

The Role of Regional Governments in Developing Draft of Regional Regulations

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Abstract.

This study aims to understand the role of local governments in the preparation of the Ranperda, especially the Ranperda concerning Regional Public Water Supply Companies in the Jepara Regency area. In addition, it is also viewed from the perspective of Islamic law on the steps taken by the local government. This study uses an analytical-descriptive type of research, and uses a juridical-sociological approach. In accordance with the type and approach used, the types and sources of data are Primary Data and Secondary Data, with data collection methods used through interviews with related informants and literature studies in the form of statutory regulations and related literature books. The results of this study are that the role of local governments in the preparation of regional regulations is in accordance with the regional government laws, namely; has the right to submit Draft Regional Regulations, including in this case the Submission of Ranperda concerning Regional Public Drinking Water Companies in the Jepara Regency area.

Keywords: Local; Government; Regional; Role.

1. Introduction

Making regional regulations to promote regional development can only be realized if the formation of regional regulations is carried out in accordance with statutory regulations, regional needs and local wisdom carefully. The practice of administering local government is known as the principle of freedom of action (*freies ermessen*). The aim is to expedite the tasks of local governments in order to realize the vision, mission and strategies that have been announced by the local government. One aspect of freedom of action for local governments is freedom of action in the legal field. Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia states that regional governments have the right to stipulate regional regulations and other regulations to carry out autonomy and assistance tasks.¹

The regional government system in Indonesia conceptually adheres to and implements the principle of the rule of law (*rechtsstaat*). The principle is to imply that every action, whether state apparatus, central government apparatus, regional government apparatus or elements of citizens and/or local residents, must always be based on legal regulations. Constraints that often occur, namely when an act must be carried out, the legal regulations that will be used as the basis, are not necessarily ready for their existence. This is because the legal regulations do not

¹Sulistyo, Widayati, Kusriyah. "Implementasi Asas Keterbukaan Dalam Proses Pembentukan Peraturan Daerah Dalam Rangka Otonomi Daerah Di Kabupaten Kendal". *Jurnal Daulat Hukum* Vol. 1 No. 1 (2018). P.192, url : <http://jurnal.unissula.ac.id/index.php/RH/article/view/2633/1982> accessed June 30, 2022

exist or do not yet exist, the legal regulations exist but are incomplete, and it can also occur that the legal regulations exist and are complete but the interpretation is unclear. In such circumstances, if an action is taken².

To anticipate this, local governments need to be given the freedom to act to anticipate the legal vacuum crisis, by creating creations to form legal regulations. It is hard to deny, that excessive use of freedom of action can have a negative impact, namely that the government may tend to use more power in carrying out its duties. Therefore, to eliminate the actions of local governments in carrying out their activities (political will), so as not to be trapped in the category of state power (*machtsstaat*), these actions must be packaged in legal products in the form of regional regulations. Other impacts of excessive use of power by local governments, in carrying out their duties, can give birth to negative actions, including:³

The formation of good legislation according to the community is the formation of legislation carried out by promoting community participation. This is stated in Article 96 of Act No. 12 of 2011 concerning the Establishment of Legislations as amended by Act No. 15 of 2019 concerning Amendments to Act No. 12 of 2011 concerning the Establishment of Legislation. In the formation of laws and regulations, the public has the right to participate in giving their opinions either orally or in writing. Likewise in the formation of regional regulations, this is because Indonesia adheres to a democratic system whose highest sovereignty is in the hands of the people.

Drafting a Regional Regulation (Perda) which is an instrument in the implementation of regional autonomy is not an easy thing. Because in its preparation, problem after problem arose until the central government canceled it because it was overwhelmed with supervision. This study aims to examine the role of the local government of Jepara district in preparing a draft regional regulation regarding local public drinking water companies. This is because in order to achieve responsive Regional Regulations in supporting regional autonomy, designers should pay attention to the principles of the formation of Regional Regulations as a frame of reference such as clarity of purpose, proper institutional or forming organs, compatibility between types and content materials which often clash because of differences in interests. .

2. Research Methods

The type of research used is descriptive analysis with a juridical-sociological legal approach. There are two stages of study, the first stage is a study of normative law (statutory regulations), the second stage is an empirical legal study in the form of application (implementation) on legal events in concerto⁴. The types of data needed are primary and secondary data. Primary data is the result of interviews with the head of the Legal Section of the Jepara Regency Regional Secretariat, the Head of the Jepara Regency Public Works and Spatial Planning and the Director of

²Rawasita, Reny et.al., (2009), *Menilai Tanggung Jawab Sosial Peraturan Daerah*, Pusat Studi Hukum dan Kebijakan Indonesia (PSHK), Jakarta, p. 60

³Ibid, p. 62

⁴Muhaimin, (2020), *Metode Penelitian Hukum*, Cet. I, Mataram University Press, Mataram, p. 116.

the Jepara Regency Public Water Company. Secondary data is library research in the form of the 1945 Constitution both before and after the amendment, Act No. 9 of 2015, Act No. 11 of 2020 and Act No. 33 of 2004. The data analysis method uses descriptive qualitative with data processing stages starting from data examination, data funding, classification, data compilation and data analysis.

3. Results and Discussion

3.1. The Role of Local Governments in Preparing Ranperda Regarding Regional Public Drinking Water Companies in Jepara Regency

The role of local governments has the right to stipulate regional regulations and other regulations to carry out autonomy and the task of assisting regional government management arrangements as stated in Act No. 23 of 2014 concerning Regional Government as has been amended several times, most recently by Act No. 11 of 2020 concerning Job Creation. Regional regulations are legal instruments made by local governments. Regional regulations have a strategic position because they are constitutionally regulated in Article 18 paragraph (2) of the 1945 Constitution which reads "Provincial, district and city governments regulate and manage their own government affairs based on the principle of autonomy and co-administration."⁵

The local government of Jepara Regency made a regional regulation concerning the Tirta Jung Poro Regional Public Water Company which has 2 functions, the first as a social function and the second as a corporate function. The social function of Perumda Water Drinking Tirta Jung Poro is to provide the best service to the community, and the function of the company is to seek profit or profit. An explanation from Mr. Andi as the Regent of Jepara⁶. From the explanation given by the Regent of Jepara Regency, it can be seen that regional regulations are based on regional autonomy to obtain as much regional income as possible and as an effort to improve the welfare of the community through service improvement. This is also in line with the consideration given to letter b of Act No. 23 of 2014 concerning Regional Government as amended several times, most recently by Act No. 11 of 2020 concerning Job Creation which reads: "That the administration of regional government is directed to accelerate the realization of community welfare through improving services, empowerment, and community participation, as well as increasing regional competitiveness by taking into account the principles of democracy, equity, justice, and sincerity of a region in the system of the Republic of Indonesia".

Local governments as part of the organizers and realization of the State of Indonesia have an obligation to fulfill human rights obligations including the right

⁵Ahmad, Sri Kusriyah. "Preparation of Village Government Personnel Implement Village Autonomy". *Law Development Journal* Vol. 2 No. 2 (2020). P.192, url : <http://jurnal.unissula.ac.id/index.php/ldj/article/view/11441/4491> accessed June 30, 2022

⁶ Dian, "Sapto Budiriyanto Direktur Utama Perumda Air Minum Tirta Jungporo", Artikel Harian Diskominfo, Accessed on Tuesday, November 30, 2021 at 13:45, <https://jepara.go.id/2020/07/20/sapto-budiriyanto-direktur-utama-perumda-air-minum-tirta-jungporo/>

to water for their citizens. Therefore, local governments are involved in the operation of drinking water companies in their regions. The authority of the Regency Government in drinking water affairs is as the manager and development of the drinking water supply system (SPAM) in the regency area.⁷ Based on Article 1 point 5 of Government Regulation Number 122 of 2015 concerning the drinking water supply system (SPAM), the drinking water supply system (SPAM) is a single unit of drinking water supply facilities and infrastructure. Referring to Article 2 paragraph (1) of Government Regulation Number 122 of 2015, a drinking water supply system (SPAM) is organized to provide drinking water services to the community to fulfill the people's right to drinking water.

3.2. Stages of Formation of Ranperda Concerning Regional Public Company for Drinking Water Tirta Jung Poro, Jepara Regency

In the process, the formation of a regional regulation begins with the formation of a regional regulation as a material for discussion between the regional government and the DPRD as the authorized party in the formation of regional regulations. As part of the Legislation, Perda occupies the lowest rank in the hierarchy of Legislations contained in Article 7 paragraph (1) of Act No. 12 of 2011. Therefore, it is necessary to be careful regarding the content of the Regional Regulations so that they do not conflict with the above laws and regulations such as Provincial Regulations, Presidential Regulations, Government Regulations, Laws, and so on. The consequence in case of disharmony is that the Regional Regulation may be null and void during the discussion at the plenary session regarding the submission of the Ranperda, both proposed by the Regional Government and the DPRD.⁸

The formation of laws and regulations begins with planning, preparation, preparation techniques, formulation, discussion, promulgation, and dissemination. The Ranperda is obtained at the formulation stage, so that at the discussion stage the Ranperda has become a complete draft that can be used as discussion material in the plenary meeting. Efforts to draft regional regulations are based on priority issues that meet the criteria based on regional development plans, implementation of regional autonomy, higher laws and regulations, and regional assistance tasks as well as the aspirations of the community so that the preparation of regional regulations does not conflict with existing regulations. apply.

Meanwhile, the concept of content material used by the Legal Department of the Jepara Regency Government in the preparation of the Draft Regional Regulation for the Tirta Jung Poro Drinking Water Company includes;

- The background and purpose of the formation of the Ranperda;
- Goals to be realized;
- The main idea, scope, or object to be managed; and
- Setting range and direction.

⁷ Arib Setiawan, *Legalitas Tindakan Pemerintah Daerah Dalam Menjamin Pembangunan Infrastruktur Yang Dilakukan Perusahaan Daerah Air Minum*, p. 886

⁸Nanang Al Hidayat, "Implementasi Legal Drafting Dalam Proses Penyusunan Peraturan Daerah Kabupaten/Kota", *Jurnal Serambi Hukum*, Vol. 11 No. 1 (February-July, 2017), p. 71 (69-95)

Furthermore, Muh Nursinwan as the Head of the Legal Division of Jepara Regency, stated that: "the materials that have been studied and researched are then made into Academic Papers".⁹The definition of Academic Papers is contained in Article 1 paragraph (11) of Act No. 15 of 2019 Amendments to Act No. 12 of 2011 concerning the Establishment of Legislation which reads;

"Academic Papers are the results of research or study" law and other research results on a certain problem that can be scientifically justified regarding the regulation of the problem in a Draft Law, Draft Provincial Regulation, or Draft Regency/City Regional Regulation as a solution to the problems and legal needs of the community".¹⁰

3.3. Supporting Factors and Obstacles Faced by Local Governments in Preparing Ranperda Concerning Perumda for Drinking Water in Jepara Regency

Supporting factors include: *First*, Organizing Factor; Based on an interview with Muh Nursinwan, who became a supporter in the preparation of the Ranperda on Regional Public Water Supply Companies was the organization that had been formed as the formation of a team in the formulation of the Draft Regional Regulation so as to facilitate coordination and teamwork in the team.¹¹

Second, Regulatory Factor; Regulations are a supporting factor in making it easier for implementation activities to formulate and design Ranperda. This is because it already has a regulatory basis as its basis, including a decision letter on the appointment of the relevant team.¹²

Third, Reliability Factor. This reliability is rooted in the word "reliable", reliable in the sense that this factor is a person who has competence in a particular field so that it can give confidence to the person who gives the task. Everyone appointed in the formulation team for the preparation of the Draft Regional Regulation regarding the Tirta Jung Poro Regional Public Water Company are those who have competence in their fields as required in the preparation of this Ranperda (Interview, Muh. Nursinwan, 15 September 2021). In addition, based on interviews conducted with Sapto Budiiriyanto, ST as the President Director of Perumda Jepara, he stated that in the composition of this Ranperda he said he gave and appointed members in the staffing at Perumda in accordance with their respective competencies.¹³

Fourth, Community Support Factor. Based on interviews conducted with Muh Nursinwan as the Head of the Legal Division of the Regional Secretariat; that one of the supporting factors in the preparation of this Ranperda is that we also get support from some of the community, this support is carried out in the form of community participation. This is a form of manifestation of the democratic

⁹Interview with Moh. Nursinwan, September 15, 2021 at the Jepara District Government Office.

¹⁰Act No. 15 of 2015 Amendment to Law of Act No. 12 of 2011 on Formation of Legislation.

¹¹ (Interview, Muh. Nursinwan; 15 September 2021))

¹² Ibid.

¹³ Interview, Sapto Budiiriyanto, ST,

principles adopted in government by including the role of community participation in the formation of laws and regulations¹⁴.

Constraint Factor include: first, Bureaucratic Structure; Based on interviews conducted with Sapto Budiiriyanto, ST, that which affects the implementation of policies against the Regional Public Water Supply Company in the Jepara district is the bureaucratic structure. Even if the resources to implement a policy are available or the policy implementers know what should be done and have the desire to implement a policy, it is possible that the policy cannot be realized because of weaknesses in the bureaucratic structure.¹⁵

Second, Human Resources. Lack of human resources is an obstacle in the preparation and preparation of the Regional Regulation, because it is limited by regulations. As the results of interviews conducted with Muh. Nursinwan who stated that in fact the implementation of the preparation of this Ranperda was in accordance with the applicable rules and laws so that in all cases it was limited to the provisions of the rules, including in this case the limitation on human resources who compiled it.¹⁶

Third, Disposition (Attitude). The constraint factors explored by the researcher in terms of this disposition are in accordance with interviews conducted with Muh Nursinwan, that the professionalism carried out by the implementers who have been given the task is only limited to professionalism regulated by the provisions of the legislation, namely only able to achieve efficient goals but have not been able to touch the sense of effectiveness of the preparation that achieves the targets of society in general.¹⁷

4. Conclusion

The role of the Regional Government in preparing the draft regional regulation regarding the regional public drinking water company in Jepara Regency is carried out by compiling an Academic Paper and the Ranperda concerning the Jung Poro Regional Public Drinking Water Company which is carried out by the Legal Section of the Jepara Regency Regional Secretariat. The stages carried out by the Regional Government in the preparation of the Ranperda of the Jung Poro Regional Public Drinking Water Company were carried out starting with the proposal from the SKPD, preparatory meetings, inventory of laws and regulations, preparation of academic texts and drafts of Ranperda, discussion of the draft Ranperda by the team, socialization, harmonization and synchronization the substance of the Ranperda material, making a letter of recommendation from the Regent to be further submitted to the DPRD. Supporting factors faced by the local government in preparing the draft regional regulation regarding regional public drinking water companies in Jepara Regency are

¹⁴ Interview, Muh Nursinwan; 15 September 2021

¹⁵ Interview, Sapto Budiiriyanto, ST, 20 September 2021, Regional Public Company Office of Jepara Regency.

¹⁶ Interview with the Head of the Legal Section of the Regional Secretariat of Jepara Muh. Nursinwan, September 15, 2021.

¹⁷ Interview with Muh Nursinwan, Head of Legal Section of the Jepara Regency Secretariat, 15 September 2021.

organizing factors, regulatory factors, reliability factors, community support factors. While the constraint factors in the preparation are bureaucratic structure, human resources and disposition (Attitude). In the process of forming regional regulations in the future, it is hoped that cooperation with the community will be prioritized in planning Ranperda so that aspirations in the form of community interests can be accommodated and channeled. In addition, it is necessary to have professionalism from various parties, especially the Jepara Regency Government Apparatus so that the formation of the Ranperda can be avoided from the cancellation of the Perda that has been ratified.

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