THE URGENCY OF DECENTRALIZATION OF REGIONAL REGULATIONS POSITION IN THE PERSPECTIVE OF THE UNITARY STATE OF THE REPUBLIC OF INDONESIA

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ABSTRACT

Indonesia is a country that adheres to the form of a unitary state with the principle of decentralization. The principle is that each region is given the freedom to regulate its government. However, the principle of decentralization does not apply to Regional Regulations (Perda) because the legislative system still uses a centralized system. It causes the position of regional regulations to be in an unclear position whether as implementing regulations from central regulations or as regulations formed for the benefit of a related region. The formulation of the problem raised is about the implications of the position of Regional Regulations that are subject to a centralized system of laws and regulations and why decentralization is needed for the position of Regional Regulations. This study used a type of normative juridical legal research with a conceptual approach and legislation. The study results indicated that the centralized system of laws and regulations had made the regions inflexible in regulating norms according to the needs of their territories, especially norms related to local wisdom. At the same time, the centralized system has also limited the legislative function of the Regional House of Representatives (DPRD) as an institution that has the authority to formulate regional regulations together with regional heads. Decentralization of the position of Perda is needed to: (i). harmony between the system of government and the system of laws and regulations. (ii). Regional regulations are dominated by values that apply to each region. An area does not need to be designated as a particular area first in making regulations relating to the special conditions of the region. (iii). the decentralization of the position of regional regulations also opens up space for constitutional complaints. (iv). Reducing the burden of regional regulations that the Supreme Court must test. Fifth, constitutional complaint.

Keywords: Regional Regulations, Republic of Indonesia, Unitary State.

INTRODUCTION

Article 1 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia expressly states that the State of Indonesia is a unitary state in the form of a republic. This provision confirms that the state of Indonesia does not adhere to a union state system. However, even

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though the Indonesian state adheres to a unitary state, Indonesia's territories are divided into provinces and districts/cities. Each region has the freedom to regulate its area based on regional autonomy. In the regional autonomy or decentralization system, the central government can delegate part of its affairs to the regional government, be it provincial or district/city. This type of delegation can be delegated in full or not in full. For this reason, a concept called autonomy and co-administration was born.

Related to this, Agus Salim Andi Ganjong (2007) classifies autonomy or decentralization as follows:

1. Decentralization is a form of delegation of authority and power from the center to the regions;
2. Decentralization is a form of delegation of authority and power;
3. Decentralization is a form of means in the division and formation of government areas;
4. Decentralization is a form of dispersal, distribution, distribution, granting of power, and authority.

In line with Agus, Kartasapoetra (1987), decentralization is the handing over affairs from the center to the regions to take care of their household. The purpose of this surrender is to prevent the concentration of power. To involve the people more so that they are responsible for regional administration. In addition, E. Koswara determines that decentralization is the process of handing over the affairs that were previously the affairs of the central government and then given to regional governments (2001). It is intended that the regions take care of their household affairs to shift to the regional government (Widodo, 2011).

Based on the above understanding, each autonomous region is given independent authority to regulate (regelendaad) and manage (bestuurdaad) government affairs which the central government decentralizes. Therefore, autonomy contains the granting of freedom and independence (vrijheid en zelfstandigheid) to local governments. For this reason, decentralization is not the transfer of sovereignty but is only limited to the transfer of authority.

In terms of regulations, local governments have the authority to stipulate regional regulations and other regulations to carry out autonomy and co-administration tasks. Regional regulations established by regional governments only apply and have binding power for the region concerned. However, the existence of these regional regulations still causes problems in terms of position and testing.

The first is position: The position of regional regulations as regulations made based on the principle of regional autonomy is not in line with or in line with the position of regional regulations in the hierarchy of laws and regulations. Regional regulations have the lowest position in the hierarchy of laws and regulations. As a result, Regional Regulations must comply with the laws and regulations that are above them even though the laws and regulations above them are types of laws and regulations that are national.

At the same time, each region is not accessible in determining the content of a Regional Regulation, considering that the content of a Regional Regulation must be following the content of the legislation above it. This condition is certainly not in line with the principle of regional autonomy applied in terms of the system of the Unitary State of the Republic of Indonesia, which is based on the principle of autonomy as wide as possible for the Provinces and Regencies/Cities.

Second, testing: Testing of Regional Regulations is carried out by making the statutory regulations above it as a touchstone. If there is a Regional Regulation contrary to the regulations above it, the Regional Regulation must automatically be canceled. In contrast, there is a special

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regional regulation (lex specialis*)* or a regional regulation formed based on the peculiarities of a region that is different from national conditions.

1. Regulations about the position of Regional Regulations in the statutory system that are not in line with the regulatory system regarding the relationship between the Unitary State and the principle of regional autonomy with the Regional Government (Provincial, Regency/City) certainly cannot be left without any efforts to make changes because if left unchecked, it will this is the same as making unclear the status of a Regional Regulation (Perda).

Problem Formulations

1. Why is it necessary to decentralize the position of Regional Regulations?
2. How is the test design for Regional Regulations if decentralization is carried out on the position of regional regulations?

RESEARCH METHODOLOGY

This study used normative juridical research with a statutory approach, a concept approach, and a case approach. Legal materials consist of primary, secondary, and tertiary legal materials. Online and offline search processes carry out the collection of legal materials. The analytical technique used is prescriptive.

DISCUSSIONS

A unitary state is also known as a single-composed state (eenheidsstaat). For this reason, essentially, there is only one country with one central government that has all the state's duties and highest authority. Isjwara (1992) stated that the unitary state is the most potent compared to the federal and confederation. In a unitary state, there are both unions and unity.

Soehino also stated that Soehino also said, "The unitary state is a state that is not composed of several countries, but only consists of one state, so that there is no state within the state. Thus, in a unitary state, there is only one government, namely the central government, which has the highest power and authority in state government, establishes government policies, and carries out state government both at the center and in the regions.

Furthermore, Apeldorn stated that a country is called a unitary state if power is only held by the central government, while the provinces receive power from the central government. The provinces do not have independent rights (Simorangkir, 2000). Inline, Kalijarvi stated, countries where all power is concentrated in one or several main organs, without any division of power between the central government and the governments of the parts of the country. The government of those parts of the country is only part of the central government, which acts as representatives of the central government to carry out local administration, Kartasapoetra (1987).

Indonesia is a country that adheres to a unitary state system. However, the unitary state system applied in Indonesia is different from the unitary state system in general. It happens because the principle of autonomy adopts Indonesia's unitary state system as broad as possible for the provinces (regions) and districts/cities. The principle of widest autonomy is that each region has full authority to regulate and manage its own government. One of these freedoms is the freedom for local governments to make regulations. Article 18 paragraph (6) of the 1945

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Constitution of the Republic of Indonesia expressly states that regional governments have the right to stipulate regional regulations and other regulations to carry out autonomy and assistance tasks.

The form of a unitary state with the widest application of the principle of autonomy does not apply linearly to the system of laws and regulations. In Indonesia, the system of laws and regulations instead adheres to a centralized model. As evidence, several things can be stated; first, the system of laws and regulations is arranged hierarchically. Article 7 of Law Number 12 of 2011 concerning the Establishment of Legislations states that the laws and regulations in Indonesia are arranged hierarchically as follows:

1. The 1945 Constitution of the Republic of Indonesia;
2. Decree of the People's Consultative Assembly;
3. Laws/Government Regulations in place of Laws;
4. Government regulations;
5. Presidential Regulations;
6. Provincial Regulations;
7. Regency/City Regional Regulation

Third, an area does not need to be designated as a special area first. An area that will make regional regulations relating to the special conditions of its area does not require status as a special area first. It means that all regions in Indonesia can make special regulations, such as the Qonun in Aceh. A region must improve the quality and quantity of regional regulations, Anggriani (2011).

Fourth, it does not require higher laws and regulations. Decentralization of the authority to form laws and regulations will make forming regional regulations much easier. This is because each region is not confused about having to look for or even look for relationships with the laws and regulations above it as the basis for making new Regional Regulations. Admittedly or not, a region is often confused in drafting a regional regulation when it does not find a link/foundation from higher legislation. The absence of higher laws and regulations will certainly make it difficult for regions to make regional regulations, especially in preparing considerations.

Fifth, constitutional complaint. A constitutional complaint can be interpreted as a complaint or lawsuit filed by an individual to the constitutional court against the act (or omission) of a public institution that violates the fundamental rights or constitutional rights of the person concerned. Usually, this is only done and can only be accepted by the constitutional court if all available solutions through the judicial process are exhausted (Comella, 2004). The system of centralized legislation in force has created confusion over the existence of regional regulations. On the one hand, a regional regulation must have a base to a higher statutory regulation. When a regional regulation is tested, it is known that it is contrary to which statutory regulation. Because, in the system of reviewing the laws and regulations in force in Indonesia, a statutory regulation for which a judicial review will be requested must conflict with the laws and regulations above it. For example, a regional regulation can be requested for a judicial review when it is known that the regional regulation is contrary to law. Without clarity regarding the conflict of a Regional Regulation with the Law, the said Regional Regulation cannot be submitted for a judicial review to the Supreme Court (MA). This happens because the testing system applied is a formal testing system and material testing (Asshiddiqie, 2020). Material

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testing is a test where a regional regulation is assessed for suitability with the content material in the legislation above it. While, formal testing is a test in which a regional regulation will be tested from the aspect of its formation, which is related to the authority of the forming institution and the procedure for its formation (Siboy, 2018 & 2019).

At the same time, testing a regional regulation may not skip the law. This means that regional regulations can only be subject to judicial review of laws. The applicant for the review of a Regional Regulation must describe that a Regional Regulation is contrary to the Law. This will be complicated when there is a Regional Regulation contrary to the Basic Law (UUD), but no Law has a relationship with the Regional Regulation. Testing of Regional Regulations against the Basic Law is not allowed in the system of reviewing laws and regulations in Indonesia. The Constitutional Court can only examine the laws and regulations under it or only the Law (UU) and Government Regulation in place of Law (UU). The request for a judicial review of Regional Regulations against the Basic Law (UUD) cannot be carried out. In Indonesia, there is no complaint testing system or constitutional complaint where a statutory regulation at the bottom can be directly tested against the highest type of legislation. This is different from other countries that apply a constitutional complaint system to test their laws and regulations, including Austria, Germany, Hungary, Russia, South Korea and Thailand (Koeswara, 2001).

Sixth, binding power. The application of decentralization to the position, formation, and testing of Regional Regulations does not need to raise concerns that it will harm other regions. When a region is given the authority to have the broadest possible autonomy in drafting regional regulations, it will not have implications for other regions or will not harm other regions considering that the relative competence of a regional regulation only applies to its region or will not apply to other regions. The Sumenep Regency Regulation will not apply to areas outside the Sumenep Regency; the East Java Provincial Regulation will only apply to the East Java region and does not apply to the Central Java Province (Syahuri, 2007).

Seventh, reducing the burden on the Supreme Court. The decentralization of Regional Regulations can also automatically have implications for reducing the number of laws and regulations that the Supreme Court will test. This is because the decentralization system for Regional Regulations will impact the testing mechanism, which is no longer based on the hierarchy of laws and regulations as regulated in Article 7 paragraph (1) of Law 12 of 2012 concerning the Establishment Legislation.

Eighth, strengthening the relationship between the Central Government and Regional Governments. The implementation of a decentralized system of Regional Regulations in the statutory system in Indonesia can also enhance the position and relationship between the Central Government and Regional Governments. Because, with the enactment of a decentralized system of Regional Regulations, it will automatically make Regional Regulations the regime of Regional Government (Article 18 of the 1945 Constitution of the Republic of Indonesia). Thus, control over Regional Regulations is no longer control by using a system of laws and regulations alone but also control through a government system where the central government can have the authority to exercise control over Regional Regulations with the argument that the control exercised by the central government is a form of control over all matters. Relating to the relationship between the central government and local governments. In this context, the forms of control that can be applied are preventive and repressive controls.

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Preventive control is where the central government can supervise Regional Regulations. Such supervision can be carried out during the formation process or after the formation of Regional Regulations. The Central Government can assist in the process of forming Regional Regulations or carry out supervision. This is certainly very helpful for the productivity and quality of the Regional Regulations that will be formed. Management from the Central Government can improve the quality of Regional Regulations because:

1. Each region will receive assistance and supervision from the Central Government in the process of forming Regional Regulations. Supervision from the Central Government is essential because the Central Government will send a delegation from to assist the Regional Government in forming Regional Regulations. This assistance from the Central Government can reduce the burden on the Regional Government, which has to invite other parties, especially experts, to prepare Regional Regulations;
2. Prevention of corruption: Admit it or not, forming Regional Regulations is also one of the entrances for corruption. The map of corruption in the formation of Regional Regulations is straightforward to read. The budget for a substantial Regional Regulation Draft has made several individuals gain profits. The pattern of corruption in the formation of Regional Regulations is by asking or ordering certain "groups" or "mafia" to make Draft Regional Regulations, then the mafia is given wages. The results of the Draft Regional Regulation by the mafia are then brought and discussed by members of the Regional House of Representatives together with the Regional Head according to applicable procedures. However, the discussion is only a mere formality because, in substance, the parties have one hundred percent confidence in the results of the "*mafia*" which provides services for making Regional Regulations. With assistance from the Central Government, the pattern of corruption in making Regional Regulations involving the "mafia" can be prevented because the Central Government will carefully monitor and provide assistance so that it will be known whether a Regional Regulation is prepared in earnest and according to regional needs. Or simply made to obtain a budget allocation that can be used for corruption;
3. Prevent Nepotism: According to Koenen-Endepols-Heeroma, nepotism is *"familiebegunstiging; onrechtmatige beginningstiging van familieleden of vriendjes."* A S Hornby defines nepotism as "nepotism is the practice among people with power or influence of favoring their relatives, especially by giving them jobs (Parmono, 2011). Control from the Central Government can also prevent nepotism in the formation of Regional Regulations. Nepotism can certainly harm the budget and the quality of Regional Regulations. The pattern of nepotism in the construction of Regional Regulations occurs in terms of the relationship between the forming Regional Regulations and third parties. Third parties in this context are academics or experts who will be involved as cooperation partners or as experts in the formation process. The determination of third parties by the makers of Regional Regulations tends to be non-objective and not based on competence. Usually, the third party invited to partner is a university. The determination of the Universities that will be invited to partner is the Universities that have a certain affinity with the authorities. For example, a university that will be a partner is a university that has alumni as members or staff in the Regional House of Representatives. As a result, the presence of professionals from universities cannot make a significant contribution to the quality of the Regional Regulations that will be formed.

Meanwhile, repressive control by the Central Government can be carried out by canceling a Regional Regulation. In terms of this repressive control, the Central Government may annul a Regional Regulation deemed to be contrary to the principles of the Unitary State. With the central government's control over Regional Regulations, each region will automatically not arbitrarily make Regional Regulations, primarily Regional Regulations that can disrupt the course of national economic development. The pattern of cancellation of Regional Regulations by the Central Government has been carried out under Article 251 of Law Number 23 of 2014 concerning Regional Government. In this Law, the Central Government is given the authority to cancel a Regional Regulation. Article 251:

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1. Provincial Regulations and Governor Regulations that are contrary to the provisions of higher laws and regulations, public interest, and/or morality are canceled by the Minister;
2. Regency/City Regional Regulations and Regents/Mayor Regulations which contradict the provisions of higher legislation, public interest, and/or morality are canceled by the governor as the representative of the Central Government;
3. If the Governor as the representative of the Central Government does not cancel the Regency/Municipal Perda and/or regent/mayor regulations that contradict the provisions of higher laws and regulations, public interest, and/or decency as referred to in paragraph (2), the Minister cancels Regency/City regulations and/or regent/mayor regulations;
4. The cancellation of the Provincial Regulations and the Governor's Regulations as referred to in paragraph (1) shall be stipulated by a decision of the Minister and the cancellation of the Regency/Municipal Regulations and the regent/mayor regulations as referred to in paragraph (2) shall be stipulated by a decree of the governor as the representative of the Central Government.

Ninth, the application of decentralization to Regional Regulations does not need to be feared as the beginning of the transformation of regions in Indonesia into small kingdoms or "*states within a state*" because they already have the freedom to make their Regional Regulations. The possibility that regions will transform into small kingdoms or "*states within a country*" can be anticipated by implementing preventive and repressive control mechanisms from the Central Government over Regional Governments.

Tenth, the application of decentralization to Regional Regulations cannot be feared as a system, not in line with the principles of the Unitary State of the Republic of Indonesia. A unitary state is a single state. Solly Lubis stated The principle of a unitary state is that the one who holds the highest position of power over all state affairs is the central government without any delegation or delegation of power to the local government (local government). In a unitary state there is the principle that all state affairs are not divided between the central government (central government) and local government (local government) so that state affairs in the unitary state remain a unanimity (eenheid) and the highest holder in that country is the central government (Lubis, 1983).

The form of the Unitary State adopted by Indonesia is a form of the Unitary State which is flexible or flexible. This can be seen from the arrangement of the relationship between the Central Government and the Regional Government. Although Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that the State of Indonesia is a unitary state, the form of the unitary state is adjusted to the pattern of division into regions. Article 18 of the 1945 Constitution of the Republic of Indonesia states that the Unitary State of the Republic of Indonesia is divided into Provinces, and Provisional areas are divided into Regency/City areas. In each region, it is led by a person who is directly elected by the people or not appointed by the Central Government (Azim, 2013).

Thus, the decentralization pattern for Regional Regulations is a decentralization model that is in line with the Unitary State of Indonesia system as referred to in Article 1 and Article 18 of the 1945 Constitution of the Republic of Indonesia.

Eleventh, there is no need to worry about decentralizing the statutory system to Regional Regulations, which will create disharmonious relations between the Regional Government and the Central Government. The decentralization pattern will not cause local governments to behave disobediently and indifferently to the central government. This is because decentralization of regional regulations will not make regions run independently without control from the central

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government. Decentralization of Regional Regulations is essentially only to provide freedom and simplification for regions in formulating regulations in their regions.

CONCLUSION

The State of Indonesia is a country in the form of a unitary state based on decentralization. Namely, a principle that gives freedom to each region to regulate its territory independently. However, the principle of decentralization does not apply to regional regulations. Regional regulations are still in a centralized structure with regulations made by the central government so that regional governments are not free to make rules relating to their respective regions. Indeed, the principle of decentralization applies to government affairs between the central and regional governments and regional regulations in the national legislative system.

Decentralization of the position of regional regulations (Perda), in addition to creating harmony with the government system is also to strengthen the position of regional governments in forming regulations based on the conditions and specificities of their respective regions so that a region does not need to be designated as a special region in advance to be able to do so make regulations relating to the special conditions of the region. Not only that, when the principle of decentralization is applied to the position of regional regulations, a region does not need higher laws and regulations when it wants to make regional regulations, considering that the implementation of the principle of decentralization will release the position of regional regulations from the hierarchical system of laws and regulations. On the other hand, the burden of the Supreme Court (MA) will be reduced automatically, considering that the release of regional regulations from the hierarchy of laws and regulations will prevent regional regulations from having to be tested on the Supreme Court.

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