


Revitalizing Sociological Value in The Establishment of Regional Regulations in Indonesia

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Abstract

Introduction: The determination of regional regulations is a regional right that is attributively granted by the constitution in the context of the implementation of regional government to carry out regional autonomy.

Purposes of the Research: The importance of the formation of regional regulations is to accommodate sociological values.

Methods of the Research: This research is normative using a statutory approach and a conceptual approach.

Results Main Findings of the Research: The results of the study show that the procedure for determining regional regulations that accommodate the sociological values (living law) of a legal product must also include the tendencies and expectations of the community. Therefore, positive law will have effective force if it contains or is in harmony with the laws that live in society, so that legislation as a positive law will have effective force if it is formulated or composed based on living laws. There is a need to revise Law Number 12 of 2011 concerning the Establishment of Laws and Regulations on Content Materials, which must cover the previous sociological aspects. Finally, the resulting laws have no impact or usefulness for the community, so the legal products made are not in accordance with the needs of the community.

Keywords: Revitalizing; Sociological; Establishment; Local Regulation; Living Law.

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INTRODUCTION

The State forms laws and regulations to be accepted and obeyed consciously by the focused community. Consequently, every statutory regulation should focus on all the social phenomena in society. In this case, Eugene Ehrlich put forward a rational idea about the difference between positive and living laws¹. Specifically, positive law has effective power and its legislation is coercive in case it is formulated in line with the laws that live in society. In the Constitution of the Republic of Indonesia (1945), Article 18B, paragraphs (1) and (2) state that "The state recognizes, and respects special regional government units regulated by law". It acknowledges regions with special autonomy for various powers granted by the State, such as Papua, Aceh, and Yogyakarta Provinces.

It is acknowledged that local culture, customs, and traditions contribute to the identity-giving aspect of a place². The autonomous regional authority granted by the Central Government will increase the economic growth by managing its potential and other associated benefits. The authority of autonomy that manages the administration's affairs

¹ O'Day, J. F. (1966). Ehrlich's Living Law Revisited Further Vindication for a Prophet Without Honor. *Case Western Reserve Law Review*, (18) 1.

² Mahira, D. E., Soemardiono, B., & Santoso, E. B. (2023). Cultural Tradition as a Local Context for Sustainable of Urban Identity in Gianyar City Case Study. *Pertanika Journal Social Sciences & Humanities*, 283-301.

and regional governments had the right to stipulate Regional Regulations. The provisions of Article 18 Paragraph (6) of the 1945 Constitution affirmed that "local governments were mandated to stipulate regional and other regulations to carry out autonomy and assistance tasks." Therefore, the stipulation of a regional regulation is a right granted by the Constitution in administering the regional government to implement autonomy. Bagir Manan explained that granting autonomy to regions was for regions' independence to regulate and manage their affairs³. The authority was regulated based on Article 236 Paragraph (1) of Law Number 23 of 2014 concerning Regional Government which were to carry out Regional Autonomy and Co-Administration, to form a Regional Regulation". Regions that were given special autonomy, such as Papua, based on Article 29 Paragraphs (1) and (2) of Law Number 21 of 2001, Special Regional Regulation was made and stipulated by the Papua People's Representative Council and the Governor with the consideration and approval of the Papua People's Assembly ". However, in paragraph (2), there was no approval by the Papua People's Assembly.

Article 29 of Law Number 21 of 2001 concerning Special Autonomy, regulated the formation of Special Regional Regulation and Provincial Regulation in Papua Province. It explained that the Special Regional Regulation was made and stipulated by the Papua People's Representative Council and the Governor with the approval of the Papua People's Assembly while the Provincial Regulation is made and enacted by the Papua People's Representative Council and the Governor. Governor Decreed these regulations without conflicting with the public interest, Special Regional Regulation and Provincial Regulation. Although the Provincial Government socialized the regulations to be effective, the implementation of the Special Regional Regulation and Provincial Regulation experienced problems because there were no established procedures for community involvement. This is seen in various Special Regional Regulation and Provincial Regulation, which were not implemented by the traditional communities because they did not accommodate the sociological values of the Papuan people.

The Maluku region also had the Ambon City Regional Regulation Number 10 of 2017 concerning the Appointment, Election, Inauguration, and Dismissal of the Head of the State Government. The provisions of Article 47 paragraph (1) confirm that Candidates for the Head of the State were elected and appointed as ratified by the Mayor. From the historical aspect, the head of state government was a king who was appointed based on lineage and had legal legitimacy according to the customs of the local community. Therefore, the government could only attend the ratification/inauguration ceremony carried out traditionally, and its legitimacy is not based on the Decree of the Mayor, an executive agency. The regional regulation is a product of regional law, which is still debated. As a result, there was an assumption that community participation is not a condition for the formation of legislation regarding the Regional Regulations problem. Therefore, the research focused on the extent of law and sociological values were loaded in the formation of Regional Regulations and the impacts and the procedure for establishing a regional regulation that accommodates sociological values.

METHODS OF THE RESEARCH

This was normative legal research that focused on library research. Normative legal research is a type of study that looks for principles or the core philosophy of laws in the

³ Manan, B. (1994). *Hubungan Antara Pusat dan Daerah Menurut UUD 1945*. Jakarta: Pustaka Sinar Harapan.

form of prevailing law inventory or research that is done for the aim of legal discovery in a specific case⁴. It indicates that the research is centered on reading and analyzing primary and secondary material. The author demonstrates how the law and/or regulations are applied in various situations. The author used international and national law in this study, including conventions, charters, and laws pertaining to refugee law. Furthermore, it used a statutory approach to examine related legislation as an analytical tool and a conceptual approach by starting from the opinions of experts or the doctrines and legal principles to analyze the problem to be focused on.

RESULTS AND DISCUSSION

A. Sociological Values as Standards for Formation of Regional Regulations

The State must be built from the concept of law and democracy since it currently promotes changes in the paradigm of the legislation to be more autocratic. The first amendment to the 1945 Constitution was carried out in four stages from 1999 to 2002 which marked the flow of change in Indonesia. These changes resulted in fundamental modifications in the Constitutional Law, including⁵. 1) Changes in basic norms in state life, such as affirming Indonesia is a state of law and sovereignty is in the hands of the people and implemented according to the Constitution; 2) The existence of new institutions and the disappearance of some existing institutions; 3) Changes in relations between state institutions; 4) Human Rights Issues. Since the change in the paradigm of constitutional law, the concept of democracy in forming legislation has been reformed. The implementation of regional autonomy and the establishment of its regulations, Law Number 10 of 2004, Law Number 32 of 2004, and the issuance of Minister of Home Affairs Regulation Number 16 of 2006 was enacted. These include changes to basic norms in life state, such as the affirmation that Indonesia is a state of law and sovereignty is in the hands of the people and implemented according to a dichotomy. This is a study from a juridical-normative and socio-political perspective. Additionally, the socio-political perspective of Mahfud MD assumes that the formation of the positive law (in the abstract) would be appropriate and influenced by certain political configurations that interact in the process. Conceptually applicable and adopted by the State, it can be studied dichotomously, namely the configuration of democratic and authoritarian politics. Juridical-normative and socio-political studies are procedural concepts informing legislation, included in the normative aspect of democracy. They have not been hermeneutic in examining the context and text of the articles in legislation which are the substance of their content.

To enrich the study of constitutional law theory, this paper examines the perspective of the aspects of democracy (material and normative) informing the legislation, focusing on Democracy aspects in the formation of Regional Regulations from a Socio-Legal Perspective⁶. Some regions have power over the sociological aspects of certain regions, both from natural resources and human resources. Every Regional Regulation made as a form of a domestic product also has a sociological basis, both in local wisdom owned by people from certain regions. This contribution undoubtedly demonstrates the capacity to endure for a long time by adjusting to local conditions.⁷ The Regional Government is the

⁴ Nasution, B. J. (2008). *Metode Penelitian Ilmu Hukum (Legal Research Method)*. Bandung: Mandar Maju.

⁵ Alkosar, A. (1997). *Identitas Hukum Nasional*. Yogyakarta: Fakultas Hukum UII Press.

⁶ Asshiddiqie, J. (1995). *Pembaharuan Hukum Pidana Indonesia*. Bandung: Angkasa Bandung.

⁷ Avrami, E. (2011, Spring). *Sustainability and the built Environment: Forging a Role for Heritage Conservation*. Diambil kembali dari <https://www.getty.edu>: https://www.getty.edu/conservation/publications_resources/newsletters/26_1/feature.html

administration of government affairs by its government and people's representative councils according to the principle of autonomy and assistance tasks within the system and principles referred to in Indonesia. Regions were directed to accelerate the realization of community welfare through improving services, empowerment, community participation, and increasing regional competitiveness by concerning the principles of democracy, equity, justice, and the uniqueness of a region in the Indonesian system. The policy of regional decentralization authorizes the government to regulate and manage its affairs, and local communities' interests appropriate to national development goals not carried out by the central government.⁸

The Regional Regulation is a product of regional law jointly formed between the Regional Head and the Regional People's Representative Council at the Provincial and Regency/City levels. Regarding the mechanism and procedures for its formation, it is regulated in Law Number 12 of 2011 pertaining to the Establishment of Legislation and Regulation of the Minister of Home Affairs Number 80 of 2015 on the Establishment of Regional Legal Products. Based on Article 5 of Law Number 12 of 2011, dealing with the Formation of Legislations (including Regional Regulations) should be based on the laid principles, including clarity of purpose, proper forming institutions, conformity between types and content material, implementation, usability, clarity of formulation and openness.⁹

Legislation such as regional regulations was a concrete form of law that should be appropriate to the reality, phenomena, developments, and beliefs or awareness and legal needs of the community and have a sociological basis. The implementation would have no hitches provided provisions contained in regional regulations were appropriate with general beliefs or legal awareness of the community and understandable. For a legal state to realize the welfare of the people (welfare state), it should have a set of rules or norms to create peace and order in social life. In a legal state, the meaning of life and orderly life has its style because everything is based on law. Law is an orderly regulation with a coercive, binding nature and regulates human relations in society, ensuring justice¹⁰. Norms/rules are factors that influence and regulate human behavior in society, and they include: 1) Religious norms are rules of life accepted as commands, prohibitions, and suggestions from God. Example: not to drink alcohol, commit immorality, consume drugs, and others; 2) Moral norms are considered the voice of the human conscience or an inner voice recognized and realized by everyone as a guide in behaving and acting. For example, a child is disobedient to his parents; 3) Norms of decency are rules that arise from a group of people who are followed and obeyed, thereby regulating human behavior towards the environment, for example, young people should respect elders; 4) Legal norms are regulations that arise from laws made by state authorities binding on everyone, and their implementation can be maintained with all coercion by state instruments. Example: committing theft, murder, rape, and others.

To create order in a democratic country, people should participate in determining the laws that will apply, the State's direction and goals. Peace and order will be realized provided laws and regulations are made based on the will of the people; democratic life. Furthermore, regional legal products can be in two forms, (1) regulations which include Regional Regulations, Regional Head Regulations, Joint Regional Head Regulations, and

⁸ Hocine, T., Ammar, B., & Said, G. (2017). Towards an environmental approach for the sustainability of buildings in Algeria. *Energy Procedia*(119), 119, 98-110. doi:<https://doi.org/10.1016/j.egypro.2017.07.053>

⁹ Budiarjo, M. (1991). *Dasar-dasar Ilmu Politik*. Jakarta, Indonesia: Gramedia Persada, Jakarta.

¹⁰ Sunaryati, H. C. (1991). *Politik Hukum Menuju Satu Sistem Hukum Nasional*. Bandung, Jawa Barat, Indonesia: Alumni Bandung.

People Representative Regulations, and (2) stipulations entailing Regional Head Decrees besides People Representative Decisions, Leadership Decisions, and Honorary Body Decisions¹¹. This was to realize an orderly administration that regulates the procedures and mechanisms for forming Regional Legal Products appropriate to legal and government developments, encouraging the implementation of the formed Legal Products functions in a planned, integrated and coordinated manner. Starting from planning, preparation, discussion and determination, promulgation, and dissemination.

B. Impact of a Regional Regulation that does not contain Sociological Values.

There were still various problems although the stage and mechanism legislation for forming a regional regulation were adjusted as described previously. A program for the formation of provincial, regency/city regulations with draft provincial, regency/city regional regulations as derived from Article 33 jo and Article 40 of Law Number 12 of 2011. The materials were to be regulated, and their linkages with statutory regulations regarding the conception of the draft provincial, regency/city regional regulations include: a) The background and purpose of the preparation; b) The target to be realized; c) The main idea, scope, or object to be regulated; d) Setting range and direction. The assessed and aligned regulated materials as outlined in an academic text. Further, the provisions of Article 56 paragraph (2) jo and article 63 of Law Number 12 of 2011 state that the draft regional regulation originating from the people representative and the Regional Head is with an explanation and academic text.

Every region has a local legal product formed with the people's will and their representatives. However, the product had weaknesses such as some failures of some elements of society to feel a positive impact in regulating or have the value of local wisdom from the community. The local regulations should also be balanced and in line with positive law to create legal harmonization, useful for the community. In a democratic system, changes in social order should be based on a normative basis through the law-making process as one of the duties of Parliament. Implementing a democratic state was carried out by balancing duties, authorities, responsibilities, and obligations in managing and running the government. Theoretically, this government system was decentralized, containing two main elements, the formation of autonomous regions and regional autonomy. The formation of an autonomous region resulted in a sovereign status formed on the aspirations and objectives of the people in a region forming a regional government. Regional governments regulated and managed their affairs established on autonomy and assistance tasks aimed to achieve community welfare through improvement of service, empowerment, and community participation based on the Regional government regulations and management of affairs. It aimed to increase regional competitiveness formulated on the principles of democracy, equity, justice, and regional specificity in the Indonesian system. Regional government autonomy transitioned the government system from a deconcentrated to a decentralized, involving handing over of affairs to regional governments operational in the government bureaucratic system. Autonomy aims to achieve effectiveness and efficiency in services to the community. The regional autonomy was implemented by government institutions such as the Regional Head (Governor and Regent/Mayor), People Representative (Provincial, Regency/City), and local bureaucracies both private institutions and government bureaucracy. To ensure that the decentralization

¹¹ Huda, & Ni'Matul. (2005). *Hukum Tata Negara Indonesia*. Jakarta, Indonesia: Raja Grafindo. (2019). *Law Number 12 of 2011 in Conjunction with Law Number 15 of 2019 Concerning the Establishment of Legislation*.

process takes place and is sustainable, each region should form a consistent autonomy package according to regional needs.

In this process, local community involvement was needed by each regency/city government, including People Representative, a more responsible decentralization process for the success of regional autonomy. To develop local government institutional organizations in response to the changing times and the demands of an increasingly diverse society, the evaluation of the implemented institutions was needed. Local government institutions can refer to Law Number 32 of 2004 concerning Regional Government, Government Regulation Number 38 of 2007 about the Division of Government Affairs between the Government, Provincial, and Regency/City Regional Governments, Government Regulation Number 41 of 2007 dealing with Regional Apparatus Organizations, and Minister of Home Affairs Regulation Number 57 of 2007 concerning Technical Guidelines for Organizational Arrangement of Regional Apparatus, which regulates the number of services, agencies, and technical institutions beside sub-structures that are part of the relevant Regional Apparatus Work Unit. Therefore, realizing an appropriate regional government system of existing laws and regulations supports inter-work needs. It facilitates coordination between the Central, Provincial, and Regency/City Governments, and the Regional Apparatus Organizations should be established.

C. Procedures for Formation of Regional Regulations That Include Sociological Values

Article 18 paragraph (6) of the Constitution states that "Local governments have the right to stipulate regional and other regulations to carry out autonomy and assistance tasks"¹². Therefore, it is attached to the "regional government" institution when viewed in terms of authority. There is a difference between "regional governance" and "regional government". Regional governance refers to two elements of regional institutions, namely the Regional Head and the Regional People's Representative, also called the regional executive and legislature. In contrast, the regional government is the regional head or executive.

Two regional organs hold the formation of regional regulations. This alludes that the two regional organs should execute the formation's mechanisms, procedures, or stages. Therefore, if one organ's regulations are formed, the result would be invalid or null and void. All the laws and regulations are referred to in Law Number 12 of 2011 in conjunction with Law Number 15 of 2019, including those in Article 7 concerning the types, hierarchy of laws, and regulations, along with those regulated in Article 8 of Law a quo. However, apart from the types of legislation formed by the authority, both at the central and regional levels, two types of legislation nearly have the same formation mechanism, "laws" and "regional regulations".

The most basic equation of local laws and regulations was the process of formation. First, it must be approved by the people through their representatives currently occupying legislative institutions, both at the central and regional levels. Second, only local laws and regulations can contain provisions for criminal sanctions. The three terms used are almost the same, but they differ in terms of their area of application, for example, the terms "wet" (national law) and "locale wet" (local law). Jimmy Asshiddiqie explained that: "From the perspective of its formation, it is very clear that the Regional Regulation was formed by the legislature with the head of the regional government. This is similar to the formation of law at the national level by the Parliament after a discussion and mutual approval between the

¹² Asshiddiqie, J. (2010). *Perihal Undang-Undang*. Jakarta, Indonesia: Rajawali Press.

Parliament and the President, which is then duly ratified by the President. Therefore, the regional regulation is a product of the regional legislature.”

The procedure for the formation of regional regulations is similar to the procedure for the formation of national laws and has 5 stages as stipulated by law, including (i) planning; (ii) preparation; (iii) discussion; (iv) endorsement or determination; and (v) promulgation. 1) Planning I: In principle, planning for the formation of regional regulations is determined by the Regional Parliament and the Regional Head in the regional legislation program for 1 year. The key consideration is the priority scale for the formation of the draft regulations. Each draft regional regulation can only be submitted based on what was determined previously in the regional legislation program. 2) Compilation: At this stage, each Draft Regional Regulation, despite its origin, must be accompanied by an Academic Manuscript (NA) that contains philosophical, juridical, and sociological foundations, as well as the reasons why it is necessary to establish regional regulations (Regulation, Regional Regulations, 2011). 3) Discussion: The discussion was carried out by the Regional Parliament and the regional head on two levels at this stage. Level I discussions are in commission, joint commission, legislative body, budget board, or special committee meetings. While the level II, the discussion is in the plenary meeting (Regulation, Regional Regulations, 2011). 4) Ratification: In this stage, if there is a mutual agreement between the Regional Parliament and the Regional Head, the Regional Parliament Leader will submit the Draft Regional Regulation to the Regional Head to be ratified as a regional regulation. However, if the regional head does not ratify it within a maximum of 30 days, then the Raperda is valid as a regional regulation and must be promulgated. 5) Enactment: This is the final stage of the procedure for forming statutory regulations, namely by placing a regional regulation that has been ratified into the regional gazette, and the explanation is contained in an additional regional sheet; hence everyone is aware of it. These procedures are inseparable. Therefore, every Draft Regional Regulation that the Regional Parliament and the Regional Head must go through these procedures, otherwise, the regional regulation will become invalid.

D. Arrangement and formation regulation area, which is arranged in a substantial way for the local community

The birth of the concept of regional autonomy provides independence and development, which is very rapidly needed for an area of good province or regency to regulate and manage its household affairs. Implementation Regional autonomy is one of the demands that is strong enough to be fought for period reform, regardless of the response of the public to the implementation of local government during the New Order era, which was considered a failure and corrupt with a centralized system. Autonomy itself, in essence, according to Bagir Manan, is independence to organize and manage affairs. House the stairs owns Mana's opinion that a government region is a territorial government unit that has more levels in the territory of the Unitary Republic of Indonesia and has the right to regulate and administer affairs during his reign. Alone in field certain is the administration of the state as a household affair. Autonomous regions, also called units or territorial areas, are common, while autonomy is the right to regulate and look after affairs of government in the field administration country, which includes household chores, independently.

The ideals of regional autonomy are not only the demand for efficiency and effectiveness from the government but also for constitutional demands that are closely related to the principles of democracy and country, which are based on law. In facet material, autonomy area means business for realize well-being, which together with principle well-being and

system deployment power according to national principle by law/ The use of regional autonomy is limited to the emission of authority, which is given by the government center. kindly institutional Area Autonomous is a lower level state organ that was born from the principle of dispersal power (*spreading vans machten*), whereas in a manner functional Area Autonomy was born from the principle of spreading governmental authority (*spreading van overheidsbevoegdheden*), which means only running government affairs or state administration. According to Bagir Manan, although autonomy is *staatsrechtelijk*, the contents of the domestic affairs of the autonomous region only concern function government or function administration countries

Even if there is function legislation, it is limited to arrangements in the field of state administration. That too is only limited to maintenance affairs in the House Ladder area. Area Autonomous Also, no authorized rule of state administration or rule is another rule of a state nature. Judiciary is constitutional because That No. can become authority area autonomous. Giving authority to an autonomous region, which is limited to the field of government or state administration This is in line with the spirit of the 1945 Constitution, which does not want "country" in one country: "Because Indonesia Country is something that is an *eenheidsstaat*, so Indonesia No will have an area in the environment, which is *a state* also".

Its relation to the authority to form regional legal products or regional regulations certainly does not exceed the authority of the central government, but in setting matters relating to local wisdom rather than society, matters should be comprehensively regulated in order to have power enforceability and not collide with higher legal aspects. According to Bagir Manan, self-reliance on autonomy does not mean that the region can create regulation, legislation, or decisions, regardless of the system, in a national manner. Regulation Legislation Level Area is not inseparable from the unity system of legislation-invitation in a national manner. There is a regulation-legislation-invitation-level area, which is contrary to regulation-legislation-invitation, which is of higher level or public interest.

CONCLUSION

The procedure for forming regional regulations that accommodate the sociological values of a legal product is a living law and must also include the tendencies and expectations of the community. The laws and regulations only record an instant action (moment hospitalization) by omitting the trend factors and expectations. Therefore, positive law would have effective power if it contains or is in harmony with the law that lives in society; hence, legislation as positive law would have valid power formulated or compiled based on the living law. However, there is a need to revise Law Number 12 of 2011 concerning the Establishment of Legislation on the content material, which must include sociological aspects earlier. This aspect was the main factor in making a legal product because it was where the law originates: the community. In contrast, the law was made to fulfill formal requirements without paying attention to sociological aspects. Hence, the resulting lack of impact and usability on the community and the legal products made were not per the community's needs.

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