



UDC 34

THE REGULATION AND IMPLEMENTATION OF SUPERVISION OF THE REGENT'S REGULATION AS A DELEGATED REGULATION OF REGIONAL REGULATIONS

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ABSTRACT

The legal existence of a Regent Regulation is recognized and carries binding legal force as long as it is mandated by higher legislation or established based on proper authority. This is outlined in Article 8, paragraph (1) of the Law on Regional Government. Specifically, the regulation of Regent Regulations is governed by Law No. 23 of 2014 concerning Regional Government and its subsequent amendments. This study is a socio-legal research, employing both a sociological approach to law and a legislative approach. The sociological approach to law seeks to understand law within its social context, while the legislative approach, as noted by Peter Mahmud Marzuki, requires researchers to understand the hierarchy and principles within legislative regulations. Regarding the oversight of Regent Regulations as a delegation of authority from Regional Regulations, Indonesia has established stringent provisions for its supervision, both before and after the enactment of the Regent Regulation.

KEY WORDS

Regional regulation, delegated regulation, regent regulation.

In order to realize Indonesia as a legal state, the government is obligated to implement national legal development that is carried out in a planned, integrated, and sustainable manner within the national legal system, ensuring the protection of the rights and obligations of all Indonesian citizens based on the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution).

The constitutional basis for the existence of a Regent Regulation as a regulation established by the Regent has been clearly stated in Article 18, paragraph 6 of the 1945 Constitution, which states that "Regional Governments have the right to establish Regional Regulations and other regulations to implement autonomy and delegated tasks." Regional regulations, as stated in this provision, are part of the regional government administration that must be based on law. This is in line with the constitutional mandate in Article 1, paragraph (3) of the 1945 Constitution, which asserts that "The Indonesian State is a legal state." Furthermore, the procedures for the formation of legislation have been generally regulated in Law No. 12 of 2011 concerning the Formation of Legislation, which has been amended several times, most recently by Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011 on the Formation of Legislation.

Discussing the regulation of oversight of regional legal products in the form of a Regent Regulation as a delegated regulation from the Regional Regulation has a long historical record in the journey of the Unitary State of the Republic of Indonesia. The regulation on oversight in each law regarding Regional Governments during each regulatory period, starting from the early independence era to the post-reformation era, including from Law No. 1 of 1945 to Law No. 23 of 2014, along with its derivative changes and regulations, has evolved significantly.

The regulation of Regional Government initially began with Law No. 1 of 1945 on the Position of the Regional National Committee, which was the first legal product of the Republic of Indonesia published by the government. Law No. 1 of 1945 can be said to be very brief, containing only six articles. Regarding regional legal products in Law No. 1/1945,



this is regulated in Article 2, which states: "The regional people, together with the Regional National Committee, form a Representative Body led by the Head of the Region to carry out the duties of managing regional household affairs, provided it does not conflict with Central Government regulations and regulations of broader regional governments" (Sirajuddin, et al., 2016).

Based on the provisions above, it can be explained that the region is given freedom and latitude to regulate (*vrijheid van regeling*) through regional regulations, which are jointly formed by the people and the Regional Representative Body, with two orientations: (Dicky Eko Prasetyo, 2022) first, regional regulations can serve as implementation regulations of higher central regulations based on the principle of medebewind and self-government. Second, regional regulations are created to follow up on a law, so they must be ratified by the central government.

In 1948, precisely on July 10, 1948, the Central Government enacted a new law, Law No. 22 of 1948 on Regional Government (Sirajuddin, et al., 2016). This law consisted of 5 chapters, 13 sections, and 47 articles, complete with a general explanation and detailed explanations of each article. The regulation regarding legal products in the region in Law No. 22 of 1948 is regulated in Article 24, which states: "Through regional regulations, a region can delegate its obligations to the Regional People's Representative Council or to the Local Government Council below it to be implemented."

On January 17, 1957, Law No. 1 of 1957 on Regional Government Principles was enacted, consisting of 9 chapters and 76 articles (Sirajuddin, et al., 2016). There were not many differences between Law No. 22/1948 and Law No. 1/1957 in regulating legal products in the region. However, one slight difference was that Law No. 1/1957 also regulated the administrative aspects of regional regulations, such as their placement in the regional gazette and the inclusion and limits of criminal offenses that could be regulated in regional regulations.

As time went on, on September 1, 1965, the People's Consultative Assembly enacted Law No. 18 of 1965 on Regional Government Principles, consisting of 9 chapters and 90 articles. The regulation on legal products in the region in Law No. 18 of 1965 can be said to mark the end of the authority of the Regional Head or the Local Government Council to form regulations from the Regional Regulation. In this regulation, the Local Government Council was abolished and replaced with the term Head of Region. The term Regional Government in Law No. 18 of 1965 refers to the 'Head of Region and the Regional People's Representative Council.

In 1974, the government enacted Law No. 5 of 1974 on Regional Government Principles, which was promulgated on July 23, 1974. This law consisted of 8 chapters, divided into sections, and 94 articles with an explanation. Unlike previous laws, the principle of autonomy in Law No. 5 of 1974 was formulated as "real and responsible autonomy." The explanation in item f stated that, in essence, regional autonomy is more of an obligation than a right, meaning the obligation of regions to participate in the development process to achieve people's welfare, which must be accepted and carried out responsibly (Sirajuddin, et al., 2016).

Post-reformation, the legal product regulating regional government is Law No. 22 of 1999 on Regional Government, which was one of the transitional legal products that fundamentally changed the regional government system, shifting from a centralist to a fully decentralized system for regencies and cities. This change occurred almost without a transition process. Law No. 22 of 1999 came into force in 2000, but it only provided normative provisions, stating that the law would be effective two years after its promulgation.

Due to the incompleteness of Law No. 22 of 1999 regarding the lack of regulation on preventive oversight of regional legal products and the ineffectiveness of repressive oversight, the government responded to these issues by enacting Law No. 32 of 2004 on Regional Government as a replacement for Law No. 22 of 1999, making fundamental changes to the process of forming regional legal products and forms of oversight over regional legal products. Along with the enactment of Law No. 32 of 2004, the government also enacted Law No. 10 of 2004 on the Formation of Legislation.



To address the incomplete regulation regarding the oversight of regional legal products, as explained earlier, the government eventually enacted Law No. 23 of 2014 on Regional Government, along with its derivative amendments, as a replacement for Law No. 32 of 2004. Regarding the regulation of oversight of regional legal products in Law No. 23 of 2014, as amended several times with Law No. 9 of 2015 concerning the Second Amendment to Law No. 23 of 2014 on Regional Government, there is a significant difference in the oversight of regional legal products.

Based on the above explanation, this topic is interesting for researchers to analyze how the regulation and implementation of oversight over Regent Regulations as delegated regulations of Regional Regulations are carried out. This study aims to analyze the regulation and implementation of oversight over Regent Regulations.

METHODS OF RESEARCH

This type of research is socio-legal research. According to Mukti Fajar (Fajar & Ahmad, 2013), socio-legal research is based on normative legal science (laws and regulations) as law in books, and then aligns and compares it with the reality that occurs in practice (law in action). This means that, in addition to examining and analyzing the research object from the perspective of positive law, it also examines legal phenomena in society or social facts.

In order to analyze the legal issues in this study, the author employs a socio-legal approach and a legislative approach. The socio-legal approach is a method of understanding law in its social context. The perspective used is not only focused on formal rules but also informal rules. The expected outcome from a socio-legal perspective research is to explain, link, test, and criticize the operation of formal law in society. This approach has several concepts, including objectivity, the use of inductive logic, synthesis, a posteriori, generalization, and data construction, both quantitative data through statistics and qualitative data through in-depth interviews to uncover the uniqueness of society or "tick description" (Banakar & Travers, 2005). Meanwhile, the legislative approach (statute approach) is described by Peter Mahmud Marzuki, who states that, in the legislative approach, researchers need to understand the hierarchy and principles within laws and regulations (Marzuki, 2017). Article 1, paragraph 2 of Law No. 12 of 2011 on the Formation of Legislation defines "legislation as written regulations containing binding legal norms created or established by state institutions or authorized officials through procedures stipulated in legislation." Peter Mahmud Marzuki further emphasizes that the legislative approach involves using legislation and regulations (Marzuki, 2017).

RESULTS AND DISCUSSION

The constitutional basis for the existence of the Regent Regulation as a regional regulation established by the Regent has been explicitly stated in Article 18, Paragraph 6 of the 1945 Constitution of the Republic of Indonesia, which states that "Regional governments have the right to establish Regional Regulations and other regulations to implement autonomy and delegated tasks." The regulations in the region, as mentioned in this provision, form part of the implementation of regional government that must be based on law. This is in line with the constitutional mandate of Article 1, Paragraph (3) of the 1945 Constitution, which asserts that "The State of Indonesia is a law-based state." Furthermore, the procedure for the formation of laws and regulations in general has been regulated in Law No. 12 of 2011 concerning the Formation of Legislation, which has been amended several times, most recently by Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011 on the Formation of Legislation.

The existence of the Regent Regulation is legally recognized and has binding legal force as long as it is mandated by higher legislation or established within the scope of authority, as regulated in Article 8, Paragraph (1) of the Law No. 12 of 2011 on the Formation of Legislation. Specifically, the regulation of the Perbup is governed by Law No. 23 of 2014 concerning Regional Government and its amendments. Of course, regional governments in



exercising autonomy and delegated tasks cannot be separated from the intervention of the central government. This is a logical consequence in a unitary state, where the central government has full authority to intervene in the implementation of regional autonomy. The central government is responsible for ensuring the unity of the state, namely guaranteeing equal treatment for all citizens (the principle of equal treatment), ensuring uniformity of actions and regulations in certain fields (the principle of uniformity). The limitations on the autonomy of regions in managing their internal affairs with these obligations are a logical consequence of adopting the rule of law principle. This supervision or control also includes control over the legal norms established by regional governments (Widiati & Adam, 2012).

After the granting of regional autonomy by the central government to the regions, which has been effectively implemented since January 1, 2000, it must be acknowledged that it has brought two simultaneous effects: positive effects towards progress and negative effects or shortcomings. At least, there are two prominent positive impacts in the application of regional autonomy, namely: (Sirajuddin, et. al., 2016) first, the development of regional initiatives and creativity to build their areas and compete with other autonomous regions. With the freedom to formulate their own development plans, regions can optimize their potential for the welfare of the community. Second, the emergence of relative independence of regions from the central government in solving various problems faced by the regions. Regional problems, with the existence of regional autonomy, can be solved locally with methods and by the local communities.

In addition to the positive impacts, the implementation of regional autonomy has also raised various negative symptoms that certainly harm the local communities. These negative symptoms include: (Sirajuddin, et. al., 2016) first, the prevalence of Corruption, Collusion, and Nepotism, the buying and selling of positions, and money politics. Second, unprofessional bureaucracy. This is particularly evident in the administration and the quality of public services, which often receive complaints from the community for being inefficient. In some cases, this situation is also influenced by mechanisms based more on nepotism traditions, along with many other negative symptoms that continue to worsen and divert the true goals of regional autonomy.

Given the potential negative impacts of regional autonomy granted by the central government to regional governments, supervision is needed. Supervision is one of the instruments that can be used to minimize the potential negative effects in the implementation of regional government autonomy. In the context of supervision, Jazim Hamidi and Mustafa Lutfi mention at least four empirical issues that underline the urgency of supervision in regional government implementation, namely: (1) the centralization of power in the center–region relationship is the main obstacle to the implementation of supervision; (2) the number and types of supervisory agencies in the region are very many, while the division of tasks and functions among them is unclear, even overlapping in some cases; (3) coordination among regional supervisory agencies has not been synergistic, even with institutional egoism emerging among them; and (4) the placement of human resources (HR) in supervisory institutions is not based on professional considerations, in addition to the relatively weak or insufficient quality of the human resources themselves.

Supervision is the “binding” force that ensures regional autonomy does not deviate too far, thus reducing or even threatening national unity (unitary). However, if supervision is too strict, it will “restrain” decentralization. Therefore, supervision must be accompanied by limitations. These limitations cover aspects such as the form, procedure, and the agencies conducting the supervision.

CONCLUSION

In relation to the regulation of supervision over the Regent Regulation as a delegated regulation from the Regional Regulation, Indonesia has implemented strict rules regarding supervision both before and after the Regent Regulation is enacted. However, there are issues in the implementation of supervision over the existence of the Regent Regulation, which is mandated by the Regional Regulation. Some regional leaders have been negligent



or careless in failing to establish the Regent Regulation as required by the Regional Regulation. Moreover, there is no clear regulation regarding the time limit within which a regional head must immediately establish the mandated Regent Regulation. In fact, in the implementation of supervision over the Regional Regulation that lacks the corresponding Regent Regulation, for example, in Karawang Regency, the Regional Legislative Council of Karawang has conducted supervision of the Regional Regulation without the Regent Regulation by providing recommendations to the Regent. However, the Regent still did not establish the Regent Regulation as mandated by the Regional Regulation. Therefore, it can be concluded that in the regulation of the formation of regional legal products, there is a legal vacuum regarding the time limit within which a regional head must immediately establish the Regent Regulation mandated by the Regional Regulation. As a result of this legal vacuum, the implementation of the Regional Regulation cannot be optimally carried out due to the unavailability of the Regent Regulation. On the other hand, there is also a lack of clarity in the regulation concerning the clarification process conducted by the central government, where the regulation does not fully explain the procedure for citizens who feel their rights have been violated by the enforcement of a Regional Regulation and/or Regent Regulation. Additionally, there are still unclear provisions regarding the supervision conducted by the Supreme Court through judicial review of the Regional Regulation. The regulation concerning the examination has not been clearly stipulated, whether the examination session is to be held publicly or privately, and in practice, most judicial review processes by the Supreme Court are conducted privately and even in a limited manner.

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