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Urgency of establishing responsive local regulations to realize good local governance

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Abstract. The formation of responsive regional regulations based on premise that Indonesia is a democratic legal state. A democratic rule of law is obligated to guarantee protection of human rights and provide justice through community participation in formation of regional regulations. As a good legal product, Regional Regulations must reflect shared values of justice, and be responsive to community needs. Regional Regulations are regional legal products established by Regional People's Representative Council (DPRD) with the joint approval of Regional Head in context of carrying out regional autonomy and co-administration tasks. Regional autonomy the rights, powers and obligations of autonomous regions to regulate and manage their own government affairs and interests local community within system of Unitary State Republic of Indonesia. Thus the substance of Regional Regulation must be made in accordance with wishes and needs local community/region. The urgency of forming responsive regional regulations to realize regional governance is to realize justice and provide protection for human rights through community participation in formation of regional regulations. Realizing good Regional Regulations based on the principles of legality, "principles can be implemented" and "principles can be recognized" which are formal and material principles in formation of laws and regulations, and are formed in accordance with the interests of society.

Keywords. responsive, good local, society

Introduction

The formation of responsive regional regulations based on premise that Indonesia is a democratic legal state. A democratic rule of law is obligated to guarantee protection of human rights and provide justice through community participation in formation of regional regulations. As a good legal product, Regional Regulations must reflect shared values of justice, and be responsive to community needs. Regional Regulations are regional legal products established by Regional People's Representative Council (DPRD) with the joint approval of Regional Head in context of carrying out regional autonomy and co-administration tasks. Regional autonomy the rights, powers and obligations of autonomous regions to regulate and manage their own government affairs and interests local community within system of Unitary State Republic of Indonesia. Thus the substance of Regional Regulation must be made in accordance with wishes and needs local community/region.

The real guarantee of implementation democracy is presence law which is used as the basis for development of democracy. It is often stated that law, democracy and human rights have a relationship that is interdependence. In perspective of Human Rights, according to Marwati Riza recognition of Human Rights brings legal consequences to the protection of people's rights against government actions. Law is basis for implementing democracy, and vice versa, democracy the main basis for realizing and respecting human rights. This means that it is impossible to form a democratic government without law and it is impossible to realize respect for human rights without a democratic state government [1].

The concept of democratic principles in administering government in terms of making policies in a country is an alternative or solution an effort to improve welfare of society. There are many views and theories about elements, characteristics, and even indicators of *good governance* in implementing democratic principles.

The existence of Indonesia as a unitary state in form a republic is constitutionally contained in Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This provision underlies the implementation of governance in the regions on principle decentralization. This principle then underlies the meaning of autonomy, with substance implementation of authority in the implementation of government. Article 18 of the 1945 Constitution Republic of Indonesia is a strong foundation for implementing regional autonomy by providing broad authority, including the authority to form regional regulations. Article 18 paragraph (6) states that the Regional Government has the right to obtain regional regulations and other regulations to carry out autonomy and assistance tasks. This gives authority, autonomous regions to form Regional Regulations and other regulations. Regional regulations play a very important role in realizing good regional governance.

The existence of regional regulations cannot be separated from regional autonomy because regional regulations as instruments and one of the products of regional law are inherent in the regional autonomy system. It is said so because the essence of regional autonomy itself is independence (*zelfstandigheid*) and not a form of freedom an independent government unit (*onafhankelijkheid*). Independence itself implies that the region has the right to make legal decisions in form of statutory regulations which are then among others named Regional Regulations. Thus existence of regional regulations becomes an absolute in regulating regional household affairs [2].

To realize good regional government, the formation of regional regulations must comply with the principles of *good governance* and in accordance with the needs of the community. Therefore, community participation in the formation of regional regulations should be *meaningfull participation*, where people's voices must be heard, considered, and explained when their aspirations are not accepted. Empirical facts show that there are still many public participations in the formation of Regional Regulations, their participation is still a formality, causing conflicts when implemented and not fulfilling the wishes and needs community. In this study using the type of normative legal research. [3]

Discussion

Philosophical urgency

Philosophically, the formation of responsive regional regulations is to realize justice and provide protection for human rights through community participation, realize community welfare through legal development that is oriented to the interests and needs of the community, and create responsive regional regulations according to community needs and realize *good governance*. It is based on the principle of rule of law and democracy.

Regional regulations are part of law, so they must be able to provide a sense of justice, certainty and benefit to the community. According to Gustav Radbruch, the purposes of law are justice, certainty and expediency. Justice must have the first and most important position in terms of legal certainty and benefits. Historically, at first, according to Gustav Radbruch, the goal of legal certainty was ranked at the top among other goals [4].

In relation to the administration of regional government, a responsive regional regulation has become a demand and necessity in the implementation of regional autonomy. To realize regional interests based on community aspirations, regional governments are given a great responsibility in terms of regulation in the field of laws and regulations in governance and development for the benefit of their regional communities. The authority to make regional regulations is a clear manifestation of the implementation of autonomy rights owned by a region and vice versa, regional regulations are a means of implementing regional autonomy [5].

Theoretical urgency

One important principles in a rule of law is the principle legality. The principle of legality is a fundamental principle that is maintained for sake legal certainty. There is no law without a law that regulates it first. Every state action based on a law that has been held beforehand, this law must be obeyed by the government or its apparatus. With this principle of legality, everything that is done by the state or government according to their duties and authorities must be based on statutory regulations, so what is done becomes illegal in the eyes of the law. The principle of legality can also be used as a basis for examining the actions of state apparatus [6].

Every statutory regulation can be said to be good (*good legislation*), legally valid and effective because it can be accepted by society naturally and is valid for a long time, so it must be based on basis of statutory regulations. The basis for formation of laws and regulations has at least 3 (three) foundations, namely philosophical, juridical and sociological foundations. Philosophical foundation, that Regional Regulations must reflect the view of life, awareness, and legal ideals which include the mystical atmosphere and philosophy of Indonesian people which originate from Pancasila and Preamble to the 1945 Constitution of Republic Indonesia. The juridical basis, that Regional Regulations are formed to address legal problems or filling legal voids by considering existing regulations, which will be amended, or which will be repealed in order to ensure legal certainty and a sense of justice in society. The juridical basis concerns legal issues relating to the substance or material being regulated so that it is necessary to form new laws and regulations. Sociological Basis, that Regional Regulations are formed to meet needs of society in various aspects. This foundation actually concerns empirical facts regarding development of problems and needs of society and the state.

In addition to these foundations, there are important principles that must be considered, namely "the principle can be implemented" (*het beginsel van uitvoerbaarheid*) and "the principle can be recognized" (*het beginsel van de kenbaarheid*) which are formal and material principles in the formation of laws and regulations. The principle of "workable" means that any formation of laws and regulations must take into account the effectiveness of these laws and regulations in society, both philosophically, juridically and sociologically. Meanwhile, the "principle of being recognizable" means that contents of Regional Regulations must be explored from the values that live in society according to traditions and culture of community.

Juridical urgency

Juridically formation of regional regulations is to resolve legal problems in society and fill legal voids by taking into account existing regulations, which will be amended, or which will be revoked in order to guarantee legal certainty and a sense of justice for the community.

The State of Indonesia is a Unitary State in the form a republic as stipulated in Article 1 paragraph (1) 1945 Constitution the Republic of Indonesia. This provision underlies Article 18 of 1945 Constitution the Republic of Indonesia which regulates Regional Government. Article 18 paragraph (6) 1945 Constitution Republic of Indonesia, it is formulated that regional government has the right to stipulate regional regulations and other regulations to carry out autonomy and assistance tasks. Regional authority in forming regional regulations is emphasized in Article 236 paragraph (2) Law Number 23 of 2014 concerning Regional Government, it is formulated that regional regulations are formed by Regional People's Representative Council (DPRD) with joint approval of Regional Head. These provisions serve as the basis for authority of Regional Government in establishing Regional Regulations and other regulations to carry out autonomy and co-administration tasks.

Sociological urgency

Sociologically, regional regulations are formed to meet needs of society in various aspects of life. The formation of regional regulations based on interests and aspirations that grow in society parallels opinion of Eugen Ehrlich, as one of legal thinkers from a sociological perspective, who states that good law must be in accordance with laws that live in society [7]. Ehrlich further stated that the new positive law will have effective effect if it contains or is in harmony with the living law in society (*the living law*). According to Ehrlich's thinking, those who act as parties who develop law must have a close relationship with values adopted in community concerned [8].

Law is formed by society and is used for benefit of regulating human behavior in society. The existence of law exists in society, and in society there must be law. According to *Cicero said Ubi societas ibi ius.* " This means that where there is society there is law. Thus, law and society are two things that cannot be separated from one another. The formation of regional regulations part of formation laws, the laws that are formed must be responsive according what local community wants and needs.

Basically the law is made for humans and humans always need laws in order to regulate social life in society. According to Satjipto Rahardjo in his book entitled "Progressive Law; An Indonesian Legal Synthesis" writes that "law is for humans", not the other way around. In this regard, the law doesn't exist for itself, but for something wider and bigger. So whenever there is a problem with law, it is law that is reviewed and corrected and not humans who are forced to be included in legal scheme [9].

Conclusion

The urgency of forming responsive regional regulations to realize regional governance is to realize justice and provide protection for human rights through community participation in formation of regional regulations. Realizing good Regional Regulations based on the principles of legality, "principles can be implemented" and "principles can be recognized" which are formal and material principles in formation of laws and regulations, and are formed in accordance with the interests of society.

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