

EFFORTS TO OVERCOME- DIS-HARMONIZATION OF REGIONAL REGULATIONS TO REALIZE HARMONIOUS REGIONAL REGULATION

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ABSTRACT

Every law formed should be consistent and harmonious with other laws and regulations, but it does not rule out possibility that laws and regulations turn out to be contrary to higher and / or equivalent law and regulation. For example, at the regional level, it is often found that the substance of local regulations is considered problematic so that it must be canceled or revised, so that strategic steps are needed in order to overcome this. This research aims to determine efforts to overcome disharmonization of regional regulations. The type of research used is a normative legal research method with a *statutory approach* (*statute approach*) and a *conceptual approach* (*conceptual approach*), which is further analyzed deductively. The results of the research are in an effort to overcome the disharmonization of regional regulations through preventive supervision in the formation carried out by the central government before local regulations are ratified and promulgated, in the form of facilitation and evaluation to ensure the formation of regional regulations has met good regional regulations. In the meantime, strict oversight is conducted on local regulations that have been enacted and hold legal authority. These regulations are subject to two types of supervision: internal supervision, which involves providing clarifications without the power to cancel, but only making recommendations; and external supervision, which is carried out by the Supreme Court to annul the Bylaw.

Keywords:

Disharmonization,
Local Regulations,
Law

INTRODUCTION

Every law formed should be of quality and harmony with other laws and regulations. However, it is possible that the laws and regulations formed are contradictory, for example, at the regional level, it is often found that the substance of local regulations is considered problematic so that they must be canceled or revised. For this reason, steps are needed in order to overcome this. The process of preparation and implementation needs to be monitored continuously to provide assurance to the public that all provisions regulated in local regulations have followed applicable norms or rules, namely meeting the requirements of good regional regulations. (Keziya M. Layuk, 2020).

Although regions have autonomy through the division of affairs between the center and regions, in the concept of a unitary state it is impossible for regions to be released in running the government without supervision. According to George R. Terry, to establish what has been achieved, evaluate and implement corrective actions and if necessary ensure results that are in accordance with the plan (Alfira Pondaag, et al, 2017). While Bagir Manan views supervision as a function and also a right, supervision also contains a dimension of control. Therefore, supervision with restrictions and *directives*. In practice, the existence of control is

often seen as a means to prevent all forms of deviation from government duties from what has been outlinedn (Victor Immanuel, 2017).

Administrative supervision is one of the instruments that can be used in minimizing negative impacts in the administration of local government. According to Bagir Manan, there are two types of supervision related to autonomy, namely preventive supervision and repressive supervision. Both of these supervision models are aimed at supervising legal products produced by regions, and supervising the actions of local governments in the authority to ratify in preventive ratification as well as the authority to cancel (*vernietiging*) or *suspension* (*schorsing*) in repressive supervision (Achmad Sodik Sudrajat, 2010).

In its development, there are currently two lines of local supervision, namely preventive supervision (executive / government channel) and repressive supervision (judicial / MA channel) as an effort to overcome disharmonization. Preventive supervision is defined as a control or supervision function carried out by a higher government to its subordinate governments. The implementation of preventive surveillance is at the beginning of repressive surveillance. The interference power of the region has also become greater. Preventive supervision contains "prerequisites" so that regional decisions in certain fields or containing properties can be carried out, restrictions on preventive supervision are stricter than repressive supervision (Victor Juzuf Sedubun, 2014).

Repressive supervision in this case is supervision carried out on all local regulations that have been promulgated. Repressive supervision is carried out in the form of suspending the enactment of a regional regulation and/or canceling a regional regulation if it is considered contrary to the provisions of higher laws and regulations or public interest.

METHOD

The study was carried out through normative legal research techniques, which involve examining legal documents such as laws, regulations, court rulings, legal principles, and scholarly opinions. The research utilized both a statutory approach and a conceptual approach. The data included primary legal materials, secondary legal materials, and non-legal materials (Muhaimin, 2020).

The process of collecting data in legal research involves utilizing various techniques and sources. One of the techniques used is conducting literature research, which involves gathering data from published materials such as books, journals, theses, reports, and other scientific works. Additionally, opinions from legal scholars are also considered as valuable sources of information. Once legal materials have been collected, they are carefully selected and processed. These materials are then analyzed and examined in relation to the specific legal issues being studied. Finally, deductive methods are employed to draw conclusions based on the analysis conducted.

RESULTS AND DISCUSSION

a. Preventive supervision

Preventive supervision of local regulations is carried out through an executive preview mechanism, which is the authority given to the government to test draft laws and regulations (including local regulations) before they are ratified and promulgatedn This form is commonly referred to as supervision. The supervision of

local regulations has two models in its implementation in Indonesia consisting of preventive supervision called executive preview and repressive supervision (enforcement) called executive review. The mechanism of supervision of legal norms through executive abstract preview, namely control carried out before the relevant legal norms are binding for the public, as well as in the ratification of a product or Perda. (Riza Novandra, 2019).

Supervision of regional regulations is carried out to maintain synchronization of regional regulations with higher laws and regulations, and avoid conflicts between regional regulations and public interest and decency with prevention efforts to evaluate and clarify based on Undang-Undang No. 23 of 2014. Supervision of regional regulations includes supervision of draft regional regulations (evaluation) and supervision of regional regulations (clarification). Ranperda evaluation includes local regulations related to Regional Long-Term Development Plan (RPJPD), Regional Medium-Term Development Plan (RPJMD), Regional Finance, Regional Tax, Regional Retribution, and Regional Spatial Planning. Such coordination and evaluation (preventive) actions are intended so that the draft bylaws do not conflict with higher regulations and public interest. Then in Article 91 paragraph 2 of Law No. 23/2014 that supervision for district/city regional regulations is carried out by the Governor as a representative of the central government. Preventive supervision is aimed at the phrases "mandatory to submit", "consent", and "evaluation".

There are three reasons why it is necessary to harmonize the draft regional regulations (Raperda), namely first, regional regulations as one type of legislation are a subsystem of the national legal system. As a sub-system of a larger system, laws and regulations must be interrelated and interdependent and constitute a complete roundness with other subsystems. Second, local regulations can be tested by the Supreme Court (*judicial review*), and by the Ministry of Home Affairs (*executive preview*). In this regard, harmonization of local regulations is very strategic in its function as a preventive effort to prevent conflicts with higher laws and regulations, the principle of forming good laws and regulations, the principle of material content of legislation, and prevent the submission of test applications to the Supreme Court. And the third reason is to ensure that the process of forming regional regulations is carried out in accordance with the principles for legal certainty (Hafiz Andi Sadewo, 2015).

The process of developing local regulations should be carried out systematically, starting from the upstream to the downstream. It is crucial to avoid the cancellation of regional regulations at the end. To prevent this, the central government should provide guidance to the regions throughout the process of forming regional legislation, particularly in the upstream sector. Strengthening coaching in the upstream process is essential, especially when the product is still in the design phase. It is important to note that this process requires the support of competent human resources. Designers, in particular, should have a deep understanding of the content material and technical aspects of the local regulations (Enny Nurbaningsih, 2019).

According to Article 98 paragraph (1) of Law Number 12 of 2011 regarding the Formation of Laws and Regulations, the term "drafters of laws and regulations" refers to civil servants who are entrusted with complete duties, responsibilities, authorities, and rights by authorized officials to undertake the task of preparing draft

laws and regulations, as well as other legal instruments, in accordance with the provisions stipulated in the laws and regulations.

The issue that arises is that not all regions have trained designers, and even if they do, they may not have the necessary skills to fulfill the coaching role. As a result, the development model implemented in these regions primarily focuses on understanding the formal requirements through pre-made templates provided by the central authority. Consequently, the outcomes are not effective in determining the feasibility or appropriateness of Regional Regulations, nor do they assess their compliance with higher laws and regulations. These deficiencies in the initial stages also contribute to the subpar quality of regional regulations during their formation, highlighting the need for improvement (Enny Nurbaningsih, 2019).

The Constitutional Court (MK) decision Number 137 / PUU-XIII / 2015, issued on April 5, 2015, has led to the need for the center to enhance its preventive supervision of the local regulations formation process. This decision concluded that the Ministry of Home Affairs no longer has the authority to carry out repressive supervision, which includes the cancellation of local regulations. In response to this, the government has implemented various policies to ensure that the formation of local regulations aligns with higher laws and regulations, serves the public interest, and maintains decency.

The regulation of the Minister of Home Affairs Number 80 of 2015, which initially focused on harmonization of regional law products, underwent changes following a Constitutional Court decision that limited the government's control over local regulations. In response, the Ministry of Home Affairs introduced Minister of Home Affairs Regulation Number 120 of 2018, aimed at enhancing preventive supervision in the formation of regional regulations. This regulation, known as Permendagri 120/2018, was officially enacted on February 20, 2019, after being stipulated on December 17, 2018 (Ahmad Bonadi, 2019).

Then, there are several changes in order to ensure the realization of harmonization of regional regulations, namely *the first* stage of preparation related to the alignment of academic manuscripts, required to include regional apparatus to carry out regional research and development functions. This participation can be in the form of written input or verbal/direct responses during the alignment meeting. The involvement of this regional apparatus is because so far academic manuscripts have been considered only as a formality to legitimize that the draft bylaw is needed. In fact, the urgency of academic law in the preparation of local regulations is very integral in nature. *Second*, the stage of discussion is carried out construction in the form of facilitation by the Direktur Jenderal Otonomi Daerah for Raperda Provinsi dan Raperda Kabupaten. Facilitation is carried out after level I talks are conducted. As stipulated in the following provisions (Permendagri 120/2018); The efforts outlined in Permendagri 120/2018 are in order to complement existing policies. To ensure that the substance of local regulations is in accordance with the national strategy program, namely making good quality regulations.

Before the decision of the Constitutional Court, the government had undertaken multiple initiatives to enhance regional legislation by releasing diverse legal instruments. These instruments included not only Presidential Regulations (PP) but also circular letters (SE) as a means of policy guidelines. For instance, the Circular Letter from the Minister of Home Affairs broadened the interpretation of clarification, emphasizing the need for all proposed local regulations to be aligned with the

recommendations of the national action plan on human rights committee (ranHAM). However, the obstacle lies in the readiness of human resources involved in the committee, not all of whom have sufficient capacity to understand the scope of local regulations. In addition, there are no indicators that can be used by local regulation formers to test the harmonization of local regulation design with human rights and its suitability to the real conditions of the region.

The involvement of vertical agencies (Kanwil Hukum dan HAM) in taking a role in encouraging the achievement of legal development in the regions so that they can be in line with national legal development, helps reduce incomprehension in the preparation of Prolegda. The role of Law and Human Rights Law and Human Rights can only be carried out effectively after the enactment of PP 59/2015 which regulates the mechanism for the involvement of vertical agencies in the regions because in the provisions of Article 6 of the PP it is determined the need for the involvement of drafting personnel in the preparation of regional planning. The designer staff is under the guidance of the Ministry of Human Rights and its staff in the Regional Office. To streamline the implementation of this role, commitment support is needed from the governor as the representative of the central government in the regions. This support is needed because in PP 38/2007 it is stated that the scope of regional authority, one of which is to harmonize regional legal products in line with the function of vertical agencies, namely harmonizing laws and regulations.

The Ministry of Law and Human Rights also provided a breakthrough in order to oversee the formation of local regulations in areas that more specifically focus on understanding steps. Through the Regulation of the Minister of Law and Human Rights Number 22 of 2018 concerning the Implementation of Draft Laws and Regulations formed in the regions by the drafter of laws and regulations. The purpose of this rmonization is to harmonize with the constitution, the 1945 Constitution, equivalent or higher laws and regulations, and court decisions. In addition, it is intended to harmonize with the technique of drafting laws and regulations and produce agreement on the substance adopted (Permenkumham 22/2018).

The provisions related to harmonization were previously stipulated in Article 58 paragraph (2) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. This entailed the process of aligning, refining, and strengthening the framework of draft provincial regulations put forth by the Governor in coordination with the Legal Affairs Bureau, and potentially involving vertical agencies from ministries responsible for legal matters.

In its development, the implementation of harmonization that uses the phrase can include vertical agencies in the process is facultative so that local governments often feel no need to include related vertical agencies because there is no obligation, which results in many local regulations being formed in the end problematic or disharmonizing.

In 2019, Article 58 of Law Number 15 of 2019 was introduced to amend Law Number 12 of 2011, which pertains to the establishment of laws and regulations. These amendments aim to ensure proper harmonization by involving designers from vertical agencies or ministries that handle government affairs in the process of forming laws and regulations. Previously, this responsibility was solely carried out by Kemenkumham. The harmonization of draft laws and regulations, including regional regulations, in different regions is now conducted upon a written request. This

request must be accompanied by an explanation and/or academic text from the initiator, which is then submitted to the director general of laws and regulations. The director general serves as the drafting supervisor and receives the request through the head of the regional office of the ministry of law and human rights (Permenkumham 22/2018).

In Article 7-Article 10 of PermenkumHAM 22/2018, Harmonization of Regional Regulations by the designer in the regional office of the Ministry of Law and Human Rights, includes elements of local governments, DPRD, village governments or other designations, and government institutions or related vertical agencies. And can include a member of an expert. In its implementation, the head of the regional office coordinates and chairs meetings, in addition to assigning primary high leadership officials or administrative officials for laws and regulations. Then the harmonized Ranperda is submitted back to the initiator for further processing in accordance with the stages of the formation of laws and regulations (PermenkumHAM 22/2018). With the establishment of coordination between these agencies, the governor's duty as the central representative in the regions can be maximized because the harmonization of district/city regional regulations is supported by agencies that have the authority in the field of harmonizing laws and regulations (Kanwil Kumham) (Enny Nurbaningsih, 2019).

The government must continuously supervise the regions and cooperate with various parties in the form of briefing or assistance to the regions in the formation of regional legal products intensively so that errors in making regional legal products do not continue to repeat. In addition, supervision should be carried out before carrying out repressive supervision, it is also better to conduct guidance (evaluation) to the regions, especially in making local regulations on an ongoing basis, inappropriate Regional Regulation should be immediately returned for revision. So that the possibility of errors in making local regulation can be minimized as far as possible (Ni'matul Huda, 2019).

b. Repressive Supervision

The implementation of supervision or control over government legal products, especially local governments, both internal and external, is important. Including in the case of the establishment of local regulations, supervision must be carried out. In repressive surveillance, when viewed from the position or organ that exercises that control over the controlled body/organ, a distinction can be made between a type of control called *internal control* and *external control*.

1. Internal supervision (*Executive review*)

This internal supervision can be divided into internal supervision in the narrow sense that local supervision can be carried out by the initiator himself or the party that forms the regional regulation itself, while in a broad sense by the central government as an agency that can supervise the regional regulation or regional regulation. Considering a law can only be canceled by regulations at the same level and or higher. So in the event that the bylaw needs to be changed or has to be canceled, the perrakarasa can with his own awareness to check or evaluate his own bylaw product. And if problems are encountered in the bylaw, the initiator can revise or revoke the bylaw itself by forming a bylaw on changes or revocation of related bylaws. So that it can again meet good quality local regulations without having to wait for cancellation from the center or court decisions (Supreme Court).

The central government has the authority to supervise and cancel regional regulations through the Minister of Home Affairs and the Governor. If regional regulations are found to be conflicting with public interest, higher laws, or regulations, they can be cancelled based on the results of clarification. Any findings that go against public interest and higher regulations are then proposed to the president for cancellation.

According to Article 242 paragraph (5) and Article 243 paragraph (1) of Law 12/2011, the Minister and Governor, as representatives of the central government, are given the authority to provide a registration number for provincial and district/city draft regulations, no later than 7 days after the draft regulation is received. As long as the draft regulation has not been given a registration number, it cannot be promulgated in the regional gazette. The executive review held by the Minister or Governor regarding provincial or district/city draft regulations, such as harmonization, consolidation, and refinement of the draft regulations, is coordinated together with the ministry responsible for government affairs in the field of law, as regulated in Article 58 paragraph (2) and Article 63 of Law 12/2011. However, with the existence of Constitutional Court Decision Number 137/PUU-XIII/2015 and Constitutional Court Decision Number 56/PUU-XIV/2016, in their verdicts, they annulled the provision that gave the authority to the government to revoke promulgated regulations, but instead became the constitutional authority of the Supreme Court (MA) (Ahmad Bonadi, 2019). Therefore, if a regulation is found to be in contradiction with higher laws and regulations, public interest, and morality, the central government can issue recommendations or suggestions that include an evaluation of the regulation to the regional government to immediately make changes to the related regulation.

In Article 127 paragraph (4), government supervision of the current regional regulation no longer reaches the cancellation of the regional regulation but the result of a clarification that states it is not appropriate, containing recommendations to local governments to make changes to local regulations or repeal local regulations no later than the establishment of local government in the following year. In the event that provincial and district governments do not implement the clarification results, it will be an assessment of the performance of local governments (Permendagri 120/2018). If the government is unable to bring order to the problematic local regulations through other means, it has the option of pursuing a judicial review with the Supreme Court, which has the authority to overturn the local regulations.

2. External Supervision (Judicial Review)

External supervision is a type of control carried out by organs or institutions that are organizationally / structurally outside the government in the executive sense. Including this external control is control carried out indirectly through *judicial control* (Ni'matul Huda, 2019). Efforts to harmonize laws and regulations including regional regulations open the possibility of the Government, community members or other interested parties to conduct testing by submitting applications or law suits. The Constitutional Court and the Supreme Court are two state institutions that have the power to review laws and regulations.

The institution responsible for conducting judicial review of local regulations is the judicial power, specifically the Supreme Court. The tests carried out are first, formal tests that are usually related to procedural questions and with respect to the legality of the competence of the institution that makes them, and *second*, material testing is related to the possibility of material conflict of a regulation with other higher

regulations or that concern the specificities of a rule being compared with prevailing norms generally (Jimly Ashshiddiqie, 1999).

This examination is conducted to evaluate the adequacy of local regulations established in compliance with superior laws and regulations as well as public interest and decency. In the event that any local regulations are found to be inconsistent with higher laws and regulations and/or public interest and decency, they shall be deemed unenforceable and consequently repealed, revised, or amended as necessary.

The government, communities, or parties who feel aggrieved by the implementation of local regulations can resort to legal measures to challenge them in the Supreme Court. By doing so, they aim to have these regulations declared invalid if their legal arguments are successful.

CONCLUSION

Efforts to overcome disharmonization of local regulations are through preventive supervision and repressive supervision. The central government conducts preventive supervision during the development of local regulations to ensure their compliance with established standards. This supervision involves facilitation and evaluation to ensure that the formation of local regulations adheres to the necessary criteria. On the other hand, repressive supervision is carried out on already promulgated local regulations that hold legal authority. This supervision is divided into two categories: internal supervision, which involves clarification and recommendations without the power to cancel, and external supervision, which involves judicial review by the Supreme Court to potentially nullify regional regulations. Supervision of local regulations, both in regulation and in their implementation, is not only emphasized that local regulations must not conflict with higher regulations and public interest/decency, but also need emphasis to ensure harmony with equal regulations as a form of horizontal harmonization. Considering horizontal harmonization in the preparation of laws and regulations is also very important because if it is not fulfilled it will have a very massive impact on legal certainty and its implementation.

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