, the right of the people to determine their fate lies not only in the head of state government, but also in every place, in cities, in villages and in regions…… In such cases, every part or the people have autonomy (make and carry out their own rules) and zelfbestuur (carry out regulations made by the higher Councils)…. .. Such a situation is very important, because the needs of every place in one state are not the same, other” (Mahmud, 1999).

Autonomy must be one of the joint structures of democratic governance, meaning that in democracies a government is demanded to have the right to autonomy. The existence of such Regional Government also perfects a characteristic of the rule of law (Guruh, 1999).

Further stated:

> "Because the sovereignty of the Indonesian people is one and not fragmented, the sovereignty carried out by the regional people is essentially nothing but incarnation rather than the point. The actions of the regional people must not contradict the principles that have been established as the general guidelines of the

state. In other words, the actions of the people in the area which are contrary to the objectives of the state are null and void, not containing even a little legitimate power in them" (Hatta, 1980).

The existence of decentralization can also be seen as part of the realization of the rule of law, this is because the principle of decentralization also contains the intention of limiting power to the Central Government, while the existence of such restrictions is one of the characteristics of the rule of law. Among the characteristics of the classical rule of law there are 3 (three) things relating to the limitation of power, namely the existence of the Constitution as a written regulation governing the relationship between the government and its citizens; the existence of power distribution (machtenscheiding) which specifically guarantees an independent judicial power; and the existence of state/government power distribution (*spreiding van de staatsmacht*) (Manan, 1994).

These characteristics clearly require restrictions on government power, which are usually set forth in the constitution. The Constitution or the Basic Law is a tool to limit the power in the country can be proven from the content of material which is always contained or regulated therein (Soemantri, 1988).The separation of state / government power (spreiding van de staatsmacht) as an effort to limit government or state power is closely related to households. Submission or letting or acknowledging as government affairs are regulated and managed as regional domestic affairs, implies that the Center limits (limits) its power to not regulate and manage such government affairs again (Manan, 1994).

The legal form used to regulate and manage local affairs is a Regional Regulation. Regional regulations as part of the legislation have the following elements:

1. Written decisions, meaning to follow certain standard formats such as there is a title, opening, content, and closing;
2. issued by authorized institutions/officials, the authority of state institutions or officials to make laws and regulations is obtained through two ways, namely attribution and delegation. The authority of attribution occurs if the constitution or law creates new authority to a body with its own power and its own responsibility to form laws and regulations, whereas delegation is the transfer or handover of authority to form legislation from the original authority that gives the delegation to the one who receives the delegation by responsibility for exercising that authority upon those who receive the delegation. Attribution dandelegation of laws and regulations, the contents of the material can be broad, can also be narrow. Extensive material occurs if the attribution or delegation only designates the organ or body of the attribution or delegation by not determining the limits of the material it makes, so that the material to be arranged is submitted to the discretion of receiving the attribution or delegation. Narrow material occurs when the attribution or delegation is determined at the same time between the organ that is authorized to make it with the material content that must be arranged;
3. it contains rules of conduct, these rules of conduct can take the form of orders, prohibitions, permits, and dispensations;
4. general binding, meaning not identifying certain individuals. If we follow Bagir Manan's opinion, what is meant by binding public does not mean binding all people or groups of people who are not certain, but it is sufficient not to identify certain individuals, meaning that even if the regulation is only binding for

certain groups, it means binding public. If this is related to the DPRD Standing Orders then these rules can be classified as general binding (Manan, 1992).

For legislation to function in accordance with its objectives, in making laws and regulations must pay attention to the basis or a good basis of law and regulation. Bagir Manan states that there are four bases or foundations for legislation to apply properly, namely:

1. Juridical foundation,
2. sociological foundation,
3. philosophical foundation,
4. foundation of design techniques.
5. Political foundation.

Juridical foundation is the legal basis which is the basis for making a statutory regulation. The legal basis for making a statutory regulation, is not only seen from the basic aspects of the issuance law, but also needs to know the legal basis of the author's authority, the procedures for its formation, and the basis of its legal logic (Lubis, 1995). Juridical foundation is very important in making laws and regulations because it will show:

1. officials or institutions authorized to make or form these laws and regulations. With the knowledge of the official or institution authorized to make a statutory regulation, then if there is a statutory regulation made by an official or institution other than what has been determined, then the legislation is null and void (nietig van recthswege). Considered to never exist, all the consequences are null and void.
2. The form or type of legislation with the material that must be regulated in it, especially if it has been determined by legislation that is of a higher level or equivalent. If there is a mismatch between the basic regulations and the laws and regulations that are to be formed, or there is a discrepancy between the types of laws and regulations, the resulting laws and regulations can be canceled (vernietigbaar).
3. Certain procedures or procedures. If these procedures are not followed, then the laws and regulations may be null and void, or do not / do not yet have binding legal force. For example, each Regional Regulation must include the sentence "... with the approval of the DPRD," so if there are Regional Regulations that do not include the sentence then null and void. Another example is that each law must be promulgated in the official gazette as the only way to have binding power. As long as the legislation has not been carried out, the law is not binding.
4. There is a juridical consequence, that the laws and regulations that are intended to be made must not conflict with the basic regulations or higher levels. Every statutory regulation may not contain rules that contradict the Constitution, and so on (Manan, 1994). In this connection Hans Kelsen states that every rule of law must be based on a higher level rule. According to Zevenberger every rule of law must meet the conditions of its formation. While Logemann states that the rule of law is binding if it shows a compulsory or coercive relationship between a condition and its consequences (Soekanto, 1989).

In some literatures, the legal basis for the formation of laws and regulations is divided into two kinds:

1. The formal juridical basis, namely the legal norms which form the basis of authority (bevoegheid) to issue legislation. This foundation refers to the

institution or agency authorized to make it. For example Article 5 Paragraph (1) of the 1945 Constitution the first amendment is the legal basis for the DPR to make laws.

2. The legal juridical foundation, namely the legal norms that requires a matter whose material is regulated in a specific statutory regulation. This material juridical basis refers to material content which should be regulated in a statutory regulation. For example Articles 24 and 25 of the 1945 Constitution are the legal basis (material juridical basis) for the making of Law No. 14 of 1985 concerning the Principles of Judicial Power.

While the sociological foundation is a foundation that reflects the reality that lives in society or cultural values that apply in society. Reflecting the reality that lives in the community, it does not mean that the products of the laws and regulations produced are merely recording the instantaneous situation (hospitalization moment), but must also be able to accommodate trends and community expectations. Legislation that only confirms the reality, is not only considered static and conservative, but can also paralyze the role of law itself, which should be expected to direct the development of society.

With this sociological basis, the products of laws and regulations made are not a pile of enforced legal rules, but legal norms that are accepted by the community in a natural, spontaneous manner, and even become something that is awaited by their presence. not so much need institutional direction in its application (Manan, 1994).Philosophical foundation is the view, ideas or ideals of law (recthsidee), where a statutory regulation as far as possible is imbued with noble values in the form of ethical, aesthetic, and moral values that are adopted in community relations. These high values are certainly expected to continue to exist and be able to guide people's behavior.These values are left in the community, so that every formation of a law or regulation must be able to catch it every time it will form a law or legislation. But sometimes the value system has been systematically summarized in a summary both in the form of philosophical theories and in official philosophical doctrines, such as Pancasila.

In Indonesia, Pancasila are values that are systematically set out in an official philosophical doctrine. It contains the crystallization of the noble values of Indonesian culture which has lasted for centuries. Not surprisingly, Pancasila is used as the nation's life view, the nation's foundation, and the source of all sources of Indonesian law.As the nation's view of life, Pancasila provides direction on the patterns of behavior, awareness, self-control, and even moral ideals that include the psyche and character that reflects the culture of the Indonesian nation. As the basis of the state, Pancasila has shown its role since the founding of this republic, where the Pancasila has become a guideline for the founding fathers in realizing an independent Indonesia. Meanwhile, as a source of law, Pancasila means that all applicable laws that will be enacted must be sourced from Pancasila. The legal norms governed in Indonesian laws and regulations reflect the values contained in Pancasila, or at least do not conflict with the precepts in Pancasila (Lubis, 1995).

Whereas the basis of design technique is the foundation which has to do with procedures or procedures for making laws and regulations. Bagir Manan (1992) believes that good laws and regulations can also occur because the formulation is unclear so that the ambiguous meaning, purpose, and purpose are unclear, or the formulation can be interpreted in various interpretative meanings, or inconsistencies in using terminology, or the system is not good, the language is convoluted so difficult to understand.

The problem of obscurity, allowing various interpretations, difficult to understand, the use of inconsistent terms, is not something that can be ignored in making laws and regulations. These things are related to the techniques of drafting legislation.

In connection with the design aspects, Bagir Manan divides the two stages of drafting the laws and regulations, namely the stage of preparing the academic paper and the design stage.In the academic preparation stage discussed academic responsibility for a draft draft law. The main function of an academic paper is academic responsibility, so an academic text does not need to have been arranged in chapters, articles, verses, and so on. The most important thing is the academic analysis of various aspects of the laws and regulations that will be designed. It is at this stage that studies of philosophical, juridical and sociological foundation are needed in depth. If necessary before the preparation of the academic paper, it is preceded by scientific research and studies.

While the design phase includes procedural aspects and design writing. Procedural aspects in the form of management matters such as permission for initiatives, the formation of interdepartmental committees, and others. Whereas the writing of a design is the pouring of ideas of academic texts or other materials into normative language and structure, or usually called the stage of normativisation.

The political foundation is the political policy line that forms the basis for further policy and direction in the management of the state government. There are several principles that must be considered in the technical design by Van der Vlies divided into two principles, namely the formal principle and the material principle. For Indonesia according to A. Hamid S. Attamimi is as follows:

1. Formal principles, including:
    a. The principle of clear purpose;
    b. The principle of the need for regulation;
    c. The principle of the right organ or institution;
    d. The right content material principle;
    e. The principle can be implemented;
    f. The principle can be recognized.
2. Material principles, including:
    a. The principle is in accordance with the ideals of the law and fundamental norms of the country;
    b. The Principle in accordance with the basic laws of the country;
    c. The principle is in accordance with the principles of the state based on law; and
    d. The Principle in accordance with the principles of government based on the constitutional system.

In addition to this, of course we must pay attention to the rules of interpretation. Karl Larenz argues that there are legal-ethical measures for establishing law and interpreting the law carried out by legislators and judges (Atmadja, 1996). These are general principles consisting of proportionality, subsidiary principles, and proper principles.The Principle of Proportionality states that judges in interpreting a legal provision must hold a balance between individual and collective interests, between rights and obligations, and a balance between materialism and spirituality. The subsidiary principle contains the principle that the interpretation of the conditions is only if the regulation is not clear. Whereas the principle should state that interpretation

is carried out by adhering to the principle of morality meaning that an interpretation must not conflict with religious norms, decency and other social norms.

It must be realized that autonomy in autonomy does not mean that regions can make laws and regulations that are independent of the national legal system. This brings the consequence that Regional Regulations are subsystems of national legislation so that the principle of legislation must remain in force.The principle of lower laws and regulations must not conflict with the higher ones, but the central government must also understand that functions that have been delegated to the regions should not be withdrawn so that they are regulated in the types of national level regulations unless they are not implemented by the region. These signs must be understood by the central and regional governments, because spaning is not uncommon between the central and regional governments because of differences in understanding of these rules. The center for reasons of higher statutory regulations or public interest makes regulations whose material turns out to have been delegated and becomes a matter for regional households, regions based on delegation do not follow the rules set by the center.

In addition, according to Irawan Soejito (1969), the characteristics of good legislation are:

1. Made with short sentences, but solid and made carefully and clearly;
2. Easily understood in depth by the people;
3. Contains rules that are simple, easy to understand and appropriate;
4. Not complicated and well accepted in society.

The characteristics of good legislation according to Irawan Soejito above, seem to be more directed to the technique of making laws and regulations than the process of forming or making laws and regulations. If the characteristics of good legislation according to Irawan Soejito are related to those stated by Bagir Manan above, then the characteristics stated by Irawan Soejito are part of the technical elements of the design of the legislative regulations Bagir Manan. The technical elements of drafting legislation must be considered technical matters including:

1. the points of thought are poured into regulations which are regulatory (regeling), not predetermined (beschikking), and as far as possible regulate matters for future events, which are packaged using statement sentences;
2. the formulation must be clear the meaning, purpose, and purpose; style of language must be dense (conceise) and easy (simple), ambiguous or can be interpreted variously (interpretive), but also not obscured (obscurity), too broad (overbulkiness), long length (longwindedness), or excessive (redundancy) which can be confusing (entanglement), and not overlapping, and is not metaphoric and hypothetical;
3. the term must be consistent, as far as possible is absolute and not relative, and not be debatable (argumentaris);
4. the system is organized (orderliness) with proper use of punctuation.

This applies in the making of regional regulations and even Law 23/14 states that there are legal principles that grow and develop in society, with limitations as long as they do not conflict with the principles of the Unitary Republic of Indonesia. Thus at least every regional regulation formation must be in line with the principles of: a. clarity of purpose, b. the right institution or organ, c. match between type and material content, d. can be implemented, e. usefulness and usefulness, f. clarity of the formula, and g. openness. In addition, the content of local regulations contains the principles of protection, humanity, nationality, kinship, literacy, monastic monarchy, justice, equality

in law and government, order and legal certainty and / or balance, harmony and harmony.

Conclusion

The formation of regional regulations in order to be able to apply properly must pay attention to the principles which are referred to by Law 23/14 as the principle of law that grows and develops in society. In general, this principle can be divided into two principles, namely the principle of formation of regional regulations and the principle of the contents of regional regulations. Besides that, in the formation of regional regulations, it should also pay attention to the principles of a unitary state which should not be violated by autonomy, namely: a. the principle of uniformity means that certain fields must be guaranteed to be carried out uniformly, for example in terms of law enforcement, b. The same service principles such as payroll for the same group are paid the same, and c. there is no autonomy without supervision.

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