

Efficiency of The Regional Legislation Process: A Study of Simplification of Supervision of Regional Regulation Formation by Central Government

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Abstract. The Central Government's oversight mechanism on the formation of Regional Regulations involves many institutions, which often slows down the process of its formation and even obscures the nature of Regional Regulations as a legal product of the implementation of regional autonomy. This article discusses regulatory policies in supervising the formation of regional regulations and reconstructing the form of supervision of the formation of regional regulations by the central government. There are several forms of central government oversight. First, Harmonization, rounding, and solidification of conceptions carried out by the Ministry of Law and Human Rights. Second, Facilitation carried out by the Minister of Home Affairs through the Director General of Regional Autonomy on the draft provincial regional regulations and the Governor as the Central Government Representative on the draft district/city regional regulations. Third, Evaluation of draft bylaws by the Minister of Home Affairs on provincial draft bylaws and the Governor on draft district/city bylaws whose types of draft bylaws have been stipulated in Law 23 of 2014. The conclusion of this article is: First, the form of central government supervision in the formation of regional regulations has so far involved many institutions so that it is not effective and efficient because it is necessary to simplify the supervision mechanism for the formation of regional regulations. Second, it is necessary to increase human resources, in this case the drafter of laws and regulations within the scope of Regional Government as an effort to improve the quality of regional regulations.

Keywords: Legislation, Regional Regulation, Supervision.

Abstrak. Mekanisme pengawasan Pemerintah Pusat terhadap pembentukan Peraturan Daerah melibatkan banyak lembaga, seringkali memperlambat proses pembentukan bahkan mengaburkan sifat Peraturan Daerah sebagai produk hukum pelaksanaan otonomi daerah. Artikel ini membahas kebijakan regulasi dalam mengawasi pembentukan peraturan daerah dan merekonstruksi bentuk pengawasan pembentukan peraturan daerah oleh pemerintah pusat. Hasil pembahasan menemukan, bahwa ada beberapa bentuk pengawasan pemerintah pusat. Pertama, Harmonisasi, pembulatan, dan pemantapan konsepsi yang dilakukan oleh Kementerian Hukum dan HAM. Kedua, Fasilitasi yang dilakukan oleh Menteri Dalam Negeri melalui Direktur Jenderal Otonomi Daerah terhadap rancangan peraturan daerah provinsi, dan Gubernur selaku Wakil Pemerintah Pusat atas rancangan peraturan daerah kabupaten/kota. Ketiga, Evaluasi rancangan peraturan daerah oleh Menteri Dalam Negeri terhadap rancangan peraturan daerah provinsi, dan Gubernur terhadap rancangan peraturan daerah kabupaten/kota yang jenis rancangan peraturan daerahnya telah diatur dalam UU No. 23 Tahun 2014. Kesimpulan dari artikel ini adalah: Pertama, bentuk pengawasan pemerintah pusat dalam pembentukan peraturan daerah selama ini melibatkan banyak lembaga sehingga tidak efektif dan efisien karena perlu menyederhanakan mekanisme pengawasan pembentukan peraturan daerah. Kedua, perlu peningkatan sumber daya manusia, dalam hal ini perancang peraturan perundang-undangan dalam lingkup Pemerintah Daerah sebagai upaya peningkatan kualitas peraturan daerah.

Kata Kunci: Pembentukan Peraturan, Peraturan Daerah, Pengawasan.

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INTRODUCTION

The legislation process of the Regional Regulations should be formed effectively and efficiently while considering the principles in the formation of Laws and Regulations and conducting meaningful participation by the community. Meanwhile, this theorem is challenged. In reality, the supervision process for the legislated Regional Regulation conducted by the Central Government requires many institutions/bureaus to be involved. There are advantages and disadvantages to it. On the one hand, the involvement of many institutions in the legislation process of Regional Regulations will enrich the substance of these regional regulations and minimize errors, especially in terms of legal drafting details to follow the procedures that have been regulated by Laws. However, on the other hand, when many institutions are involved, it will take a longer time to legislate a Regional Regulation. The authority to supervise the legislation of the Regional Regulations will slow down the process of legal formation. It is ineffective and inefficient, and will even obscure the nature of these regional regulations as legal products of the implementation of regional autonomy, which essentially already becomes autonomy, as the rights of Regional Governments to govern their regions.

Conceptually, the supervision of the Central Government on the Regional Governments in carrying out regional autonomy is a necessity in the context of a unitary state. William D Hart-JF Gamer's perspective from the relationship between the Central and the Regions mentions that supervision is a "binder" to unity so that the pendulum of freedom for autonomy does not move too far which can reduce or even threaten the unity (unitary).¹ However, also according to him, if the binder is pulled so tightly, the breath of decentralization freedom will be reduced and may even be cut off. When that happens, supervision is no longer one side of decentralization but a 'shackle' of decentralization.²

¹ Sir William D Hart-JF Gamer in Ni'matul Huda, "Central Supervision of Regions (A Study of 'Problematic' Local Regulations)," *IUS QUILA IUSTUM 10 Law Journal*, no. 23 SE-Articles (June 3, 2016): 28–45, <https://doi.org/10.20885/iustum.vol10.iss23.art2>. p. 36

² Ibid

The issue of Central Government supervision toward Regional Regulation legislation in Indonesia is complex. Nowadays mechanism of supervision refers to complex applicable legal regulations. There are several arrangements related to the supervision of the formation/legislation of the Regional Regulations conducted under the Central-Regional relationship. The form of supervision on the formation of the rules is spread across several legal regulations:

1. Harmonization, rounding, and solidification of conceptions carried out by the Ministry of Law and Human Rights as stipulated in Article 58 of Law Number 12 of 2011 on the Establishment of Laws and Regulations.³
2. Facilitation, carried out by the Minister of Home Affairs through the Director General of Regional Autonomy on the Bills of Provincial Regional Regulations, and by the Governor as the Central Government Representative on the Bills of District/City Regional Regulations as a form of guidance by the Central Government.⁴
3. The Evaluation of Bills of Regional Regulations carried out by the Minister of Home Affairs on the Bills of Provincial Regulation, and the Governor on the Bills of District/City Regulation.⁵

When viewed from these various arrangements, there are two forms of central government supervision of the formation of Regional Regulations, namely: harmonization and facilitation. In this context, the form of supervision mentioned above is a form of preventive supervision because it is carried out in stages before the regional regulation is passed. This is done to prevent local governments from arranging Regional Regulations or other policies that do not conflict with other laws and regulations. According to Hanif Nurcholis, “preventive supervision” is supervision of local governments so that local governments do not set policies that

³ Law Number 12 of 2011 on the Legislation of Laws and Regulations amended several, times most recently by Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on the Legislation of Laws and Regulations.

⁴ See Law Number 23 of 2014 on Regional Government and Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 120 of 2018 on the Amendments to the Regulation of the Minister of Home Affairs Number 80 of 2015 on the Legislation of Regional Legal Regulation

⁵ Law 23 of 2014 on Regional Government.

are contrary to the public interest and higher laws and regulations or other laws and regulations.⁶

However, if you look at the involvement of various institutions in the process of supervising the formation of draft regional regulations as described above, it will increase the length of the bureaucratic flow in the formation of regional regulations. Broadly speaking, the harmonization in the Ministry of Law and Human Rights and Facilitation in Provincial Law bureaus and/or the Ministry of Home Affairs have similar work. Both provide analysis of regional regulations from the aspect of the substance of content material and aspects of procedures for the formation of laws and regulations.

Based on the background of these problems, this article would like to provide a review related to regulatory policies in supervising the formation of regional regulations so far and would like to offer ideas for simplifying the form of supervision of regional regulation formation by the central government.

METHODOLOGY

This article is normative legal research. The methods used are a statute approach and a conceptual approach.

RESULT AND DISCUSSION

A. Central Government Supervision of the Arrangement of Regional Regulation

There is a "legal norm control mechanism" to control or supervise the arrangement of legal norm. In general, control over norms can be carried out through political supervision or control, administrative control, or legal control (judicial control).⁷

⁶ Hanif Nurcholis, *Theory and Practice of Government and Regional Autonomy* (PT. Gramedia Widiasarana Indonesia, 2005). p. 196

⁷ Ni'matul Huda, *Local Government Law*, Print I (Bandung: Nusa Media, 2009).

Within the framework of a unitary state, the central government's supervision of local governments is a way that is impossible to abandon. This is nothing but intended to avoid the occurrence of mistakes, either intentionally or unintentionally, as a preventive measure, or also to correct them if they have occurred.⁸ Theoretically, the form of supervision is at least divided into two, namely preventive supervision (*preventief toezicht*) and repressive supervision (*repressief toezicht*). Preventive supervision is related to the authority to certify (*goedkeuring*). While repressive supervision is related to the authority of cancellation (*venietiging*) or *suspension* (*schorsing*).⁹ The following describe some supervisory arrangements in the stages of forming preventive regional regulations.

1. Harmonization in the Ministry of Law and Human Rights

The harmonization of the rule of law included therein is the Regional Regulation is to coordinate, adjust, strengthen and round the conception of a plan of legal regulation with other legal regulations, both higher, similar, and lower, and other matters other than the rule of law, so that it is systematically structured, not mutually opposite or overlapping, this is a consequence of a hierarchy of legal regulations.¹⁰ Theoretically, the harmonization in the formation of the rules of the law is at least divided into two: vertical harmonization and horizontal harmonization. Vertically, the legal norms of regional regulation are adjusted and harmonized with the rules of law that are hierarchically higher than the district regulations. Whereas horizontally, the legal norms of the region's regulations are aligned and harmonized with the legal regulations that are in line with the rules of the area. Harmonization is vertically in line with the base *lex posteriori derogate legi*

⁸ Paul Effendi Lotulung in Huda. p. 23

⁹ Bagir Manan in Ni'matul Huda, *The Problem of Cancellation of Regional Regulations* (Yogyakarta: FH UII Press, 2010). p. 65

¹⁰ Arie Elcaputera, Ahmad Wali, and Ari Wirya, "The Urgency of Harmonization of Regional Regulation Drafts: An Analysis of Challenges and Strategies for the Formation of Indonesian Laws and Regulations in the Context of Strengthening Regional Autonomy," *Journal of Legal Sciences, Faculty of Law, University of Riau* 11, no. 1 (2022): p. 132.

prori. Whereas horizontal harmonization is related to the basis of *ex posterior delegat legi priori* and *lex specialist delegat legi generalist*.¹¹

The policy of harmonization of regional regulations whose authority is given to the Ministry of Law and Human Rights has undergone several changes based on the governing law. In Law Number 12 of 2011 on the Establishment of Laws and Regulations as amended several times most recently by Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on the Establishment of Laws and Regulations stipulates in article 58 which reads as follows:

- a. Harmonization, rounding, and solidification of the conception of the Draft Provincial Regional Regulations are coordinated by the minister or head of the institution that organizes government affairs in the field of Formation of Laws and Regulations.
- b. Harmonization, rounding, and solidification of the conception of the Draft Provincial Regional Regulations as referred to in paragraph (1) is reviewed by vertical agencies of ministries or institutions that carry out government affairs in the field of Formation of Laws and Regulations.

This arrangement was previously in Law Number 15 of 2019 on Amendments to Law Number 12 of 2011 on the Establishment of Laws and Regulations Article 58 mention as follows:

- a. Harmonization, rounding, and solidification of the conception of the Draft Provincial Regional Regulations originating from the Provincial DPRD are coordinated by the Provincial DPRD equipment that specifically handles the field of legislation.
- b. Harmonization, rounding, and solidification of the conception of the Draft Provincial Regional Regulations originating from the Governor are reviewed by ministries or institutions that carry out government affairs in the field of Formation of Laws and Regulations.

Meanwhile, in Law Number 12 of 2011 on the Establishment of Laws and Regulations, article 58 reads as follows:

- a. Harmonization, rounding, and solidification of the conception of the Draft Provincial Regional Regulations originating from the Provincial DPRD are

¹¹ Zunnuraeni Bn, Hermi Sari, Galang Asmara, "Harmonization of the Draft Regional Regulation on Executive Initiative by the Ministry of Law and Human Rights," *Socio-Cultural Dynamics* 22, no. 2 (2020): p. 320.

coordinated by the Provincial DPRD equipment that specifically handles the field of legislation.

- b. Harmonization, rounding, and solidification of the conception of the Draft Provincial Regional Regulations originating from the Governor are coordinated by the legal bureau and can include vertical agencies from ministries that carry out government affairs in the field of law.

From the three amendments to Law Number 12 of 2011 on the Establishment of Laws and Regulations, it can be seen that there has been a shift in authority in terms of harmonizing, rounding, and solidifying the conception of the Regional Regulation Draft which was originally in Law Number 12 of 2011 on the Establishment of Laws and Regulations, the authority is given to the Regional House of Representatives apparatus that handles the field of legislation, namely the Forming Body Regional Regulations (*Bapemperda*) for Regional Regulations originating/initiates by the Regional House of Representatives. Meanwhile, harmonizing, rounding, and solidifying the conception of the Bills of Provincial Regional Regulations originating from the Governor becomes the authority of the Provincial Law Bureau. The involvement of the Ministry of Law and Human Rights is only optional, which is termed with the phrase "can participate".

In the first amendment of Law Number 15 of 2019, there are differences from the previous arrangement. Law Number 15 of 2019 changes to the authority to harmonize, round, and solidify the conception of the Draft Provincial Regional Regulations originating from the Governor reviewed by ministries or institutions that carry out government affairs in the field of Formation of Laws and Regulations. In other words, harmonization in the Ministry of Law and Human Rights was only non-mandatory (optional) in the previous arrangement, but after the amendment it became mandatory.

In the latest amendment, Law Number 13 of 2022 changes in authority occurred very significantly. Especially related to the authority of *Bapemperda* to harmonize, round, and solidify the conception of the Regional Regulation Draft changed to the authority of the Ministry of Law and Human Rights. Currently, all types of regional regulations, both those originating from the Regional House of Representatives and

those originating from the Governor/Regent/Mayor, must firstly be harmonized by the Ministry of Law and Human Rights.

Such arrangements have actually overlapped authority, or it can also be said that inefficient. There has been a waste that harmonization activities by the Ministry of Law and Human Rights have also been carried out by the Ministry of Home Affairs, Provincial Law Bureau or *Bapemperda* under other names such as facilitation and/or evaluation.

Technically, the harmonization carried out by Ministry of Law and Human Rights has a rule on the level of Ministerial Regulation which is the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 22 of 2018 on the Harmonization of the Legal Regulation Plan formed in the District by the Legal Regulation Planner. This Ministerial Regulation premonishes that the Harmonization of the Bills (hereinafter simply called harmonization), is the process of coordinating the substance of the legal regulation plan and the technique of drafting the rule of law, thus becoming a rule of law that is a whole union within the framework of the national legal system.

The Regulation of the Minister of Law and Human Rights also regulates what is harmonized/harmonized, namely harmonizing with:

- a. Pancasila, National Policy Law of the Republic of Indonesia of 1945, single-level or higher rule of law and Court Decree; And
- b. technique of drafting legal regulations.

In addition, harmonization activities will result in producing agreement on the regulated substance. In such a context, harmonization activities whose authority is in the Ministry of Law and Human Rights have changed the paradigm in the formation of regional regulations towards a centralized (centralized/centripetal) which is also not technically ready, such as the inadequate readiness of human resources for design personnel.¹² Even though there is an assumption that this arrangement is referred to as an effort to reinforce the implementation of harmonization of draft

¹² A Dwiatmoko and H Nursadi, "Problems and Structuring the Formation of Regional Regulations through Centralized Harmonization," *Journal of Indonesian Legislation*, 2022, 292–306, <https://e-jurnal.peraturan.go.id/index.php/jli/article/view/949>.

regional regulations to be in line with the direction of central government development¹³, according to the author, the role to harmonize has actually been carried out by the ministry of home affairs which is part of the central government.

Especially if it is related to the harmonization authority possessed by the Ministry of Law and Human Rights on the draft regulation of regional heads. As stated in Article 97D of Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on the Establishment of Laws and Regulations which states that:

Harmonization, rounding, and solidification of the conception of the Draft Provincial Regional Regulations as referred to in Article 58 and the Draft District/City Regional Regulations as referred to in Article 63 apply *mutatis mutandis* to harmonizing, rounding, and solidifying the conception of draft regulations of provincial heads and draft regulations of district/city heads.

So, in addition to harmonizing the draft regional regulations, the Ministry of Law and Human Rights is also given the authority to harmonize the draft regulations of regional heads which are certainly more than regional regulations. With the addition of this authority, it will increase the burden on the Ministry of Law and Human Rights in harmonizing regional legal products.

2. Facilitation by the Governor as Representative of the Central Government and Ministry of Home Affairs

Referring to Law Number 23 of 2014 on Regional Government, there are several forms of supervision carried out by the Central Government on the formation of Regional Regulations.

In Article 242 of Law Number 23 of 2014 on Regional Government, it is stipulated that there is an obligation for the Regional House of Representatives and regional heads to submit draft Regional Regulations to the Central Government, in this case the Minister for the draft Provincial Regional Regulations and the Regent/Mayor conveys it to the governor as a representative of the central government. More details can be seen as follows:

¹³ Kadek Tegar Wacika, Faculty of Law, and Udayana University, "Harmonization of Regional Regulation Draft Submitted by Regional Heads After the Enactment of Law Number 15 of 2019" 9, no. 9 (2021): p. 1583, <https://doi.org/10.24843/JMHU.2017.v06.i01.p10.Rumondor>.

- a. The draft regional regulation that has been jointly approved by the DPRD and the Regional Head is submitted by the DPRD leadership to the regional head to be determined to be a Regional Regulation.
- b. The submission of the draft Regional Regulation as referred to in paragraph (1) shall be carried out within a maximum period of 3 (three) days from the date of mutual agreement.
- c. The Governor must submit the draft Provincial Regional Regulation as referred to in paragraph (2) to the Minister no later than 3 (three) days from receiving the draft Provincial Regional Regulation from the leadership of the provincial DPRD to obtain the Regional Regulation register number.
- d. The regent / mayor must submit the draft of the Regency / City Regional Regulation as referred to in paragraph (2) to the governor as a representative of the Central Government no later than 3 (three) days from receiving the draft district / city bylaw from the head of the district / city parliament to obtain the regional regulation registration number.
- e. The Minister provides the register number of the draft Provincial Bylaw and the governor as the representative of the Central Government gives the register number of the draft District/City Bylaw no later than 7 (seven) days after the draft Regional Regulation is received.
- f. The draft regional regulation that has received a register number as referred to in paragraph (5) is determined by the regional head by affixing signatures no later than 30 (thirty) days after the draft regional regulation is approved jointly by the DPRD and the regional head.
- g. In the event that the regional head does not sign the draft regional regulation that has received a register number as referred to in paragraph (6), the draft regional regulation is valid as a regional regulation and must be promulgated in the regional gazette.
- h. Regional regulation's plan as referred to in verse (7) is stated to be valid with its confirmation sentence reading, "The District Rules are declared valid".
- i. The confirmation that reads as defined in verse (8) must be posted on the last page of regional regulation before the invitation of the regional regulation script into the district sheet.

Even more explicitly stated in Article 243 paragraph (1) as follows:

Draft Regional Regulations that have not obtained a register number as referred to in Article 242 paragraph (5) cannot be determined by the regional head and cannot be promulgated in the regional gazette.

Further regulation regarding the form of supervision of the Central Government as a follow-up to Law Number 23 of 2014 on Regional Government can be seen from the

Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 120 of 2018 on Amendments to the Regulation of the Minister of Home Affairs Number 80 of 2015 on the Establishment of Regional Legal Products.

Article 87 of the Regulation of the Ministry of Home Affairs stipulates that:

- a. Guidance on the draft regional legal products in the form of regulations in the province is carried out by the Minister of Home Affairs through the Director General of Regional Autonomy.
- b. Guidance on the draft regional legal products in the form of regulations in districts / cities is carried out by the governor.

Meanwhile, Article 88 of the Permendagri regulates the form of guidance by facilitation. It is mentioned as follows:

- a. Construction as referred to in Article 87, is carried out in the form of Facilitation of regional regulations plan, local head of government regulation plan and/or DPRD Regulation plan.
- b. Facilitation as referred to in paragraph (1), is mandatory.

Facilitation is written guidance of Regional Law Products in the form of regulations on content materials and design preparation techniques before they are determined. If viewed from the definition above, the product of the results of facilitation both carried out by the Ministry of Home Affairs and the Governor as Representative of the Central Government is a result of a study of the draft regional regulations that have been discussed at "Level I discussions", namely discussions carried out before decision making in plenary meetings. Therefore, the result of the discussion at level I carried out by facilitation is a draft regional regulation that has gone through a discussion process between the Regional House of Representatives and regional heads.

The form of guidance from the central government represented by the Ministry of Home Affairs and the Governor as the Representative of the Central Government in the form of facilitation actually has similarities with harmonization carried out by the Ministry of Law and Human Rights. The similarity lies in the output resulting from these activities, namely the analysis of the draft regional regulations both materially and from the design techniques for the formation of laws and regulations.

Meanwhile, what distinguishes between harmonization carried out by the Ministry of Law and Human Rights and Facilitation by the Ministry of Home Affairs is when the activity is carried out. Harmonization is carried out at the stage of drafting regional regulations, while Facilitation is carried out after the first discussion at the discussion stage.

When viewed from the stages of forming regional regulations consisting of planning, drafting, discussing, determining and disseminating. So, the result of harmonization carried out by the Ministry of Law and Human Rights even though an analysis has been carried out on the content material and techniques for drafting laws and regulations. However, it may be that the results of harmonization change during joint discussions between the House of Representatives and regional heads. This cannot be denied because the stage that greatly determines the content of regional regulations is at the discussion stage.

3. Evaluation by the Ministry of Home Affairs and the Governor

In addition to construction in the form of facilitation, there is another form of construction which is the evaluation of the District Regulations plan. Evaluation is the study and evaluation of the plan of the Regional Regulation which is governed in accordance with the Laws in the field of local government and other legal regulations to find out to be contrary to the public interest, and/or the regulation of higher law.

As stipulated in Article 91 of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 120 of 2018 on Amendments to the Regulation of the Minister of Home Affairs Number 80 of 2015 on the Establishment of Regional Legal Products.

When viewed from these arrangements, evaluation is different from the facilitation of the object of the draft regional regulation being evaluated. The evaluation conducted by the Minister of Home Affairs and the Governor is only limited to a few draft regional regulations that have been determined in the provisions above.

The draft regional regulations that are evaluated are draft regional regulations whose types involve more planning documents as well as taxes and levies. This is because local regulations related to planning documents, taxes and levies are interrelated with various other arrangements, especially with higher planning documents. Hierarchically, the planning documents below should not conflict with the higher planning documents. For example, a planning document regarding spatial planning. In spatial planning, the planning documents are hierarchical starting from the National Spatial Plan, Provincial Spatial Plan, District/City Spatial Plan and Detailed Spatial Plan.

The hierarchical concept in the preparation of spatial plan documents is used with the aim that the functions set between spatial planning documents remain synergistic and do not conflict with each other because spatial documents that apply to the micro scope are elaborations and details of spatial plans that apply to more macro areas.¹⁴

Moreover, the evaluation of the types of regional regulation as stipulated in article 91 paragraph (2) of the Minister of Home Affairs Regulation Number 80 of 2015 on the Formation of Regional Legal Products requires coordination between the Ministry of Home Affairs and other relevant ministries. This is regulated in Article 93 paragraph (2):

The Minister of Home Affairs in conducting the evaluation as referred to in paragraph (1), namely:

- a. through the Director General of Regional Financial Development on the draft provincial bylaws on regional taxes and regional levies and coordinating with the minister who organizes government affairs in the financial sector;
- b. through the Director General of Regional Development on the draft provincial bylaws on regional spatial planning and coordinating with the minister who organizes government affairs in the field of spatial planning;

¹⁴ “<http://acehutarapenataanruang.blogspot.com/2013/03/Pengertian-Fungsi-Dan-Hirarki-Rencana.Html>,” n.d.

- c. through the Director General of Regional Development on the draft provincial bylaw on industrial development plans and coordinating with the minister who organizes government affairs in the industrial sector.

4. Simplification of Central Government Supervision

a. The Problem of Ineffective Supervision

From the description in the previous sub-chapter, it is found that there are 3 forms of supervision carried out by the Central Government on Regional Governments in terms of the formation of regional regulations whose purpose is to prevent regional regulations to be issued and implemented do not conflict with higher regulations and in accordance with the techniques of forming laws and regulations. This form is, first, harmonization carried out by the Ministry of Law and Human Rights. Second, Facilitation carried out by the Ministry of Home Affairs and the Governor. and Third, Evaluation conducted by the Ministry of Home Affairs and the Governor.

These three things can be classified as a form of preventive central government supervision. This is because this form of supervision is carried out before the regional policy or regulation is ratified/enforced. However, the forms of supervision carried out so far on the process of forming regional regulations are not effective and efficient because of several things, namely:

First, harmonizing, rounding, and solidifying the conception which is now under the authority of the Ministry of Law and Human Rights even though it is mandatory and becomes a procedure that must be passed in the stage of forming regional regulations, namely at the stage of drafting is not effective because the results of harmonization may change during the discussion stage. The discussion stage is the most crucial stage because this stage brings together ideas and ideas between the DPRD and Regional Heads.

Second, the harmonization authority possessed by the Ministry of Law and Human Rights which is also given to harmonize draft regional regulations originating from the Regional House of Representatives actually clashes with the authority possessed by the Regional House of Representatives equipment, namely the Regional

Regulation Forming Agency (*Bapemperda*) which one of its authorities is to harmonize the draft regional regulations. As stipulated in Article 52 letter d of Government Regulation Number 12 of 2008 on Guidelines for the Preparation of Rules of the People's Representative Council of Provinces, Regencies and Cities.

Bapemperda has the duty and authority to harmonize, round, and solidify the conception of draft regional regulations submitted by members, commissions, or joint commissions before the draft regional regulations are submitted to the leadership of the Regional House of Representatives.

Third, harmonization activities by the Ministry of Law and Human Rights and facilitation and/or evaluation of regional regulations whose authority is in the Ministry of Home Affairs and/or the Governor actually have similarities in terms of the products produced, namely in the form of analysis documents on draft regional regulations in the form of analysis related to the content material and related to techniques for drafting laws and regulations.

Even though the difference is that the harmonization process has not yet entered the discussion stage. Meanwhile, facilitation and/or evaluation is carried out after discussions between the Regional House of Representatives and Regional Government. Apart from this, it should be realized that so far, the formation of regional regulations has often been problematic both from the material aspect of content and from the aspect of drafting laws and regulations. One of them happens because the aspect of human resources that have the authority is not so adequate to carry out the process of forming regional regulations.

For example, the provincial government in terms of coaching the Bills of District/City Regional Regulations, not all regions have design personnel, even if they are at the provincial level, not necessarily the knowledge of the drafting staff is adequate to perform the coaching function.¹⁵ Another example is the Regional Regulation Forming Agency (*Bapemperda*). As is known that the human resources in the *Bapemperda* council equipment are members of the Regional House of

¹⁵ Enny Nurbaningsih, *The Problem of Regional Regulation Formation: Actualization of Regulatory Authority in the Era of Broad Autonomy* (Depok: PT RajaGrafindo Persada, 2019). p. 339

Representatives with diverse backgrounds. If the *Bapemperda* Regional House of Representatives does not have supporting personnel who understand the drafting of the formation of laws and regulations, then the work of the Bapemperda in the process of harmonization of the Regional Government cannot be maximized.

b. Simplification of Supervision of the Formation of District Regulations

During this time, the oversight by the federal government involving many institutions needs to be simplified so that the process of building regional regulations is simpler but does not rule out material aspects of the payload that are in line with the higher legal regulations and the formation is in line with the planning techniques of the formation of legal regulations.

Since the Ministry of Law and Human Rights was given the authority to harmonize regional regulations, it has become a problem for local governments and local parliaments because they feel that the harmonization process in the Ministry of Law and Human Rights actually slows down the process of forming regional regulations. For example, what happened in Banjarmasin City. In a report by the Banjarmasin City's *Bapemperda*, it was considered that the harmonization process at the Ministry of Law and Human Rights was so slow, because it had to wait for scheduling and determining the time for harmonization of local regulations so that it took a long time.¹⁶

Therefore, several efforts must be made to simplify the process of forming regional regulations, especially related to harmonization, namely: *First, the* involvement of the Ministry of Law and Human Rights in the process of forming regional regulations, especially related to the harmonization process, should not be carried out as a separate activity that is not included in local government activities. As a form of coordination and considering the limited drafting staff in local governments and DPRD, the involvement of designers of the Ministry of Law and Human Rights in the harmonization process should be carried out by following local government

¹⁶ “<https://Klikkalimantan.Com/31162/Harmonisasi-Puu-Hambat-Pembentukan-Perda/>,” n.d., <https://klikkalimantan.com/31162/harmonisasi-puu-hambat-pembentukan-perda/>.

activities. For example, in the harmonization stage in the Regional House of Representatives through *Bapemperda*, the Regional Office of the Ministry of Law and Human Rights is included in the harmonization process carried out by *Bapemperda*. Thus, the process of forming regional regulations is not hampered by the flow/harmonization process carried out by the Ministry of Law and Human Rights.

Second, as a form of guidance carried out by the Ministry of Home Affairs and the governor as representatives of the Central Government to Provincial and District/City regions, guidance is needed in the formation of regional regulations from the initial stage, namely in the planning stage, namely during the preparation of the Regional Regulation Formation Program (*Propemperda*).

Third, the actual institution that has the authority to supervise the formation of regional regulations is the Ministry of Home Affairs. Because hierarchically, the ministry of home affairs is the ministry that directly oversees local governments. Therefore, legal products and policies issued by local governments are the authority of the ministry of home affairs to supervise and conduct guidance. The involvement of other ministries, in this case, the ministry of law and human rights is actually a form of coordination. As well as coordination carried out by the Ministry of Home Affairs in terms of evaluation of draft regulations related to planning documents such as coordinating with the minister who organizes government affairs in the field of finance for regional regulations related to regional taxes and levies, coordinating with the minister who organizes government affairs in the field of spatial planning for draft regional regulations related to spatial planning and Coordinate with the Minister who organizes government affairs in the field of industry for the draft bylaw on industrial development plans.

Fourth, it is also very important to increase human resources, especially drafting staff for laws and regulations within local governments and Regional House of Representatives. Moreover, considering that in the ministry of home affairs there is a directorate of regional legal products that should maximally be able to carry out supervision efforts on the formation of regional regulations.

CONCLUSION

The form of central government supervision in the formation of regional regulations has so far involved many institutions so that it is not effective and efficient, therefore simplification of the supervision mechanism for the formation of regional regulations is needed while paying attention so that regional regulations are in line with higher regulations and in accordance with the techniques of drafting laws and regulations. The involvement of the Ministry of Law and Human Rights should be carried out by following activities in stages whose authority lies with local governments and Regional House of Representatives.

In addition, it is also necessary to increase human resources, in this case the drafter of laws and regulations within the scope of Regional Government as an effort to improve the quality of regional regulations.

COMPETING INTEREST

There is no conflict of interest in the publication of this article.

REFERENCES

- Bn, Hermi Sari, Galang Asmara, Zunnuraeni. "Pengharmonisasian Rancangan Peraturan Daerah Inisiatif Eksekutif Oleh Kementerian Hukum Dan Hak Asasi Manusia." *Dinamika Sosial Budaya* 22, no. 2 (2020): 314-35.
- Dwiatmoko, A, and H Nursadi. "Problematika Dan Penataan Pembentukan Peraturan Daerah Melalui Harmonisasi Yang Sentralistik." *Jurnal Legislasi Indonesia*, 2022, 292-306. <https://e-jurnal.peraturan.go.id/index.php/jli/article/view/949>.
- Elcaputera, Arie, Ahmad Wali, and Ari Wirya. "Urgensi Harmonisasi Rancangan Peraturan Daerah : Sebuah Analisis Tantangan Dan Strategi Pembentukan Peraturan Perundang-Undangan Indonesia Dalam Rangka Penguatan Otonomi Daerah." *Jurnal Ilmu Hukum Fakultas Hukum Universitas Riau* 11, no. 1 (2022): 121-36.
- Huda, Ni'matul. *Hukum Pemerintahan Daerah*. Cetakan I. Bandung: Nusa Media, 2009.
- — —. "Pengawasan Pusat Terhadap Daerah (Kajian Terhadap Peraturan Daerah 'Bermasalah')." *Jurnal Hukum IUS QUIA IUSTUM* 10, no. 23 SE-Articles (June

- 3, 2016): 28–45. <https://doi.org/10.20885/iustum.vol10.iss23.art2>.
- — —. *Problematika Pembatalan Peraturan Daerah*. Yogyakarta: FH UII Press, 2010.
- Nurbaningsih, Enny. *Problematika Pembentukan Peraturan Daerah: Aktualisasi Wewenang Mengatur Dalam Era Otonomi Luas*. Depok: PT RajaGrafindo Persada, 2019.
- Nurcholis, Hanif. *Teori Dan Praktek Pemerintahan Dan Otonomi Daerah*. PT. Gramedia Widiasarana Indonesia, 2005.
- Wacika, Kadek Tegar, Fakultas Hukum, and Universitas Udayana. “Harmonisasi Rancangan Peraturan Daerah Yang Diajukan Kepala Daerah Pasca Berlakunya Undang-Undang Nomor 15 Tahun 2019” 9, no. 9 (2021): 1577–89. <https://doi.org/10.24843/JMHU.2017.v06.i01.p10.Rumondor>
- “<http://acehutarapenataanruang.blogspot.com/2013/03/pengertian-fungsi-dan-hirarki-rencana.html>,” n.d.
- “<https://klikkalimantan.com/31162/harmonisasi-puu-hambat-pembentukan-perda/>,” n.d. <https://klikkalimantan.com/31162/harmonisasi-puu-hambat-pembentukan-perda/>
- Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan sebagaimana telah diubah beberapa kali terakhir dengan Undang-Undang Nomor 13 Tahun 2022 tentang Perubahan Kedua Atas Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan
- Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah
- Peraturan Menteri Dalam Negeri Republik Indonesia Nomor 120 Tahun 2018 tentang Perubahan atas Peraturan Menteri Dalam Negeri Nomor 80 Tahun 2015 tentang Pembentukan Produk Hukum Daerah.
- Peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor 22 Tahun 2018 Tentang Pengharmonisasian Rancangan Peraturan Perundang-Undangan Yang dibentuk di Daerah oleh Perancang Peraturan Perundang-undangan