

Role Of Regional People's Representative Boards In Establishing Aspirative & Responsive Local Regulations

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Abstract

The purpose of this study is to examine and analyze the authority and function of the DPRD in the mechanism for the formation of Regional Regulations. This study uses a normative juridical method. The data used for this research are primary and secondary data. Based on the results of the study, it can be concluded that one of the powers of the DPRD is to make Regional Regulations. This authority is attributive, because it is given by Act No. 23 of 2014 concerning Regional Government for DPRD. Therefore, its use must be carried out based on the principle or principles of accountability and transparency, so that it is truly in accordance with the underlying regulations. The formation of laws and regulations is the making of laws and regulations that include the stages of planning, drafting, discussing, ratifying or determining, enacting, and disseminating in Article 1 point 1 of Act No. 12 of 2011 concerning the Establishment of Legislations.

Keywords: Mechanism; Formation; Regional; Regulation, Representative; Council.

1. Introduction

The process of administering state power by state institutions is regulated according to the state constitution.¹ Currently, the constitution in force in Indonesia is the 1945 Constitution of the Republic of Indonesia which has been amended.² Based on this constitution, in the system of government of the Republic of Indonesia, the process of administering state power takes place at the national, regional and village levels.

In the tradition of a democratic state, there are three pillars of the mandate of state power, namely government power (executive), legislative power (legislative), and judicial power (judicial). Although in its implementation in various countries, various

¹ Muhammad Adib, Sri Kusriyah, and Siti Rodhiyah Dwi Istinah, "The Giving Of Disciplinary Penalty of Civil Servants Based On Government Regulation Number 53 of 2010 in Governments of Demak Regency" in *Jurnal Daulat Hukum*, Volume 2 Issue 4, December 2019, p. 444, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8239/3862>

² Andi Pradikta Alvat, "Politics Of Law Human Rights Protection In Indonesia" in *Jurnal Daulat Hukum*, Volume 2 Issue 4, December 2019, p. 513, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8354/3873>

variations and forms can be found, some use a separation of power pattern, some use a division of power (deviation of power), and some use a convergence (mixed) pattern.³

Indonesia is a unitary state. With the form of a unitary state, there is only one government that is sovereign inside and outside, namely the central government which is domiciled in the capital city of Jakarta. To run the government in the regions, the central government delegates authority to its apparatus in the regions based on the principle of deconcentration, delegates authority to the regions to manage their regional households based on the principle of decentralization or regional autonomy and assists the implementation of central affairs based on the principle of assistance.⁴

The division of affairs, duties and functions as well as responsibilities between the center and the regions shows that it is impossible for all government affairs to be carried out by the center alone. This recognition provides an opportunity for the regions to try to regulate and manage and organize their own government. Thus, the regulation regarding the relationship between the center and the regions is a problem that requires good, comprehensive and responsive regulation to the demands of regional independence and development.⁵

In Act No. 23 of 2014 concerning Regional Government, states that:

"Regional Government is the administration of government affairs by the regional government and regional people's representatives according to the principle of autonomy and assistance duties with the principle of autonomy as wide as possible within the system and principles of the Unitary State of the Republic of Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia".⁶

As one of the organizers of regional government, the Regional People's Representative Council, hereinafter referred to as DPRD, has the functions mentioned in Act No. 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, and the Regional People's Representative Council Part Two Functions of Article 365 paragraph (1). The DPRD has legislative, budgetary and supervisory functions.

In the provisions of Article 350 letter (a) of Act No. 27 of 2009 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, and the Regional People's Representative Council, which basically mandates that Members of the Regency/City DPRD have the right to submit draft regulations Regency/City area.

In addition to the 1945 Constitution of the Republic of Indonesia and the Decree of the People's Consultative Assembly. The law on the formation of laws and regulations is based on the idea that the State of Indonesia is a state of law. As a state of law, all aspects of life in the social, national and state fields including the

³Sirajudin dkk, 2007, *Komisi Pengawas Penegak Hukum: Mampukah Membawa Perubahan*, First Edition, MCW dan Yappika, Malang, p. 1.

⁴Utang Rosidin, 2015, *Otonomi Daerah dan Desentralisasi*, Bandung: Pustaka Setia, p. 9.

⁵Sunarso, 2013, *Perbandingan Sistem Pemerintahan*, Yogyakarta, Ombak, p. 56.

⁶Article 1 point 3 of Act No. 23 of 2014 concerning Regional Government.

government must be based on laws that are in accordance with the national legal system.⁷

Community participation in providing input to the formation of laws and regulations is a reflection of a democratic country where people's participation is a necessary thing, even though the people have been represented by representatives in the House of Representatives (DPR and DPRD). Although the formation of a Regional Regulation comes from the DPRD's initiative, it does not mean that a Draft Regional Regulation will not have the potential for deviations in substance in the discussion process with the Regional Head, because the community is no longer involved unless the legislators open up public space for the public to be heard in the form of Public Hearing.

Based on the above presentation, therefore, the author is interested in concluding a problem formulation, namely: What are the powers and functions of the DPRD in the mechanism for establishing Regional Regulations?

2. Research Methods

This research uses normative juridical approach. The specification of descriptive analytical research. The data used for this research are primary and secondary data. Primary data is data obtained directly from the field or from the first source and has not been processed by other parties. Then secondary data is data obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. The method of data analysis used a qualitative descriptive method.

3. Results and Discussion

According to theory, the most basic functions of regional legislatures are: 1. determine policies and make regional regulations. To realize these functions, the DPRD has the authority, the right to initiative, the right to amend. 2. Determine the Regional Revenue and Expenditure Budget (APBD), which is included in the budget right (budget). 3. Controlling the executive body (Local Government) through the rights of the DPRD.⁸

One of the most important powers of a region that regulates and manages its own household is the authority to establish regional regulations.⁹ Regional Regulations are regulations set by the Regional Head with the approval of the DPRD and which must meet certain formal requirements can have legal and binding force.¹⁰

⁷ Sri Praptini, Sri Kusriyah, and Aryani Witasari, "Constitution and Constitutionalism of Indonesia" in *Jurnal Daulat Hukum*, Volume 2 Issue 1, March 2019, p. 7, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/4149/2897>

⁸ Soetandjo Wignosubroto sebagaimana dikutip Arifuddin N, "Implementasi Fungsi Legislasi Dewan Perwakilan Rakyat Daerah pada Pembentukan Peraturan Daerah" in *AL-ISHLAH: Jurnal Ilmiah Hukum* Vol. 22, No. 1 (Mei 2020). p. 60. <http://jurnal.fh.umi.ac.id/index.php/ishlah/article/view/36>

⁹ Irawan Soejito, 1989, *Teknik Membuat Peraturan Daerah*, Bina Aksara, Jakarta, p. 1

¹⁰ Djoko Prakoso, 1985, *Proses Pembuatan Peraturan Daerah*, Ghalia Indonesia, Jakarta, p. 43.

In accordance with the provisions of Article 18 paragraph (6) of the 1945 Constitution that Regional Governments have the right to stipulate Regional Regulations and other regulations to carry out autonomy and assistance tasks. The mandate of Article 18 of the amendments to the 1945 Constitution is reaffirmed in the latest Regional Government Law with Act No. 23 of 2014 concerning Regional Government that Regional Regulations as a type of legislation made by the Regional Head together with the DPRD are regulated in Article 236 to Article 254 of Act No. 23 of 2014 concerning Regional Government.

Delegating and/or granting authority for government affairs to the Regional Government to make regional legal products is certainly not easy because there will be juridical problems related to the relationship between the Central Government and Regional Governments. An important aspect that is always a problem is the synchronization and harmonization of Regional Regulations with other aspects concerning the supervision of Regional Regulations both at the provincial and district/city levels so that they do not conflict with higher regulations.

One of the powers of the DPRD is to make Regional Regulations. This authority is attributive, because it is given by Act No. 23 of 2014 concerning Regional Government for DPRD. Therefore, its use must be based on the principle or principles of accountability and transparency, so that it is truly in accordance with the underlying regulations. This authority certainly cannot be separated from the authority possessed by the executive, Article 236 paragraph (2) Number 23 of 2014 concerning Regional Government Perda can only be formed jointly between the DPRD and the Regional Government. Therefore, the relationship between these two institutions is referred to as a partnership relationship, there is no Regional Regulation that is formed by the DPRD without cooperation with the Regional Government, on the contrary there is no Regional Regulation without the DPRD.

If referring to the theory of authority as described above, then in the Indonesian constitutional system, the authority to form a regional regulation does not lie with the power of the DPRD, but lies in the power of two institutions or two organs at once, namely the authority of the DPRD and the Regional Government. This is because there is no authority to formulate a regional regulation which is only carried out by the DPRD without the government. Although the Law states that the Regional Head stipulates a Perda with the approval of the DPRD, it does not mean that all authority to form a Perda rests with the Regional Head, and the DPRD only gives approval, but the DPRD is equipped with the right to submit a draft Perda and the right to make changes.

As an element of government administration in the regions, the Regional People's Representative Council has the function of forming Regional Regulations, budget functions and supervisory functions. Meanwhile, the Regional Head carries out the function of implementing Regional Regulations and regional policies. Therefore, the making of Regional Regulations is prohibited from contradicting the provisions of higher laws and regulations, public interest and/or decency.

As for the duties and authorities of DPRD in Act No. 23 of 2014 concerning Regional Government Article 101, namely:

- 1) Establish a regional regulation that is discussed with the regional head for mutual approval;
- 2) Discussing and approving the draft Regional Regulation on the Regional Budget with the Regional Head;
- 3) Carry out supervision over the implementation of Regional Regulations and Regional Budgets;
- 4) Electing the Governor of the Regent/Mayor;
- 5) Propose the appointment and dismissal of the Governor of the Regent/Mayor;
- 6) Provide opinions and considerations to the Regional Government on the draft international agreement in the region;
- 7) Give approval to the plan of international cooperation carried out by the Regional Government;
- 8) Request a report on the accountability of the Governor of the Regent/Mayor in the administration of the Regional Government;
- 9) Give approval to the plan of cooperation with other regions or with third parties that burden the community and the region;
- 10) Carry out other duties and authorities regulated in the provisions of laws and regulations.

The formation of laws and regulations is the making of laws and regulations which include the stages of planning, drafting, discussing, ratifying or determining, and enacting legislation in Article 1 number 1 of Act No. 12 of 2011 concerning the Establishment of Legislations.

Stages of Formation of Regional Regulations:¹¹

1) Planning

Planning for the preparation of Regional Regulations is carried out in the Regional Legislation Program. Regional Legislation Program, hereinafter referred to as Prolegda, is a planning instrument for the formation of provincial Regional Regulations or Regency/Municipal Regional Regulations which are prepared in a planned, integrated and systematic manner. The criteria for the priority scale for the preparation of the list of Draft Regional Regulations in the Prolegda are based on:

- a. Higher statutory orders;
- b. Regional development plans;
- c. Implementation of regional autonomy and assistance tasks; and
- d. Local community aspirations.

2) Compilation

The process of preparing the draft Regional Regulation, which is the process of drafting and drafting within the DPRD or within the Regional Government (In this case the Raperda proposes a non-APBD initiative or an ordinary Perda). This process includes the preparation of an initiative draft, an academic draft and a legal draft.

¹¹Jazini Hamidi, 2008, *Pembenlukan Peraturan Daerah*, Prestasi Pustaka, Jakarta, p. 17.

Academic Papers are manuscripts of research results or legal studies and other research results on a particular problem that can be justified scientifically regarding the regulation of the problem in a Draft Law, Draft Provincial Regulation, or Draft Regency/Municipal Regional Regulation as a solution to the problem and the legal needs of society. Harmonizing, unifying, and strengthening the conception of the Draft Provincial Regulation originating from the Governor is coordinated by the legal bureau and may include vertical agencies from the ministry that administers government affairs in the legal field, while those originating from the Provincial DPRD are coordinated by the Provincial DPRD's equipment which specifically handles legislation field.

3) Discussion

In more detail, the discussion in the DPRD, both at the initiative of the Regional Government and at the initiative of the DPRD, will be determined by the Regional DPRD Regulations. Specifically for a Raperda at the initiative of the DPRD, the Regional Head will appoint a Regional Secretary or a Work Unit Officer to coordinate the draft. The discussion of the Draft Regional Regulation at the initiative of the DPRD (non APBD or ordinary Perda) will be coordinated by the Regional Secretary or Work Unit Officer appointed by the Regional Head to be responsible for further discussions at the executive level. After that, an assistance team will be formed with the Secretary in the Bureau/Legal Section.

4) Endorsement and Determination

Draft Regional Regulations that have been approved by the DPRD but are not approved by the Regional Head, the Draft Regional Regulations initiated by the DPRD which are non-APBD or ordinary Regional Regulations in the process of ratification can still be legalized and stipulated by the Regional Head, because the authority

The DPRD is more dominant than the Regional Head where in Act No. 23 of 2014 concerning Regional Government it has been explained that the DPRD's authority is to discuss and approve Regional Regulations. Article 18 of the 1945 Constitution paragraph (6) explains that "Local Governments have the right to stipulate Regional Regulations and other regulations to carry out autonomy and co-administration tasks" but this has not been clearly regulated when non-APBD or regular regional regulations are not approved.

5) Invitation

If the discussion of a Raperda in the final plenary meeting at the DPRD has been completed and the Raperda has been approved by the DPRD, the DPRD leadership will then send it to the Regional Head through the Regional Secretariat in this case the legal bureau/department for approval. Numbering of Regional Regulations will be carried out by the legal bureau/department and the Head of the bureau/legal division will authenticate. Furthermore, the Regional Head will ratify the Regional Regulation by signing the Regional Regulation. After the Regional Regulation is ratified by the Regional Head, so that the Regional Regulation can apply and bind the public, then the Regional Secretary will

promulgate the Regional Regulation. After that, the legal bureau/department is responsible for copying, distributing and documenting the Regional Regulation.

6) Dissemination

Dissemination is carried out by the DPRD and the Regional Government since the preparation of the Prolegda, the preparation of the Draft Regional Regulation, the discussion of the Draft Regional Regulation, to the promulgation of the Regional Regulation. Dissemination is carried out to provide information and/or obtain input from the community and stakeholders. Dissemination of the Prolegda is carried out jointly by the DPRD and the provincial or district/city Regional Government coordinated by the DPRD's equipment which specifically handles the field of legislation.

Thus, the DPRD's authority over Perda that is not approved by the Regional Head is that the DPRD controls the running of the Regional Regulation by the Regional Head in the community whether the Regional Regulation is implemented or not after the Regional Regulation is enacted and ratified by the Regional Head, because DPRD as a Legislative institution is to supervise the formation of Regulations. Area.

The series of mechanisms in making these Regional Regulations which are based on existing laws and regulations for the purpose of realizing a good legislative outcome and creating good regulations for the whole community. In the theory of good legislation, in order to be able to make good laws and regulations, it is necessary to have/have knowledge of the legislation, including relating to the form/type, the content material to be regulated and how the material is outlined in the legislation in brief, clear and easy to understand and systematic so that the regulations are obeyed and can be implemented.

In forming laws and regulations, including local regulations, in relation to the application of norms according to I Gede Pantja Astawa and Suprin Na'a, three foundations must be met, namely: the philosophical basis, the sociological basis, and the juridical basis.¹² Another thing that needs to be considered in the formation of a regional regulation is not to ignore general legal principles, especially the principles of legislation. PW Brower shows several principles, such as *Lex Superior Legi Inferior*, *Lex Specialis derogat Legi Generalis*, and *Lex Posterior Derogat Legi Priori*.¹³

4. Closing

One of the powers of the DPRD is to make Regional Regulations. This authority is attributive, because it is given by Act No. 23 of 2014 concerning Regional Government for DPRD. Therefore, its use must be based on the principle or principles of accountability and transparency, so that it is truly in accordance with the underlying regulations. The formation of laws and regulations is the making of laws and regulations that include the stages of planning, drafting, discussing, ratifying or

¹² Made Pantja Astawa and Suprin Na'a, 2008, *Dinamika Hukum dan Ilmu Perundang-undangan di Indonesia*, Bandung, Alumni, p.78

¹³ Purnadi Purbacaraka, 1986, *Penggarapan Disiplin Hukum dan Filsafat Hukum Bagi Pendidikan Hukum*, First Edition, C.V. Rajawali, Jakarta, p. 35-36.

determining, enacting, and disseminating in Article 1 point 1 of Act No. 12 of 2011 concerning the Establishment of Legislations. In order to overcome the problem of people who often do not know and understand their rights to participate in the formation of regional regulations, it is necessary to optimize legal communication through counseling and reviving the function of community organizations, as well as inviting the community regularly if there is a discussion on draft regional regulations, both at the stage preparation of planning for the formation of regional laws and regulations, as well as in the discussion of draft regional regulations up to the enforcement of regional legal products. The community needs to be informed about the draft regional regulations to the community.

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