

IMPLEMENTATION OF REGIONAL REGULATION IN SUPPORTING REGIONAL AUTONOMY

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Abstract: *In the atmosphere of regional autonomy, there are so many problems that are overwhelming the regions so that the regions will want to regulate and determine anything freely through regional regulations. In addition, the substance of regional autonomy is not clearly understood in its meaning so that at the level of its implementation many reap the error bias. This problem arises because of the tendency to think of some bureaucrats in South Tangerang City who consider that the main parameter determining the independence of a region in autonomy lies in the amount of Regional Own-Source Revenue. Another problem is juridical technical in the form of regulations which are used as a legal basis for the regions to collect the Regional Own-Source Revenue, both from taxes and from Regional Retribution. The research method used in this study is a normative juridical method that is in answering problems using a legal perspective based on applicable laws and regulations, to then be associated with the situation in the field related to the discussion of the problem. From the results of research on the regional regulations bill proposed by the regional government of South Tangerang City, particularly those related to regional taxes, have not paid attention to the principles of establishing good regional regulations, particularly the principle of transparency, because the purpose of forming regional regulations are all the same, namely in order to increase the regional own-source revenue in order to optimize the implementation of the regional autonomy.*

Keywords: Regional Taxes, Regional Autonomy, Bureaucrats

Research Area: Law

Paper Type: Research Paper

1. INTRODUCTION

Regional governments in the New Order era, both at Provincial and Regency/Municipality Levels mostly came from the central government, in the form of Autonomous Regional Subsidies (SDO), Presidential Instruction, and sectoral funds were allocated through the technical department's budget and a small portion came from PAD. All funds outside PAD are determined by the national government, the decision and its implementation become the national authority. A region receives these funds or not, everything highly depends on the national government. As a result, regions are unable to develop their autonomy creatively and innovatively.

In responding to these conditions, the national government published Law No. 23 of 2014 concerning Regional Government, which previously was Law No. 32 of 2004 concerning Regional Government. Regional Government Law 2014 and Law No. 33 of 2004 concerning Financial Balance Between the National and the Regions, fundamentally alter the financing model of the Regional Government, as set forth and contained in Article 282 of the Implementation of Funding Government Affairs in the Region. In paragraph (1) Administration of Government Affairs under the Regional Authority shall be funded from and at the expense of the Regional Budget, paragraph (2) regarding Administration of Government Affairs which becomes the authority of the National government in the Region shall be funded from and at the expense of the National Budget, and paragraph (3) regarding

Administration of funding for the administration of Government Affairs which is the authority of the Region as referred to in paragraph (1) shall be carried out separately from the administration of funding for the administration of Government Affairs which become the authority of the National government as referred to in paragraph (2). The basic concept of regional financing model according to both laws is an authority handover of regional governments either according to the principle of decentralization, deconcentration, and assistance tasks should be followed by adequate fees, devices, and personnel so that these regions are able to organize all the delegated authority.

Such budgeting model encourages the national government is no longer subjectively determining the funds, but allocating them on a proportional and rational basis to the regions so that the regional government is able to organize its autonomy on a creative and responsible manner. Referring to the funding structure, it is hoped that regional governments will be able to provide excellent services to the public which will lead to the creation of community welfare so that they can realize their good and transparent regional autonomy.

The realization of the regional autonomy occurs through the process of transferring a number of powers/authorities from the national government to regional governments where the implementation of decentralization requires the ability of the regions to finance the implementation of the power/authority they have. The most important source of financing is the source of financing called PAD (Regional Own-Source Revenue), where the main component is revenue originating from the regional tax and retribution components. There are several instruments that can be used by regional governments to cover all expenses charged to Regional Governments (Pemda) as a result of the delegated governance process.

All types of revenues the regional governments receive as well as all types of regional financing that they spend in implementing government tasks and development programs are clearly stated in a regional budget. Broadly speaking, these revenue sources can be classified into 2 (two) categories of financing sources. The first category is the income that the regional government receives from external sources. The second category is the revenue that the regional government receives from sources managed by the regional government itself (regional sources). This second category of revenue is the one that is explored and handled by the regional government itself from sources of revenue within its jurisdiction. Regional tax, as one component of regional sources, is a tax imposed by regional governments on residents who inhabit their jurisdiction, without directly receiving rewards given by regional governments that collect the regional taxes they pay.

However, the implementation of regional autonomy does not only bring about a series of fundamental changes in the administration of the regional governments but has also resulted in changes in the regional policy-making to support regional economic development. In a decentralized setting, so many problems are felt that weigh on the regions making them organize and establish anything independently through the regional regulations. In addition, the substance of the regional autonomy is not so clearly understood in terms of its meaning so that at the level of its implementation reaps many error biases. An obvious example is about Regional regulation on Taxes and Retributions, it is frequently not conducive to the regional economic activity as well as counterproductive to the interests of society towards the goal of the regional autonomy.

Regional Tax as one source of regional revenues from PAD, according to Article 8 of Law No. 33 of 2004 concerning Financial Balance between the National and Regional Government articulates with Article 285 paragraph (1) of Law No. 23 of 2014 confirming:

Regional revenue sources consist of regional own-source revenue including 1) regional taxes; 2) regional retributions; 3) results of the management of separated Regional assets; and 4) other legal PAD shall be stipulated by Law, whose implementation in the regions shall be further regulated by regional regulations. Those both Articles are affirmations of what governed by a written constitution, the 1945 Constitution from results of amendments, in particular, Article 23A asserting that "taxes and other compelling charges for the purposes of State shall be governed by Law."

The relevance of the two laws mentioned above reflects that the collection of regional taxes can increase the income of the region. Particularly in the era of the regional autonomy, where regions need huge funds to implement the tasks of government and development while the sources of funding, both from the national government or others, are very limited. This underlies tax collections; regions are also encouraged to give birth to creativity in establishing sources of funding that can support the needs of governance and development expenditures. This is where the regulating function plays, where the government can regulate tax collection schemes with high tax collection on community activities that are less needed. Conversely, for activities that are frequently carried out and develop community productivity are subject to a small nominal tax. Various types of funding sources also encourage increased implementation of development in the regions and the provision of services to the community, so that each region must be able to increase the regional revenue from the results of regional taxes and retributions.

The same is implemented by the Government of South Tangerang City of Banten Province, as a policymaker to make different regulations at the regional level as a form of manifestation and decentralization policy in fiscal as referred to in Law Number 28 of 2009 concerning Regional Taxes and Retributions, which are enforced for supporting the increase in the Regional Own-Source Revenue, which ultimately it can support the regional development. The reason for this is to consider that in order to achieve development and progress in the economic field as expected it would require very strong support. Funding support is a driver of development, including regional development.

One of the problems South Tangerang City encounters is about efforts to increase the Regional Revenue. This problem arises because of the tendency to think of some bureaucrats in South Tangerang City who consider that the main parameter determining the independence of a region in autonomy lies in the amount of PAD. The tendency of thought can be understood as the historical perspective of the regional governments that reveal the cause of confinement in the regions both politically and economically through regulatory instruments of the regional government, namely Law No. 5 of 1974 concerning the Principles of Regional Government and all implementing regulations. These regulatory instruments restrict the authority of the regions to grow and develop in order to explore all strategic economic potential in the regions.

This shows that a large portion of the Regional Budget (APBD) originates from the national government aids. A huge financial aid provides a greater opportunity for regions to carry out the various tasks of service to the community, but the financial dependence raises due to the implementation of the regional autonomy is not fully run, and on the other hand invites the strong intervention - the national government in the administration of the regional domestic affairs. Apart from the issue of limited authority in mobilizing sources of tax and retribution funds, there are also technical juridical issues, which are in the form of regulations used as a legal basis for the regions to collect PAD, both from regional taxes and retributions Regional governments in the New Order era, both at Provincial and Regency/Municipality Levels mostly came from the central government, in the form of Autonomous Regional

Subsidies (SDO), Presidential Instruction, and sectoral funds were allocated through the technical department's budget and a small portion came from PAD. All funds outside PAD (Kusnandar, et al, 2009) are determined by the national government, the decision and its implementation become the national authority. A region receives these funds or not, everything highly depends on the national government. As a result, regions are unable to develop their autonomy creatively and innovatively.

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2. RESEARCH METHOD

As it is known that the Legal Studies recognizes two types of research, namely the normative legal research and empirical legal research. According to Marzuki (2010), normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced. Then this type of research used in this study is a normative legal research, the legal materials source and data type used primary legal materials covering Act of 1945, Act No. 32 of 2004 concerning Regional Government, Act No. 33 of 2004 concerning Financial Balance between National and Regional Governments, Act No. 28 of 2009 concerning Regional Taxes and Regional Retributions and Act No. 23 of 2014 concerning Regional Government. While the secondary legal materials sourced from books and journals. Data analysis using descriptive-analytic research is the description of what the condition exists or propositions position of law or non-law in a way to evaluate, interpret, construct and provide an argument based on reasons that are legal reasoning.

3. DISCUSSION

3.1 Principles for Establishing Good Regulations in Supporting the Implementation of Regional Autonomy in South Tangerang City

From the research results of a researcher in the regional government of South Tangerang City, it shows that the process of establishing regional regulations (Perda) of South Tangerang City starts from the process of preparing the regional regulation bills, submitting the regional regulation bills, discussing the regional regulation bills until approval and stipulating them as regional regulations during the session period of 2010 and 2011.

The regional regulations (Perda) of South Tangerang City created during the period are, as follows:

- a. Regional Regulation on the Regional Symbol of South Tangerang City;
- b. Regional Regulation on South Tangerang City Anniversary;

¹ The Regional Budget (APBD) is an annual financial plan for regional governments in Indonesia under approval of the Regional House of Representatives. APBD is stipulated by a Regional Regulation. APBD fiscal year covers a period of one year, starting from January 1 to December 31.

- c. Regional Regulation on SOTK;
- d. Regional Regulation on Health Retributions;
- e. Regional Regulation on Manpower Organization.
- f. Regional Regulation on Regional Taxes;
- g. Regional Regulation on HO Retributions;
- h. Regional Regulation on the Implementation of Communication and Information Technology;
- i. Regional Regulation on Transportation Organization;
- j. Regional Regulation on Protocol and Finance of DPRD Leaders and Members;
- k. Regional Regulation on Government Affairs;
- l. Regional Regulation on Population Administration;
- m. Regional Regulation on Management of Regional Property;
- n. Regional Regulation on Education Organization;
- o. Regional Regulation on Building Construction Permit Retributions;
- p. Regional Regulation on Regional Financial Management; and
- q. Regional Regulation on Regional Medium-Term Development Plan (RPJMD).

After conducting research on the regional regulation bills proposed by the regional government of South Tangerang City, particularly those relating to regional taxes, such regional regulations *have not paid attention to the principles of establishing good regional regulations*, because the purposes of establishing regional regulations are all the same, namely in the context of increasing PAD to optimize the implementation of the regional autonomy.

One of the principles that generally fails to get the attention of regional drafters is the principle of transparency because the community participation is not involved in drafting the regional regulations and also the clarity of the formula has not been fulfilled because there are still contents of articles that are unclear that are not followed by any elucidations either specified general as well as in the elucidations of the regulations which are generally written quite clearly.

Article 69 of Law Number 22 of 1999 concerning Regional Government, states that "Regional Heads shall stipulate regional regulations with the approval of the Regional House of Representatives in the context of implementing the regional autonomy and further elaboration of the higher statutory regulations". In Law Number 32 of 2004 concerning Regional Government, Article 136 paragraph (1) states that the Regional Regulation shall be stipulated by the regional heads after obtaining joint approvals with the Regional House of Representatives. The meaning of "joint approvals" in this Article does not always mean to "approve", but it can also be interpreted as to "disapprove". Disapprovals can occur when the Regional House of Representatives and the Regional Government do not agree on the substance regulated in the Bills or the regional regulation bills.

Regional regulations as a legal umbrella in the implementation of the regional autonomy aim to regulate the substance of the content in accordance with the regional conditions. Thus, it must not be based on higher regulations (national level), but can also create rules in accordance with the needs of each region in the framework of implementing the regional autonomy provided that the rules do not conflict with higher regulations. In the regional regulations established to carry out the regional autonomy, the object of the regulation includes both the substantive and technical nature of the procedures for their implementation.

In South Tangerang City, each product of the regional regulation law, the purpose of establishing regional regulations, in general, can be seen in the considerations and general elucidation of the regional regulations. The results showed that in the regional regulation legal products in South Tangerang City during the session period of 2010 and 2011, it was disclosed that the regional regulation bills submitted by the regional government to South Tangerang City Regional House of Representative to be discussed together, was later stipulated as Regional Regulations in each consideration and general elucidations, the purpose of establishing regional regulations are:

- a. In the framework of implementing broader, tangible, and accountable regional autonomy, improving the administration of government, implementing efficient and effective development and services of the community;
- b. To regulate authority which is the function of the regency/city-regional government;
- c. Guidance and supervision in the implementation of authority that becomes the regency/city government affairs;
- d. Increased regional own-source revenues.

When viewed from the aspect of implementing the "principle of clarity of purpose" in the establishment of laws and regulations, the establishment of those seventeenth regional regulations mentioned above, show that the objectives to achieve is very diverse. In such a context, the *purpose of establishing regional regulations is again unclear whether in the context of improving services, regulating authority, fostering, and controlling or increasing regional revenues*. At first glance, the drafting of the regional regulations seems to aim at accumulating various objectives simultaneously, but when examining all in the implementation the most prominent is in the context of increasing the regional own-source revenues of the region to support the implementation of the regional autonomy.

4. CONCLUSION

South Tangerang City Government seems to intend to establish the regional regulations, particularly regional regulations governing taxes and retributions as means of generating monies to fill the regional treasury. Through the legal umbrella of the regional regulations of South Tangerang City, the Government expects to increase the regional revenue in the context of implementing development in the region and increasing services to the community. It should be noted by the regional government of South Tangerang City that each regional regulation (Perda) formation follows the principles of establishing laws and regulations, particularly the material content of laws and regulations, so that the material contained in the regional regulations does not overlap with higher regulations and in accordance with the regency/city government authority. The Regional Government of South Tangerang City needs to implement a tax policy (Fiscal Policy) against investors by providing incentives/stimuli in the form of tax exemptions (Tax Holiday) or tax reduction which later it can be expected that many foreign investors will invest their capital, particularly in the service and trade area.

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