



THE 3rd INTERNATIONAL CONFERENCE AND CALL FOR PAPER

"Legal Development in Various Countries"



IMAM AS SYAFEI BUILDING
 Faculty of Law, Sultan Agung Islamic University
 Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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INFORMATION OF THE CONFERENCE AND CALL PAPER

WORLD CLASS ISLAMIC UNIVERSITY
UNISSULA
SULTAN AGUNG ISLAMIC UNIVERSITY

Welcome to Participants on International Conference

"LEGAL DEVELOPMENT IN VARIOUS COUNTRIES"

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. And focusing on the development of law in both developed and developing countries and its role in shaping a good future.

KEYNOTE SPEAKER:
Prof. Henning Glaser
Thammasat University, Thailand

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Organized by : Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang-Indonesia

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Nagoya University, Japan
2. Prof. Dr. Ruzian Markom
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Indonesia, September 05th 2017

WORLD CLASS ISLAMIC UNIVERSITY
UNISSULA
SULTAN AGUNG ISLAMIC UNIVERSITY

International Conference

5
September
2017

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Organized by : Faculty of Law UNISSULA Semarang-Indonesia

This Conference And Call Paper was held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

Day: Tuesday

Date : September 5th 2017

Time : 08:00 - 15:00 pm

Place : Imam AsSyafei Building 3rd Floor

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

Jl. Raya Kaligawe Km. 4 PO. BOX.1054 Telp. (024) 6583584 Fax.(024)6582455
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AND CALL FOR PAPER
“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

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PREFACE

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM from SebelasMaret University, Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.**

This is our third International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines to exchange and discuss views on the most important recent on Legal Development happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fourth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, September 5th 2017

Chairman of the Committee,



Dr. Anis Mashdurohatun, S.H., M.Hum
NIDN : 06-02105-7002

GREETING FROM THE DEAN OF FACULTY OF LAW

As-salamu'alaikum Wr. Wb.

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: “**Legal Development in Various Countries**” which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on September 5th 2017.

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. In the end, as in contract theories, no monist view of legal development possesses the explanatory power needed to understand how law has come to be and where it may take us in the future. What we do have is a foundation built on at least two millennia of legal history. The intellectual starting point for this project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view of legal development takes issue with Henry Sumner Maine's thesis that development in advanced legal systems is progressive in nature. And, more importantly for the current undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands of years of Jewish legal development indicated that legal development perpetually progressed in cycles.


Therefore, to discuss more about legal development or law reform, Faculty of Law, Sultan Agung Islamic University is confidence to conduct a conference by the theme “**Legal Development in Various Countries**” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who have contributed in this event, so that this international seminar ran well.

Wassalamu'alaikum Wr. Wb.

Semarang, September 5th 2017

Dean,



Prof. Dr. Gunarto, SH, SE, Akt, M.Hum
NIDN.062004670

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OPTIMALIZATION OF THE ROLE OF THE DPRD (Regional House of Representative) IN THE PREPARATION OF REGIONAL REGULATIONS

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ABSTRACT

In general, the role of DPRD is manifested in three functions, namely, 1. Regulator. Arranging all regional interests, including local (autonomous) regional government affairs and central government affairs submitted to the regions (assistance tasks); 2. Policy Making. Formulate development policy and planning of development program in its area; 3. Budgeting. Regional budget planning (APBD). In its role as a representative body, the DPRD places itself as a balance power which balances and exercises effective control over the Regional Head and all levels of local government, it can be said that the role and function of DPRD legislation in the implementation of Regional Government able to position itself as a partner executive work.

The problems that often occur in the formulation of Regional Regulations in the DPRD is the lack of understanding of some members of the DPRD to the legislative function attached to it, and the low level of knowledge and ability (read: education) DPRD. The weak selling value and weak DPRD bargaining position against the draft Local Regulations proposed by the executive make the DPRD must participate in the grooves that the executive has designed. The existence of irregularities in the drafting of local regulations by some members of parliament itself concerning certain policies, by making an unwritten agreement with the Unit of Regional Device Organizations (SOPD) in approving the draft Raperda submitted by the executive, which then "oknum" DPRD members came to the Unit (SOPD) in the name of the person or group / group that submitted (read: ask for the willingness of SOPD to grant what he wants) in relation to the draft Raperda into Perda.

The optimization of DPRD in formulating the Regional Regulation with Bupati is not only in the limited scope of the problem; arrangement, systematics and language. Arrangement, including layout, basic political use (weighing); the legal basis (remembering); distribution and use of Chapter, section of chapter, verse and so on. Systematics, including among others the sequence of problems (from simple to complex), the order of subject matter and supporting material. Language, including the use of simple language, monolithic terms (absolute), sentence structure (passive or active sentences, commands or prohibitions).

Keywords: Optimization, DPRD Function, Balance.

Background

Talking about the existence of law as a system or ties of values has long been the focus of ancient philosophers concerning the contradiction between the natural law school (lex naturalist) and the legal positivism school (lexhumana) in the search for absolute justice. It shows the existence of the law is measured by the content of the presence or absence of

value, especially the value of justice. The law can not be accepted as law if it does not contain any element of justice.¹

The organizer in a country is not only in the center of government. The central government gives its authority to local governments to organize their own government. In Indonesia the meaning of regional government is the implementation of government affairs by the local government and parliament according to the principle of autonomy and duty of assistance. It is in accordance with the principle of autonomy as widely as possible in the system and principles of the Unitary State of the Republic of Indonesia Year 1945.

The implementation of regional government is implemented with the principle of Decentralization, namely the transfer of government authority by the Government to the autonomous region to regulate and manage the government affairs in the system of the Unitary State of the Republic of Indonesia. In addition, it also undertakes De-concentration, namely the delegation of government authority by the Government to the Governor as a representative of the government and / or to the vertical institution, and as well as carrying out Co-Administration, namely the assignment from the government to the region and / or village from the provincial government to the district / to perform certain tasks.

In carrying out governance in the region, it takes the tools and institutions to carry out the government in everyday areas. As only in the center of the country, regional instruments and institutions are usually a reflection of the central state system.²

To fulfill the function of representation in exercising the legislative power of the region—as in the center of the country in the region—it is formed the People's Legislative Assembly, and this institution is commonly known or called the Regional Representative Council. The Regional Representative Council is a representative body of the regional people as an element of local governance.

In general, this role is manifested in three functions, namely:

1. Regulator. Arranging all regional interests, including local (autonomous) regional government affairs and central government affairs submitted to the regions (assistance tasks);
2. Policy Maker. Formulate development policy and planning of development program in its area;
3. Budgeting. Regional budget planning (APBD).

¹ Endang Sutrisno, Bunga Rampai Hukum dan Globalisasi., 2007, hal 25

² Asep kartiwa, Implementasi Peranan Fungsi DPRD Dalam Rangka Mewujudkan “Good Governance”, Materi Lokakarya Peningkatan Peran Anggota DPRD, diselenggarakan oleh KPK, Jakarta, 7-8 Juni 2006, Hal 5

In its role as a representative body, the DPRD (Regional of Representative Assembly) places itself as a balanced power that balances and exercises effective control over the Regional Head and all levels of local government.

This role is manifested in the following functions:

1. Representation. Articulate concerns, demands, expectations and protect the interests of the people when the policy is made, so the DPRD always speaks "on behalf of the people";
2. Advocacy. Comprehensive aspirations and fight it through complex negotiations, as well as very strong political bargaining. This is reasonable, since the aspirations of the community contains many interests or demands that sometimes collide with each other. Bargaining politics is meant to reach the common ground of these interests.
3. Administrative oversight. Assess or test and attempt to change the actions of the executive body. Based on this function, it is not justified if the DPRD is "off the hook" to the local government policy that is problematic or questioned by the community. Especially with the naive phrase, "It's not our authority", as is often the case in practice. In such cases, the DPRD can summon and request information, conduct questionnaires and interpellations, and ultimately may require the accountability of the Regional Head.³

Looking at the above conditions, it can be said that the role and function of DPRD legislation in the implementation of Regional Government able to position itself as an executive partner. In harmony, DPRD with its legislative function is required to be able to draft the Regional Regulations and jointly carry out the administration of the executive together. With that power, DPRD is expected to be able to translate the aspirations of the people into the form of submission of draft Local Regulations. DPRD should be able to be an effective, authoritative and more creative instrument in proposing its legislative functions to create regulations as mandated by the 1945 Constitution.⁴

Theoretical and Conceptual Basis

The Regional House of Representatives (DPRD) as one of the democratic institutions, in its history has shown the role and position of fluctuation in accordance with the political

³Asep kartiwa, Implementasi Peranan Fungsi DPRD Dalam Rangka Mewujudkan "Good Governance", Materi Lokakarya Peningkatan Peran Anggota DPRD, diselenggarakan oleh KPK, Jakarta, 7-8 Juni 2006, Hal 6

⁴Dewi Sulastris, Artid and Implikasi Pelaksanaan Kewenangan DPR Sebagai Pemegang Kekuasaan Membentuk Undang-undang Menurut Pasal 20 Ayat (1) UUD 1945, Tesis, Unpad, 2002, Hal 10.

configuration that occurs in general governance in Indonesia. This means that when the political configuration is authoritarian, the existence of the DPRD includes the House of Representatives (DPR) and even the People's Consultative Assembly (MPR), even more so as a "stamp institution" of every policy and desire of the authorities. Likewise, on the contrary, when democratic political configuration gets a "wind" to "color" the national political universe, the existence of representative institutions is unlikely to be dammed by other forces. Representative agencies represented on their members have a very strong position when compared to other institutions, such as the executive or judiciary. In this writing will be a little peeled about the role of normative DPRD in the implementation of local government.

Problems that often occur

The problems that often occur in the formulation of Regional Regulations in DPRD are:

1. Lack of understanding of some members of parliament to the legislative function attached to it, and the low level of knowledge and ability (read: education) DPRD, so can not follow the flow of thoughts and concepts in draft Raperda (Draft of Local Regulation) proposed by the executive.
2. The weak selling value and weak DPRD's bargaining position against the draft Local Regulations proposed by the executive make DPRD must participate in the grooves that the executive has designed.
3. The existence of irregularities in the drafting of local regulations by some members of parliament itself concerning certain policies, by making an unwritten agreement with the Unit of Regional Device Organizations (SOPD) in approving the draft Raperda submitted by the executive, which then "oknum (certain person)" member of the DPRD go to a particular Unit of Regional Organization (SOPD) on behalf of the individual or group / group that submits (read: asks for SOPD to grant what he wants) in relation to the Raperda sanction into Perda (Local Regulation).
4. The existence of several DPRD members in the Commission mostly uses informal and coordinative approaches with the Regional Device Organization Unit (SOPD) (usually done in the planning and the process of determining the local budget (APBD) on certain activities).
5. The deviations that occur are public secrets, but both the DPRD leadership, the Faction leadership and the leadership of the Commission and other head of

office in the DPRD lack respect (tackle the person) and tend to be 'invisible hand' and know the same attitude in other Factions too) which must be proved.

Optimizing DPRD's Role in Establishing Regional Regulations

Seeing the above problem, the role is vital in determining the design and formulation of local regulations as an agenda for the community in the region. In the broad sense that as the executor of state power, conceptually envisioned as a public interest management agent. For the administration of modern times generally adopted the doctrine of *triaspolitica*⁵, namely the separation or separation of state power into three categories: legislative, executive and judiciary. At the local level, the organs of state power organizers also replicate the organs that have been made at the national level. We recognize the DPRD as the legislative authority at the local level, the Regional Head as the executive authority (government in the narrow sense) in the area concerned, and the courts as holding the jurisdictional authority.

The politics of legal development that we have run so far is more concern on the name of people's participation and the claiming of the values and needs of a group of elites as the values and needs of the lower society. To be able to get out of the condition of such legislation, there must be continuous efforts to create responsive laws and regulations.

The effort to create a responsive legislation is not only the work of the central government, but also it must run simultaneously to the Regions. In this context, legislation (legislation) contains two meanings; First, legislation is the forming process of state regulations, at the central level and at the regional level; Secondly, the legislature is a state regulation which results from the formation of regulations, both at the central and regional levels.

By understanding the meaning of the legislation, legal norms can be established either in written or unwritten by the institutions authorized to form them, while the moral, custom, religious and other norms occur in an unwritten, growing and evolving form of customs exist in society. Habitual facts that occur, about something good and bad, which repeatedly occur, so it is always in accordance with a sense of justice in the community, in contrast to the norms of state law that sometimes does not always match the sense of justice / public opinion.

The law is valid if it is made by the institution or authority authorized to form it and based on higher norms, so in this case the inferior norm can be formed by the superior norm, and the law is tiered- ladder and layers form a hierarchy.

⁵TriasPolitica dari Montesque

Based on the amended 1945 Constitution, in Indonesia the power of state administration is no longer centered on the President. This is at least characterized by no longer power to form a law held by the President, but the power is held by the House. In this case the president only gets to submit the bill. Likewise in the regions, the power to form legislation is in the hands of the DPRD, the Regional Head shall only apply the Draft of Regional Regulation.⁶

To carry out the tasks of governance, both central and local government required legislation. What are the forms of legislation, the 1945 Constitution does not say much, only mention a few species, while other legislation grows and develops in line with state administration and governance practices of the State of Indonesia.

If Pancasila, the 1945 Constitution and MPR Decree as well as the Basic Law are not written, we are positioned as the Basic Rules / Staatsgrundgesetz, then the laws of the Republic of Indonesia constituting is as "FormallGezetz" and "verordnung & Autonomesatzung" regulations established by the People's Legislative Assembly with the President, namely other laws and regulations established by government agencies authorized to do so. However, MPR does not seem to embrace the differentiation of what is called "Staatsgrundgesetz" and what is called "FormallGezetz" and "verordnung and Autonomesatzung".

The composition of the source of the rule of law as contained in TAP MPRS Number XX/MPRS/1966, in practice raises a variety of issues, especially in relation to "other implementing regulations". By simply mentioning other implementing regulations, it gives the impression that it is unlimited in number and type.

Other regulations are equated with legislation. In this connection legislation can only be established by an institution that obtains the authority of legislation, namely the power to form a law. In fact, not all institutions have such authority. After decades, MPR made amendments to the composition of legislation as set forth in TAP MPR Number III / MPR / 1999, as follows:

1. Constitution
2. TAP MPR
3. Law / PERPU
4. Government Regulation
5. Presidential Decree

⁶Boy Yendra Tamin, *Kemitraan Legislatif Dan Eksekutif Dalam Konteks Pembuatan Peraturan Daerah*, 2009

6. Local Regulations

Changes in the arrangement of legislation have an important meaning in the formation and regulation of legislation in Indonesia. This is primarily with the removal of other implementing regulations and replaced by the Regional Regulations as the last type of legislation. On the basis of the composition of legislation based on TAP MPR Number III / MPR / 1999 then in addition to the rest of the Regional Regulation is the Central-level legislation. On the other hand, the arrangement of legislation made contains juridical consequences. The laws and regulations below should not conflict with the higher law. Therefore, we need to point briefly the existence of each of these legislation, as follows:

1. Constitution (UUD). In the 1945 Constitution there are actually some things that must be understood; The preamble of the 1945 Constitution is the fundamental norm of the State; The body of the 1945 Constitution is the Basic Rules / Basic Rules of State.
2. TAP MPR. The MPR's Decree on its rights is also a basic rule / rule of the State whose position is lower than the Constitution. The formation of the rules in the MPR Decree stems from the Verfassungsnorm of the 1945 Constitution. And the MPR TAP is at the same time the basic source of the formulation of the Act.
3. Regulations. The Regulation is a statutory law whose position is under the Constitution and TAP MPR. The law in its formation is done by the Parliament, where based on Article 20 of the 1945 Constitution stated that the House holds the power to form a law. Nevertheless, every draft law, either from the President or the DPRD, is discussed together to obtain mutual consent. That the definition of the House of Representatives holding the power to form a law must be defined as "holding the authority" because a "match" power in this case the power to form a law does have the authority to form Law. An Act in it can include the existence of criminal sanctions and coercive sanctions, and is a regulation that has been able to apply directly and publicly binding. From a number of laws that have been established since the State of Indonesia was formed, we have known some laws that mention itself the Basic Law, such as the Basic Agrarian Law, the Basic Laws of Governance in the Region and so on. If we trace the 1945 Constitution, then it is not known by the Basic Law in the sense of Law which is the "parent" of the other Law, where all the Laws in the State of Indonesia have the same position. In addition to the Law, the 1945 Constitution concerns the so-called Government Regulation in Lieu of Law (PERPU), but it can

only be made by the President in the case of a pressing incident. In the next trial, the PERPU must obtain the approval of the DPR.

4. Government Regulation. Government Regulation is a legislation established under Article 5 Paragraph 2 of the 1945 Constitution; The President stipulates the Government Regulation to implement the Act as it should. A Government Regulation is a law that makes provisions in a law work / enforceable. A new government regulation can be established if there is already a law, but nevertheless a government regulation can be established even if the law is not expressly stipulated in order to be further regulated in government regulations.
5. Presidential Decree. The Presidential Decree is a law established by the President under the provisions of Article 4 paragraph (1) of the 1945 Constitution; The President of the Republic of Indonesia holds the power of government according to the Constitution. With the power of the President, the President has the power to regulate everything in the State of Indonesia, only that regulating power has limits in accordance with Article 20 of the 1945 Constitution. A Presidential Decree can be a direct arrangement based on the attribution of Article 4 paragraph (1) of the Constitution 1945. The Presidential Decree is referred to as an independent Presidential Decree, and a Presidential Decree may also constitute a delegation of authority from a Government Regulation and its Act. Presidential decisions are not always decisions that are set and applied once completed, but often continuously.
6. Local Regulations. Regional Regulation is a legislative regulation which is newly appointed as a part of Indonesia's legislative arrangement based on TAP. MPR Number III / MPR / 1999. Previously, the Regional Regulation was placed as another regulation which was inferior to the Ministerial Instruction which, in its entirety, did not fall under the so-called statutory regulations, but in practice the Regional Regulation had to be subject to the instruction of the Minister, which was made by the Minister regarded in his position as Assistant to the President.⁷

The role of legislation will be realized if the vision of representing the people has been well instituted, according to the expectations of the people. How essential is the legislative role, in which the direction of future collective life is essentially predetermined. The restriction signs of all efforts have been initially set out in the form of legislation containing

⁷Boy Yendra Tamin, SH. MH, *Kemitraan Legislatif Dan Eksekutif Dalam Konteks Pembuatan Peraturan Daerah*, 2009

the centralized regulation, whose scope is far ahead and is expected to be long-lived, not quickly decayed.⁸

In carrying out the legislative function and as reinforcement in discussing with the local government, the DPRD based its legislative function to the principles contained in Law Number 32 Year 2004 which has provided several principles in the formation of a law. These principles include:

1. Clarity of purpose; Correct institutional or organ-forming;
2. Conformity between type and material of charge;
3. Can be implemented;
4. Effectiveness and usefulness;
5. Clarity of the formula, and
6. Transparency

Meanwhile, on the content of the Regional Regulation, Law Number 23 Year 2014 states that the content of Regional Regulations contains the following principles:

1. Protection;
2. Humanity;
3. Nationality;
4. Kinship;
5. Ke-Nusantaraan;
6. Bhineka Tunggal Ika;
7. Justice;
8. Equality of position in law and government;
9. Order and legal certainty;
10. Balance, harmony and harmony.

Along with the implementation of regional autonomy, the existence of DPRD should not be articulated as a final destination, but rather as a mechanism to create democratization of governance. Mawhood, 1987⁹, for example explicitly defines decentralization as a devolution of power from the central government to the local government, the devolution of power from central to local government. It is therefore understandable that Mawhood then formulates the central objective of the decentralization policy as an effort to realize political

⁸Boy Yendra Tamin, Fungsi Legislasi DPRD dan Pembentukan Peraturan Daerah, 2009

⁹Boy Yendra Tamin, SH. MH, Fungsi Legislasi DPRD dan Pembentukan Peraturan Daerah, 2009

equality, local accountability, and local responsiveness. Among the prerequisites that must be met to achieve these objectives is that regional governments must have a legal territorial of power; own local own income; has a representative body that is able to control local executives. The function of legislative control will be more effective and meaningful if implemented in optimizing the function of legislation.

The optimization of DPRD in formulating the Regional Regulation with Bupati(Head of a Region) is not only in the limited scope of the problem; arrangement, systematics and language. Layout, including layout, basic political use (weighing); the legal basis (remembering); sharing and use of Chapter, section of chapter, verse and so on. Systematics, it is included the sequence of problems (from simple to complex), the order of subject matter and supporting material. Language, including the use of simple language, monolithic terms (absolute), and sentence structure (passive or active sentences, commands or prohibitions).

In this context, the optimization of the Regional of House of Representative (DPRD) towards the formation of Regional Regulations, in addition to knowing how to formulate, should also know and control several things as follows:

1. Objectives of the establishment of Regional Regulations;
2. Functions of Regional Regulations (such as order function, justice function, development support function, function of encouraging social change);
3. Really master the material to be arranged. In this regard includes knowledge of whether the material has ever been set. Why it needs to be organized. What kind of legislation is appropriate to regulate the designed Regional Regulations. Further, it includes knowledge of the limitations which may be attained by a Regional Regulation.

In connection with the above description, BagirManan and KuntanaMagnar¹⁰ (1993: 114) argued that to realize legislation is considered good if it can meet the elements include:

1. Formulation is arranged in a systematic, simple and standard language;
2. As a rule, capable of achieving utility and utmost results both in the form of order and justice;
3. As a social phenomenon, it is a manifestation of life view, legal awareness and sense of community justice. Including here his ability as a factor driving the progress and change of society;

¹⁰Boy YendraTamin, Fungsi Legislasi DPRD dan Pembentukan Peraturan Daerah, 2009

4. As a sub-system of law, it should reflect a series of systems that are regular from the entire existing legal system.

Thus, the optimization of the Regional People's Legislative Assembly (DPRD) in determining the Regional Regulation with the Regent is no longer due to the existence of the order of the laws governing the regional government, but constitutes the mandate of the Constitution. This means that a law established on the structure and procedure of local government administration should give the local government the right to enact Local Regulation and other regulations, as long as it does not contradict the public interest and the higher laws and regulations.

Initiative Process of Regional Regulation Making

As stated earlier, the local regulation is formed by the local parliament which is discussed together with the regional heads to obtain mutual consent. In this context, the discussion and mutual agreement on the legislation formed in the DPRD. The formation of local regulations does not just happen, but begins with the drafting process of local regulations. The drafting and submission of the Draft Law according to the law is the right of the Regional Head. This means that the draft of the local regulation shall be submitted by the Regional Head to the DPRD and then discussed jointly between the DPRD and the Regional Head for joint approval.

The drafting of local regulations is crucial for the smooth discussion in the DPRD. Therefore, the quality of a local regulation and decision-making on the Regional Regulations Draft into a local regulation is largely determined by how and how the draft of the law is drafted. At least a draft law should be preceded by drawing up academic texts. This, of course, requires that Regional Regulations is not made on the basis of "catch-up". With the preceding or accompanied by academic script, it is very easy for the discussion of the draft law to be stipulated into a law. At least in the discussion of the material formulation of the Regional Regulations was not trapped in the discussion of "debate" surface which ultimately the purpose of formation of Regional Regulations is not optimal.

Accompanied by an academic script, the stages of the law will be more depth discussion and every stage of the discussion that must be passed can run well. Due to a draft Local Regulation to be stipulated as a regulation, there are several stages to be passed as regulated in legislation. PP No.1 Year 2001 for example, determines that the draft proposed Regional Head will be discussed in four stages. In the context of this discussion, the Head of Region involved directly in the discussion of Phase I, namely in the form of: an explanation of

the Regional Head in the Plenary Session on the draft of Regional Regulation from the Regional Head. Then in Phase II, the response of the Regional Head in the Plenary Session to the General Section of the Members. Phase III in the form of: Discussion of members of DPRD, In Phase IV in form; giving an opportunity to the Regional Head to deliver a speech after the DPRD has a decision on the Draft of Regional Regulations to be a Regional Regulations.

Considering the implementation of the legislative function of the Regional People's Legislative Assembly, in view of this law has been in accordance with Law Number 32 Year 2004 which supersedes Law Number 22 Year 1999, it is stated that: DPRD has duty and authority to formulate bylaw which is discussed with Head of Region to get mutual agreement . In the legislation function there are two important notes, namely; First, in the formation of a Regional Regulation is the authority of the DPRD. Secondly, the DPRD is no longer part of the regional government¹¹. In accordance with the conceptual changes in the formation of Regional Regulations as regulated in Law Number 5 Year 1974 and Law Number 22 Year 1999 as well as Law Number 32 Year 2004, the formation of Regional Regulation under Law Number 32 Year 2004 is the authority of DPRD. This assertiveness as stated in Article 95 of Government Regulation Number 24 Year 2004 which states: DPRD holds the power to form a Regional Regulation.

Comparing the provisions on the establishment of a regional regulation between Law Number 22 Year 1999 and Law Number 32 Year 2004, although both laws share the same view that although the DPRD is positioned as the holder of the power to form a regional regulation, , among others namely; First: In Law Number 22 Year 1999, the Regional Head shall enact the Regional Regulation on the approval of the Regional People's Legislative Assembly, whereas in Law Number 32 Year 2004, the Regional Head shall enact the Regional Regulation after obtaining joint approval between DPRD and Regional Head. Secondly, in Law Number 22 Year 1999, there is no provision on the provisions regulating if the Regional Head does not stipulate the Regional Regulation that has been approved by DPRD. Meanwhile, Law Number 32 Year 2004 stipulates that if within 30 days the Head of Region does not stipulate the law, the local regulation shall be lawful and shall be enacted by publishing it in the Regional Gazette.

¹¹Undang-undang Nomor 32 Tahun 2004 tentang Pemerintahan Daerah

Role of Legislative Committee of DPRD

DPRD has been running its role in its capacity as a legislative body in 1) Determination of Local Regulation, 2) Role of Finance, 3) Role of Supervision and 4) As People's Deputy. But in accordance with the focus of research, the authors only highlight the problem of the role of the DPRD in the determination of the Regional Regulation related to the function of legislation.

Regional Regulation is the product of two local government institutions which in determining the policy is done through a certain mechanism. The mechanisms used in determining regional policies, whether derived from executive or legislative proposals, are regulated in the rules of the DPRD. To make a Regional Regulation must be guided by a legislation in accordance with the provisions contained in Article 42 paragraph (1 a) of Law Number 32 Year 2004 and Article 136 paragraph (1) of the Regional People's Legislative Assembly have the duty and authority to form a Regional Regulation that is discussed with the Regional Head for joint approval. Since the Regional Regulations are established in the context of the implementation of regional autonomy and assistance tasks.

As stipulated in Article 102 paragraph (4) of Law Number 22 Year 2003 on the Composition and Status of the People's Consultative Assembly, DPR, DPD and DPRD, it is mentioned that the rules of procedure shall at least cover the procedures:

1. Speech and pledge
2. Selection and determination of leadership
3. Dismissal and replacement of the leadership
4. Conducting meetings
5. Implementation of functions, duties, obligations and authorities and the rights of members / institutions
6. Complaints and duties of honorary bodies in the intermediate reimbursement process
7. Establishment, composition, duties and authority and duties of fittings
8. Decision-making
9. Implementation of consultations between the legislature and the executive
10. Acceptance of complaints and distribution of community aspirations
11. Implementation of secretariat working relationships and experts / experts; and
12. Protocol arrangements and codes of ethics and institutional fittings.

The rules of order are dynamic and follow the development of laws and regulations governing the governance, related to the optimization of the role of the Regional People's

Legislative Assembly¹². Preparation of Regional Regulations in the DPRD seen from the type of Regional Regulations can be grouped into two kinds, namely:

1. Regular groups such as APBD approval, APBD changes, APBD approval.
2. Incidental groups include all Regional Regulations made only once, according to need. Regional Regulation from the process of drafting up to the enactment of its enactment fully becomes the authority and responsibility of the Regional Government, so that when the Regional Regulation has been enacted, then the Regional Regulation concerned shall apply immediately. Regional Regulations regulate household affairs in the field of autonomy and domestic affairs in the field of assistance tasks.

The process of drafting the Regional Regulation in the Regional People's Legislative Assembly is conducted by the Legislative Committee as the DPRD's fittings in charge of formulating and recommending a Draft Local Regulation to the DPRD leadership whether set or returned to the executive to be revised again even rejected at all. The Legislative Committee as the DPRD fittings makes certain stages:

1. The entry of the draft of Regional Regulation to the Legislation Committee

At this stage the Legislative Committee formulates the draft Local Regulation not only in the limited scope of the matter; arrangement, systematics and language. Layout, including layout, basic political use (weighing); the legal basis (remembering); sharing and use of Chapter, section of chapter, verse and so on. Systematics, it is included the sequence of problems (from simple to complex), the order of subject matter and supporting material. Language, including the use of simple language, monolithic terms (absolute), and sentence structure (passive or active sentences, commands or prohibitions). In making a Regional Regulation, the DPRD first accommodates the wishes and demands of the community. Local regulations should have a positive impact and have a side to the people without putting aside the interests and objectives to be achieved by the local government. This is in accordance with the provisions contained in Article 42 paragraph (1 a) of Law No. 23 of 2014 and Article 78 Paragraph (1 a) of the Regional People's Legislative Assembly has the duty and authority to form a Regional Regulation that is discussed with the Regional Head for joint approval.

Furthermore, the Legislation Committee formulates the impact of the draft of Regional Regulation when it is later invited. Whether the impact is good or bad for the community and can enter in the next discussion or rejected because it will have an adverse impact and respect law No. 32 of 2004 which states that "Regional Regulations are formed based on the principle

¹²Pasal 102 ayat (4) Undang-undang Nomor 22 Tahun 2003 tentang Susunan dan Kedudukan MPR, DPR, DPD dan DPRD

of formulation of legislation that includes: a. Clarity of purpose; b. Correct institutional or organ-forming; c. Conformity between type and content material; d. Can be implemented; e. Utility and usability; f. Clarity of formulation; and g. Openness."

2. Legislation Committee to Test the Draft of Local Regulation

Considering the importance of the position of laws and regulations, the good or bad, the quality or not and the usefulness of a Regional Regulation is determined by the means (techniques) and the design process that has been tested by the Legislation Committee. It can not be denied the truth, that without sufficient knowledge on how to formulate, the design will find the difficulty of the Region and the goal to be achieved. For the Regional People's Legislative Assembly, the Regional Regulations that meet the above requirements will facilitate the implementation of their duties which in turn may create a sense of attachment. As for the affected people, they understand that they will participate in enhancing the process of utilization and the results of the Regional Regulation. In fact, if a Regional Regulation whose design is preceded by the preparation of academic texts, it has in fact provided a space for public participation in the formation of the Regional Regulation. This is of course, if the academic script is done according to the correct procedures and can be accountable. Conditions are entitled to provide oral or written input in the framework of preparation or discussion of the Draft of Regional Regulations. The draft Local Regulation from the DPRD is distributed to the public and implemented by the DPRD Secretariat. In fact, the draft of Regional Regulation from the Head of Region should be disseminated widely to the community and implemented by the Regional Secretariat.

The consequence of disseminating the draft of the Regional Regulation to the community, it is in addition to open participation and public response to the Regional Regulation that will be formed, as well as the challenge for the Regional Head and DPRD, if the Draft of Local Regulation to be discussed and stipulated to become a Regional Regulation shall be a Draft Regulation Areas that can be accounted for academically can not be answered only with political answers. In fact, how important is the academic script of a draft Local Regulation that will be the basis for the DPRD and the Regional Head in responding to the various responses of the people to a Regional Regulation that will be formed.

3. Determination of the Draft of Regional Regulation into Local Regulation

After the draft Local Regulation is tested, the next process is the Legislative Committee recommends to the DPRD leadership to continue discussing with the Head of Region for joint approval. First, the explanation of the Regent in the plenary session of the DPRD with the agenda of submitting the Draft of Regional Regulation; Second, DPRD

Plenary Meeting with the agenda of the General View of the DPRD Factions on the Draft of the Local Regulation submitted by the Regent; Third, the submission of the Bupati's response to the general view of DPRD fractions in the plenary session of the DPRD; Fourth, discussions by the Commission, a joint Commission or a special committee of the DPRD with the Bupati (Head of District) or a representative official; To Five, Decision-making in DPRD plenary sessions against the draft of Regional Regulations that have been enhanced by the Commission, the Joint Commission or the Special Committee of the DPRD by first listening to the final opinion of the DPRD Factions.

The joint discussion between the DPRD and the Bupati (Head of District) in drafting the Regional Regulation has been in accordance with Article 42 of Law Number 23 Year 2014 on Regional Government paragraph (1) stated that:

1. Establish a regional regulation that is discussed with the regional head for joint approval;
2. To discuss and approve the draft of Regional Regulation concerning APBD together with the Head of Region;
3. Implementing oversight on the implementation of regional regulations and other legislation, regional head regulations, regional budgets, local government policies, and international cooperation in the regions.

After obtaining the joint approval of the Draft of the Local Regulation, the Regional Head shall be determined by the Regional Head to be invited and recorded in the Regional Gazette. Based on the foregoing matters, the authority of the DPRD together to form a Regional Regulation requires a very strong cooperation and on an equal footing, that the established Regional Regulation shall not be contrary to the public interest, higher Regulation and Other Regional Regulations. Even a regulatory Regional Regulation after being enacted in the Gazette shall be registered to the Governor. Even for Regional Regulations related to APBD, Regional Tax, Regional Retribution and Regional Spatial Planning prior to promulgation in the Gazette should be evaluated by the government. This means that the new regional regulations can be enacted in the Regional Gazette depending on the results of the evaluation by the government.

Based on the results of research in the field, in the know that the DPRD in carrying out its role as a legislative body is guided by Law Number 32 Year 2004 on Regional Government. Article 41: The DPRD has the functions of legislation, budget, and supervision. Article 42 states: (1) The DPRD has the duty and authority to: a. establish a Regional Regulation that is discussed with the Head of Region for joint approval; b. to discuss and

approve the draft of Regional Regulation on APBD together with the Regional Head; c. carrying out supervision on the implementation of the Regional Regulations and other laws and regulations, the regulations of the Head of Region, APBD, Regional Government policy in implementing regional development programs, and international cooperation in the regions.

4. Right to Amendment and Right of Initiative

Regional policies are formulated in the Regional Regulations and the laws and regulations have determined that the Regional Regulations are made by the Regional People's Legislative Assembly together with the Regional Government. In addition to the Regional Regulations on APBD, the draft is prepared by the Regional Government (Regional Head), the draft of other Regional Regulations, the right of initiative and the initiative of the drafting can come from the Head of Region or from DPRD.

The opening of equal opportunities for both the Head of Region and for the DPRD to initiate and take the initiative in drafting the Regional Regulation is inseparable from the purpose of regional autonomy itself. Therefore, the regions have the authority to make regional policies, one of which is by establishing a Regional Regulation. Then the DPRD as a local government agency has the same position and function with the Regional Government and build and seek support in determining the policy of Regional Government that can accommodate and channel the aspirations of the community.

Based on the same position and function, both the DPRD and the Regional Head have equal rights in amending the Regional Regulation and having equal rights in initiating and initiative in the drafting of the Local Regulation. For the amendment right to the Regional Regulation, the right of initiative and the right of initiative in submitting the draft of Local Regulation will be determined by the sensitivity of Local Government and DPRD in responding to the needs of the community and on the other side the seriousness in realizing the goals of regional autonomy.

5. Optimizing the Legislation Committee

To optimize DPRD, Legislative Committee's legislative fittings to optimally carry out its Tasks and Functions, especially in the Pre-Draft Discussion of Regional Regulations submitted by the Head of Regent (Bupati) to DPRD. In order to design a form of Regional Regulation that really can be beneficial to the Regional Government and the welfare of the community, besides that the Legislation Committee can play a more role in evaluating the forms of Regional Regulations that are made, whether the Regional Regulation in the intention still feasible or not in practice considering the number of new regulations of the Central Government. At the same time carry out the initiative of DPRD which is played by

the Legislation Committee against the rules that need to be published as an effort to encourage the progress of Local Government and society in Kuningan District. In the sense of not necessarily always accept the proposed draft Local Regulation from the Head of Region (Regent) in this case the Legislation Function as policy makers can be optimally implemented.

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