

## The Reinforcement of Local Institution In Supervising Local Regulation In Indonesia In 2020

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**Abstract:** *This research aims to give an explanation about the reinforcement of local supervisory institutions over local regulation in the future since 2020, playing an important role as the manifestation of local autonomy, so that the regulation establishment under supervision ending up with the revocation of local products can be minimized, recalling many revocations conducted in 2016, indicating that local regulation is problematic. This article was the result of a doctrinal study with library study and secondary data. The conclusion of the research was that in Indonesia there is a preventive supervision over local legal products by the government, including the Governor and repressive supervision conducted following a decision having legal consequence (rechtsgevolgen) in both autonomy and deconcentration duty fields. The reinforcement of local institutions focuses on good governance by actually applying an accountable, transparent governmental system and public participation since 2020. The presence of local legislative assembly and governmental representatives entering into the elements of local regulation development is reinforced, moreover, in the presence of the latest rules related to the Legislative Assembly, reinforcing regulation evaluation. The duty of supervising local regulations not ending up with revocation can be used as a recommendation to the government in the revocation of local regulations.*

**Keywords:** *Local Institution, Supervision, Local Regulation of 2020*

### Introduction

The pillar of Indonesia's state, one of which is *Undang-undang Dasar 1945* or 1945 Constitution, as the state's constitution, has established Local Regulation as the one governing the regional level. The development of local regulations should, of course, contain material content as governed by the law in order to be compatible with the local regional needs.

The existence of local regulation is inseparable from the legal system, a system entrenched in culture and habit

(Adi Sulistiyono, Isharyanto, 2018). Local Regulation needs supervision; a form of supervision over Local Regulation is revocation, as revocation is a form of supervision that is repressive in nature over Local Regulation (Sukardi, 2016). This repressive supervision is conducted by a governmental institution (*executive review*).

The examination of local regulations in Indonesia is conducted by the government (before the presence of Constitution Court's Decree Numbers

137/PUU-XIII/2015 and 56/PUU-XIV/2016), because the government is the regional-level institution mandated by Law No.23 of 2014 about Local Government. Local regulations existing in the regions are revoked by the Minister of Home Affairs (*Kemendagri*), but the supervision over local regulations still faces some problems, one of which is that the revocation can be filed to the Supreme Court. The Supreme Court is now the only authorized institution to revoke Regency/Municipal Local Regulation (Nimatul Huda, 2010).

Regional institutions are required to tighten supervision over local regulation. The supervision of the region supports the local legal products related to the harmonization with higher regulation, thereby not revocable easily, e.g. in the Legal Bureau of Local Regulation Product Supervision of Central Java and West Java, there is verification and evaluation in Local Regulation Publication.

The latest local institution was created due to the release of new rules, i.e., the addition of function conducted by the Legislative Assembly, supervising the local legal product; it is a new evaluation method to reinforce the legal regulation product released by the local government enacted to the local community.

## Method

Research is a principal means of developing science or knowledge. It is because the research aims to reveal the truth systematically, methodologically, and consistently. Every research and scientific development requires the

existence of a methodology. This study employed a normative approach and a qualitative normative analysis technique based on secondary data supported by primary data to sharpen the analysis in the discussion (Soerjono Soekanto dan Sri Mamudji, 2015). Therefore, the library study conducted in this study provided in-depth information relevant to the problem studied.

Data analysis was conducted using a qualitative approach. The qualitative approach, according to Soerjono Soekanto, is the method of research resulting in descriptive analysis in which what is stated by respondents in written form or orally and also their behavior are investigated and studied as a whole (Soerjono Soekanto, 1986).

## Result And Discussion Supervision

The word supervision in Indonesian *Pengawasan* derives from the word "awas" (watch out), meaning "paying attention thoroughly". Therefore, seeing something carefully and thoroughly, there will be no other report than the one based on facts observed and seen (Sujanto, 1986). As close observation reveals, the root of supervisory problems is usually a plan designed/made first as necessary, whether or not it has been implemented according to the agenda, and then the product or outcome is as planned. Supervision can be defined as the implementation or the organization of something corresponding to the activity procedure wanted, scheduled, or considered (Prayudi, 2008).

Therefore, control over governmental apparatus' actions is

required to prevent a deviation from occurring in the duty implementation as specified to achieve the objective, i.e., supervision (Saiful Anwar, 2004), or a process to assign whether or not a job has been done, to assess and to correct it if necessary, aiming to make the job implemented as planned (Manullang M, 1995). In relation to a legal product, supervision can be conducted repressively or preventively. Preventive and repressive supervision are the classical types of supervision connoting the negative. In addition to negative supervision, there is a third form of supervision, positive supervision, including instruction or guidelines.

Preventive supervision is structural and specific in nature. Preventive supervision is divided into two:

a. Deliberation or supervision is implemented before the lower-level government makes a decision. This preventive supervision is often called *voortoezicht*. For example, the no-objection statement from a higher-level government;

b. Supervision is conducted after the lower-level government makes a decision but before the decision is enacted and has legal consequence. This preventive supervision is often called *middentoezicht*. For example, ratification and announcement or enactment. (Ni'matul Huda, 2007).

Systematically, the mechanism of executive review on local regulations is constructed as a series of clarification and evaluation processes by the government over the local government's authority (Draft Local Regulation) and the local regulation itself. In this context,

the process of evaluation on a number of draft local regulations at central and regional/municipal levels can be equalized with the executive review model implemented by the government on the corresponding draft local regulations. The process of executive review (evaluative measure) on draft local regulations performed by the government is related to review and assessment only to ensure whether or not the draft local regulation "is in contradictory with public interest or higher legislation" (King Faisal Sulaiman, 2014).

Thus, the preventive supervision intended here is the one over local legal products by the government, including the Governor as the representative of central government at the regional level over regional government in the form of approval or revocation of each draft Local Regulation approved mutually by the executive and Local Legislative Assembly but has not been enacted officially as a Local Regulation.

Meanwhile, repressive supervision is the one conducted after a decision is made and has legal consequences (*rechtsgevolgen*) in both autonomy and deconcentration duty. In other words, repressive supervision is the supervision of legal products by the central government over regional governments in the form of *schorsing* or revocation of each local regulation enacted officially (promulgated) (King Faisal Sulaiman, 2014). The supervision of local regulation by the Supreme Court (Judicial Review) has implications for:

a. Illegitimate local regulation for the reason that it is in

contradiction with the higher legislation;

b. The illegitimate local regulation should be revoked and should not have binding power.

Soehino said that the implementation of supervision over local regulations by the authorized officials so far, in addition to considering special criteria and the reason for the attempt to prevent the supervision implementation, is also done based on the specified criteria, among others, in the form of a Minister of Home Affairs' Letter related to the technical requirements and legislating process or the output of a Local Regulation. Referring to the provision in Articles of Law Number 23 of 2014 about Local Government, the supervision concept intended in the broad and narrow sense is evaluation and revocation.

a. Building and supervision by Central Government is implemented by minister/ chairperson of non-ministry governmental institution.

b. Building and supervision by the Central Government as intended in Article 7 clause (1) over the organization of Governmental Affairs by Regency/Municipal area is implemented by the governor as the representative of the Central Government.

c. Building and supervision as intended in clauses (1) and (2) is coordinated nationally by Ministers (A. Zarkasih, 1994).

### **Revocation of Local Regulation**

Local autonomy spirit leads to the improvement of Provincial and Regency/Municipal Local Regulation Development, but it still results in so

many problems that the developed Local Regulation is revoked. In 2016, about 3,143 local regulations were revoked and revised by the Ministry of Home Affairs. It indicates that many local regulations developed are problematic. There are four factors that make the local regulation revoked:

1. Investment is hampered by local regulation and local leader regulation (licensing, retribution, business service, building construction permit (IMB), third-party contribution, and so on).
2. Local Regulation and Local Leader Regulation are in conflict with higher law and the public interest.
3. Local Regulation and Local Leader Regulation are in contradiction with Law Number 23 of 2014 about Local Government and the Constitution Court's Decision (water resource, telecommunication tower, local government-owned enterprise or BUMD, and transfer of affairs); and
4. Local regulations and other local leader regulations are deemed unnecessary because they are a community-wide norm (Agustino, 2017).

In Indonesia, based on legal norm level system (stufentheory), a product of legislation may not be in contradiction with the higher legislation, considering the local government's authority related to local autonomy, all regional authority of individual provincial and regency/municipal governments, whether compulsory or optional, can be the material contained in the Local Regulation as long as it is not in contradiction with the higher regulation

and public interest (University of Hasanuddin's Research Team, 2009).

The provision can be considered as a restricting framework or corridor in developing local regulation. This restricting framework is important to show that a region has the right or authority to govern its own domestic affairs, as included in the legal decision or local regulation. However, the authority is not in the sense of an independent and sovereign government unit, but remaining to be in the frame of unitary state and national legislation system [University of Hasanuddin's Research Team], 2009).

Local regulation is a form of local authorized ruler's decision that is written in the form of a regulation in a region. Article 14 of Law Number 12 of 2011 about the Development of Legislation mentions that the material contained in Provincial and Regency/Municipal Local Regulations concerns the organization of local autonomy and deconcentration duty and accommodates the region-specific conditions and/or further elaboration of higher legislation. Meanwhile, according to Soehino, material contained or matter governed by the local regulations is:

1. Materials or issues that impose a burden on the population, such as taxes and local retribution;
2. Materials or matters reducing people's freedom, for example, prohibitions and obligations, are usually followed by threats and criminal sanction;
3. Materials or matters limiting the people's rights, for example, concerning the publication of borderline during parking;

4. Other materials or matters specified in equivalent or higher legislation should be governed by local regulation (Soehino, 2008).

Therefore, according to Yance Arizone, viewed from the content aspect, local regulation is the one assuming most burdens. It is because, as the lowest regulation hierarchy of legislation, local regulation theoretically has a narrow flexibility level and thereby cannot deviate from the border of hundreds of national regulations (Arizona, 2007).

### **The Reinforcement of Local Institution in Supervising Local Regulation in Indonesia in 2020**

To undertake autonomy responsibly, it is highly desirable to strengthen local institutions in order to ensure successful local development in 2020 through local regulation products. Therefore, the central-local relationship has been reformed in the enactment of a decentralistic government system manifested in the Law about Local Autonomy (Yeremias T. Keban, 2007).

Similarly, it is also implemented in Semarang City, Central Java Province, in which governmental institutions implement their governance using "good governance," a set of modern governance principles that are based on three main elements, namely accountability, transparency, and public participation, particularly in the term of some supporting factors such as legislation and budgets (Martitah, 2013). In contrast, in Yogyakarta there is a lawsuit against the breaking of the general principle of good governance

through the Yogyakarta state administration court, in which the litigant's lawsuit underlies the judge's deliberation to grant the decision related to the breaking of the general principle of good governance (Eny Kusdarini, SH. M. Hum, Setiati Widiastuti, SH. M.HumIffah Nurhayati, 2013). For these reasons, local governments should develop local regulations with caution, particularly in terms of legislation and budgeting, keeping in mind that they are funded annually by the APBD (Local Income and Expense Budget).

Theoretically, there are fundamental basic elements in local government institutions; there are at least six fundamental basic elements in a building local government entity to enable it to implement its autonomy as the instrument of creating democratization process and wellbeing at the local level to the greatest extent possible. Therefore, those basic elements that create local government as a governmental entity should be understood philosophically (Oksep Adhayanto, 2015). They are:

- a. Decentralization refers to the process by which local authority to govern and deal with governmental affairs is delegated to a region by sharing governmental affairs between governmental levels; the central government does one thing and the regional (local) government does another.
- b. In the local institution in which this authority is impossible to implement when it is not accommodated in a local institution; in Indonesia, there are two

important institutions composing local government: an institution for political officials, the local leader institution (DPRD), and an institution for career officials, consisting of local apparatus (service, agency, office, secretariat, sub district, *kelurahan*, etc).

- c. Personnel: this element activates local institutions to run governmental affairs, becoming the domain of local government. Local personnel (local civil servants) in turn implement strategic public policy produced by officials (DPRD and Local Leader) to produce goods and services as the end product of local government.
- d. Viewed philosophically, local autonomy belongs to the people, but practically, it is impossible for the people to rule a country collectively. Therefore, people's representatives are elected to implement the people's mandate and to get legitimacy to act for and on behalf of local people. In the Indonesian government system, there are two types of institutions representing the people. Firstly, the DPRD is elected through a general election to do the local legislative function. Secondly, the local leader is elected through a local leader election.
- e. Public service is the end product of local government in which the availability of "goods and services" is divided into two, corresponding to the end product of local government. *Firstly*, local government produces public goods, i.e., goods for local regional interest, such as roads, bridges, irrigation,

school buildings, markets, terminals, hospitals, etc. *Secondly*, local government produces services related to public regulation, such as publishing birth certificates, identity cards, family cards, building construction permits, etc. Basically, public regulation is intended to create tranquility and orderliness within a community.

- f. From the argument about supervision, there is a predisposition to power abuse. Like Lord Acton's adage, "*Power tends to corrupt, and absolute power will corrupt absolutely.*" Therefore, to prevent this power abuse, this supervision element has a strategic position to create a clean and healthy government.
- g. The supervision conducted by local institutions plays a very important role. Furthermore, it is related to the regulation in the region that is required to be transparent, accountable, and with public participation to control it. The Legislative Assembly is an institution made up of independent public representatives given additional authority in 2019 to conduct supervision over local regulations. It is more closely related to the local institution in regulation supervision. Indonesia is a coastal state and should adhere to the above mentioned guidelines and standards in designing policies and regulations (Maasba *et al.*, 2018). A study conducted in the Philippines found that if his and the country's resolve to follow *daang matuwid* (straight and righteous path) saw

the transformation of damaged public institutions into more transparent and responsive ones (Villanueva, 2018). Indonesia has the same direction in the future.

## Conclusion

Supervision or control over governmental apparatus' actions is required to avoid deviation in the implementation of duty as specified to achieve the objective. Local governments should obligatorily implement good governance as mandated by the law in developing, evaluating, supervising, and socializing local regulations. A form of government supervision can result in the revocation of local regulations, and such supervision can be considered repressive in nature. Local autonomy spirit results in the improvement of Provincial and Regency/Municipal Local Regulation development and still generates some problems, so that the Local Regulation developed is revoked by the government and revised by the Ministry of Home Affairs. The basic elements in local government institutions are very desirable today to make the local regulations developed not revoked easily. At least six basic elements compose the local government entity to enable the local government to implement its autonomy optimally in 2020 and following years as an instrument of creating democratization and wellbeing at the local level: Governmental Affairs, Local Institution, Personnel, Local Representative, Public Service, and Supervision, and Local Representative Council.

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