

Strengthening Regional House of Representatives Legislative Function Based on Local Autonomy Principle

Jumahari Jahidin

(Universitas 17 Agustus 1945 Jakarta)

Tuti Widyaningrum

(Universitas 17 Agustus 1945 Jakarta)

Abstract

According to article 1 paragraph (1) of the Constitution of the Republic of Indonesia of 1945, Indonesia is a unitary republic. The power of the Unitary State of the Republic of Indonesia is focused on the central government. A centralistic state power structure characterizes all unitary states, including the Republic of Indonesia. As the period progressed, Government's mission has become more extensive and complicated. It was caused due to several factors including population growth and the government's intervention in the people's prosperity. To handle this, the state must develop government apparatus at a regional level that is not limited to the central government. The development of these tools has to be based on the concept of autonomy. In performing its duties as the apparatus of the government, the regional administration consists of the regional head and the Regional House of Representatives. In the Law Number 23 of 2014 concerning Regional Administration, the Regional House of Representatives has legislation, budgeting, and supervision function. However, during its progression, the Regional House of Representatives' performance has not been optimal in fulfilling its function as a legislature. Therefore, based on the given matter, the following problem is formulated: How to strengthen the Regional House of Representatives legislative role in accordance with the concept of local autonomy? This study employs a juridical-normative method. Based on the study, the following conclusions were drawn: (1) The Regional House of Representatives legislative role has been weakened after Law Number 17 Year 2014 concerning Regional Administration, which allows them to perform its duties with the help of or in collaboration with the regional head. On the other hand, the Law Number 32 of 2004 concerning Regional Administration stipulates the Regional House of Representatives in determining regional regulation. The Regional House of Representatives is responsible for the formulation of laws and regulations, which is essentially a legislative role in terms of regional government implementation. In reality, the executive branch, which is the regional head, collaborates with the Regional House of Representatives to formulate a regional regulation. However, in the Law Number 32 of 2004 concerning Regional Administration, the Regional House of Representatives only meets with the regional head to discuss and get approval in the formulation of regional regulation. However, under the Law Number 17 of 2014 concerning Regional Administration, the regional head collaborates with the Regional House of Representatives to formulate a regional regulation. (2) The Regional House of Representatives, in collaboration with the regional head, manages regional administration affairs based on autonomy principle in the broadest sense possible. Autonomy is being implemented to improve public welfare, public services, and regional competitiveness. In order to do this, the Regional House of Representatives drafts a regional regulation that is approved by the regional head jointly. To formulate a regional regulation that can improve public welfare, public services, and regional competitiveness, this process should involve the community.

Keyword: Regional House of Representatives, Regional Regulation, regional regulation, Unitary State of the Republic of Indonesia, autonomy principle

1. Introduction

According to article 1 paragraph (1) of the Constitution of the Republic of Indonesia of 1945, Indonesia is a unitary republic. The power of the Unitary State of the Republic of Indonesia is centered on the central government. A centralistic state power structure characterizes all unitary states, including the Republic of Indonesia. It is in accordance with the opinion of a political science expert, Miriam Budiardjo, who stated that the essence of a unitary state is that its sovereignty is not divided and the power of the central government is not limited by the

constitution because a unitary state does not recognize any other legislative body other than the central legislative body.¹

Within the Unitary State of the Republic of Indonesia, as governed in the 1945 Constitution of the Republic of Indonesia, state power that is centralized in the hands of the central government can be viewed as a means of handing over state power to the central government. As an affirmation of the centralization of power as the nature of the form of the Unitary State, the opinion of Astim Riyanto, a constitutional expert, is cited. He shared his opinion regarding the key characteristics of the nature of the form of the unitary state with centralization.²

According to the classical theory on a unitary state form, the characteristic of a unitary state is that it is managed in a centralized manner.³ In the past, the centralization of power as a means of organizing power in a unitary state could be done when its scope was still limited or not too complicated. In this case, the central government can centrally coordinate all of the community's interests and representatives due to the restricted scope of government (state) duties. Such circumstances existed in the past during Western Europe's liberal law state era. Related to the government's duties in the era of a liberal law state, Kusnardi and Ibrahim explain that the state's responsibility is only to protect people's rights so that they are not disturbed or violated and the state must not intervene in the welfare of the people.⁴ As previously mentioned, the central government's organizational structure is still very basic due to the restricted scope of government activities.

Government duties have become more comprehensive and complicated as the period progresses. Apart from the rise in population due to the government's intervention in matters of the people's welfare, it is also caused by numerous factors such as population growth and others. In this case, related to that matter, Kusnardi and Harmaily explain that community development requires the state to interfere with the public interest.⁵ As a result, the government is unable to centrally govern and coordinate all of these individuals' affairs and interests.

The state or the government task scope is getting diverse and complex if a unitary state has a large area to cover and has a large population, such as Indonesia. In such a condition, a government may not be able to be controlled and administered by an apparatus that is only located in the central government.⁶ In addition to the apparatus that is located at the center of the government, the central government apparatus that is assigned to the regions needs to be procured and distributed throughout the state to settle regional affairs.⁷ As has been mentioned before, the establishment of the local apparatus can be based on two methods of division of power. First, the establishment of a local government apparatus that is conducted based on the deconcentration method.⁸ The deconcentration process produces administrative local government as a part of the central government. Second, the establishment of the local apparatus based on the decentralization method.⁹ This method produces an autonomous regional government with its authority.

It is difficult to administer and carry out all government affairs or activities in a centralized manner in a unitary state with a large area and population such as Indonesia. Therefore, a regional administration with an independent (autonomous) authority is needed. The establishment of regional administration with their power represents a form of decentralization in which power is distributed from the central government to regional governments. Bagir Manan believes that by considering the state territory and pluralism that has been provided earlier and the desire to allow regions and various legal community units to develop independently, in a unitary state of Indonesia, it is necessary to establish a new government that is based on decentralization and autonomy.¹⁰

The principle of autonomy as the main or foundation of the process of decentralization of power (a division of power) from the central government to the regional administration (local government) within the framework of the Unitary State of the Republic of Indonesia is stipulated in the 1945 Constitution as the basis of the Republic of Indonesia's constitution, particularly in Article 18 paragraph (1). Related to the autonomous region, Article 18

¹ Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Jakarta: Gramedia Pustaka Utama, 2008).

² Astim Riyanto, *Teori Konstitusi* (Bandung: Yapemdo, 2009).

³ Haji Abdurrahman, *Beberapa Pemikiran Tentang Otonomi Daerah* (Jakarta: Media Sarana, 1987).

⁴ Mohamad Kusnardi and Harmaily Ibrahim, *Pengantar Hukum Tata Negara Indonesia* (Jakarta: Pusat Studi Tata Negara Fakultas hukum Universitas Indonesia, 1981).

⁵ *Ibid.*

⁶ R. Joeniarto, *Perkembangan Pemerintah Lokal* (Jakarta: Bumi Aksara, 1992).

⁷ *Ibid.*

⁸ Amrah Muslimin, *Aspek-Aspek Hukum Otonomi Daerah* (Bandung: Alumni, 1986).

⁹ H. Siswanto Sunarno, *Hukum Pemerintahan Daerah Di Indonesia* (Jakarta: Sinar Grafika, 2006).

¹⁰ Bagir Manan, *Menyongsong Fajar Otonomi Daerah* (Yogyakarta: Pusat Studi Hukum, Fakultas Hukum, Universitas Islam Indonesia, 2001).

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paragraph (2) of the 1945 Constitution further states that provincial, regency and city governments shall regulate and manage their government affairs by themselves according to the principle of autonomy and assistance.

As a logical consequence of Article 18 paragraph (2) of the 1945 Constitution, each autonomous regional government must have its apparatus with legislative regulations governing its duties and authorities. The above-mentioned provision for autonomous regional governments to have their apparatus is an absolute requirement that cannot be negotiated or ignored and must be implemented. The formation of structures and procedures for administering the governance in an autonomous region is stipulated by a special law established to regulate the composition of the regional administration. Article 18 paragraph (7) of the 1945 Constitution determines that the structure and administrative mechanisms of regional administration shall be regulated by law. The relevant legislation is Law Number 32 of 2004 on Regional Administration, which was revised into the Law Number 23 of 2014 on Regional Administration.

The regional government is the administration of government affairs by the regional administration and the Regional House of Representatives in accordance with the concept of autonomy and the role of establishing the Republic of Indonesia's structure and values with the broadest possible autonomy principle. Local authorities are implementing autonomy to improve public welfare, public services, and regional competitiveness. On the other hand, the local authorities include governor, regent or mayor, and regional apparatuses as elements of regional government administration.

The regional government and the Regional House of Representatives are the administrators of regional government as stipulated by Article 19 paragraph (2) of the Law Number 32 of 2004 concerning Regional Administration. Meanwhile, the most recent law, which is Law Number 23 of the 2014 concerning Regional Administration, clarifies government administrators more clearly. These regulations stipulate that the implementation of provincial and district/city government is done by the regional head and Regional House of Representatives with the assistance of regional apparatus. Based on the law, regional administration is implemented at two levels: the regional head and the Provincial House of Representatives, as well as the head or the city/regency house of representatives. In terms of regional administration, this study only focuses on the provincial and district/city house of representatives.

The Regional House of Representatives as a component of regional government administration has legislation, budgeting, and supervision roles. This study focuses on the Regional House of Representatives legislative role. Essentially, the purpose of the legislature is to create regional regulation. Ideally, the Regional House of Representatives legislative role should be able to establish an aspirational and sensitive regional regulation as its obligation as well as the authority held by lawmakers since granting authority to stipulate a regional regulation is an attempt to offer power to the area based on its localization conditions.¹¹

In relation to the Regional House of Representatives' authority as a lawmaker to be able to formulate regional regulations, there are gaps in the duties and powers of the Regional House of Representatives in the Law Number 32 of 2004 concerning Regional Administration and the Law Number 23 of 2014 concerning Regional Administration. In the Law Number 32 of 2004, it is stipulated that one of the Regional House of Representatives' duties and authority is to draft a regional regulation that is required to be discussed with the regional head for mutual approval. In a nutshell, the Regional House of Representatives has to appear before the regional head solely to discuss the regional regulations and obtain reciprocal approval. On the other hand, according to the Law Number 23 of 2014 on Regional Administration, one of the Regional House of Representatives' duties and authorities is to establish a regional regulation with the regional head in which the Regional House of Representatives have to meet with the regional head to negotiate, seek their approval, and form the regulation together.

As specified in the Law Number 23 of 2014 concerning Regional Administration, regional regulations are established by: discussing with the regional head and whether it is approved or not; making a request for the regulation draft; preparing a plan for the development of a regional regulation framework. On the other hand, The Regional House of Representatives must be able to capture the people's desires to carry out its functions. The creation of regional regulation does not include community engagement, while autonomous regions are responsible for regulating and managing the interests of their local community. As regulated in Article 354 (1) of

¹¹ Aris Joko Susilo, Tedi Erviantono, and Bandiyah, "Analisis Kinerja Legislasi Dewan Perwakilan Rakyat Daerah Periode Tahun 2009-2014 (Studi Kasus: Kabupaten Tolitoli, Sulawesi Tengah)," *Jurnal FISIP Universitas Udayana* 1, no. 2 (2015): 1-14, <https://ojs.unud.ac.id/index.php/citizen/article/view/14186>.

the Law Number 23 of 2014, in the regional administration, local government has to encourage public participation.

In terms of the Regional House of Representatives legislative role, the body has had a crisis in public perception and confidence. Various groups, including workers, teachers, students, intellectuals, and the general public, have made various criticisms and grievances to them. There was also a joke that Regional House of Representatives members had been seized and contaminated with the "5Ds" disease (datang (arriving), daftar (clocking in), duduk (sitting), diam (not doing anything), duit (receiving money)), implying that Regional House of Representatives is useless.¹² This impression is based on the reality where many people decide to bring their problem to the representative in Jakarta, which is seen as more representative and welcoming.¹³

The aforementioned matters contradict their duties and authorities as stated in the Law Number 17 of 2014 concerning the People's Consultative Assembly, House of Representatives, Regional Representative Council, and Regional House of Representatives. Indeed, as members of representatives at the provincial and regency/city levels, the Regional House of Representatives is expected to optimize its legislative role to fulfill all of the regional community's aspirations and improve the local community's welfare. Therefore, based on the aforementioned description, the study entitled "Strengthening Regional House of Representatives Legislative Function Based on Local Autonomy Principle" is written.

2. Formulation of the Problem

Based on the explanation above, the following problem is formulated: How to strengthen the legislative function of the Regional House of Representatives based on the principle of regional autonomy?

3. Methodology

This study employs a juridical-normative method. In this type of study, the law is often conceptualized as what is written in legislation or as what is conceptualized as standards or guidelines that are human benchmarks for acceptable behavior.¹⁴

4. Discussion

4.1 Decentralization Produces Autonomous Regional Government

It is important to define the concept of decentralization that plays a role in organizing the positions of the public and regional government, both executive and legislative, before understanding the legislative function of the Regional House of Representatives, local level legislature, or autonomous Regional House of Representatives. Therefore, it is important to discuss some philosophical studies provided by experts on decentralization. According to Riswandha, decentralization has resulted in local governance and authority separation and the availability of sufficient space to perceive the authority delegated to the lower government units.¹⁵ On the other hand, Smith on Syarif Hidayat, explained decentralization as the transfer of power, from top-level to lower level, in a territorial hierarchy, which could be one of government within a state or offices within a large organization.¹⁶

According to the Law Number 23 of 2014 concerning Regional Administration, decentralization is a transfer of government affairs from the central government to autonomous regions based on the principle of autonomy. In this regard, Article 18 paragraph (5) of the 1945 Constitution explains that regional governments exercise wide-ranging autonomy. Although exercise wide-ranging autonomy, in a unitary state, they function as one unit with the national government. The difference is the utilization of local experience, potential, innovation, competitiveness, and creativity to achieve these national goals at the local level.

As a legal community entity with autonomy, the regional government has the authority to regulate and administer its territory in accordance with its people's preferences and interests as long as this does not interfere with the

¹² Wiyanto, "Pelaksanaan Fungsi Dewan Perwakilan Rakyat Daerah (Studi Tentang Efektifitas Hukum/Hasil Penelitian)," *Cakrawala Hukum* 16, no. 42 (2014): 68–70.

¹³ *Ibid.*

¹⁴ Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2004).

¹⁵ Riswandha Himawan, "Desentralisasi, Demokratisasi Dan Pembentukan Good Governance," in *Desentralisasi & Otonomi Daerah: Desentralisasi, Demokratisasi & Akuntabilitas Pemerintah Daerah*, ed. Syamsuddin Haris (Jakarta: LIPI Press, 2005), 416.

¹⁶ Syarif Hidayat, "Desentralisasi Dan Otonomi Daerah Dalam Perspektif State-Society Relation," *Poetik* 1, no. 1 (2008): 1–28.

national legal order or the public interest. To give the regional government a wide-ranging autonomy to regulate and manage the lives of its people, they must pay attention to local wisdom and vice versa when creating regional policies in the form of regional regulations and others. They should also consider the national interest when forming regional policies in the form of regional regulations and others.

The nature of regional autonomy is that the people as a legal community unit are provided with authority by the central government to regulate and manage its government affairs where the regional head and the Regional House of Representatives assisting in its implementation. The administration of local governments differs from the central government that consists of the executive, legislative, and judicial bodies. The Regional House of Representatives and the regional head are in charge of implementing regional administration. As a result, the Regional House of Representatives and the regional head are considered equal components of regional government administration. However, despite having an equal position, the Regional House of Representatives and the regional head have different functions. The roles of the Regional House of Representatives are to draft regional regulation, to control the budget, and to supervise. On the other hand, the regional head is in charge of putting regional regulation and legislation into action.

The Regional House of Representatives functions are specified in the Article 96 of Law Number 23 of 2014 concerning Regional Administration and Articles 316 and 365 of the Law Number 17 of 2014 regarding People's Consultative Assembly, House of Representatives, Regional Representative Council, and Regional House of Representatives, stating that it has legislative, budgeting, and supervising functions. Regional House of Representatives functions are being implemented to represent its people at the provincial and regency/city levels.

4.2 Legislative Function of Regional House of Representatives

Woodrow Wilson stated that "legislation is an aggregate, not a simple production".¹⁷ Furthermore, Jimly Assiddiqie explains that the legislative role involves four types of activity: legislative initiation, the law-making process, law enactment approval, and binding decision making on international law agreements and treaties other legally binding documents.¹⁸

The legislative function is a method of accommodating the various stakeholder's interests in deciding how regional development will be managed. Therefore, by implementing its legislative function, it can affect the character and profile of the region through regional regulations as its product. In addition, regional regulation is a joint commitment between the Regional House of Representatives and the regional head with coercive power as a regional law commodity. Thus, legislation has a critical role in establishing the desired conditions in a society.

The Regional House of Representatives is in a strategic role since it can decide the region's sustainability and future through its legislative authority. It should be considered as a mandate from the people to them to fight for and to improve the people's welfare. However, in reality, it shows that the creation of regional regulation is dominated by the regional head. It indicates that the draft of the regulation is not compiled by the Regional House of Representatives as a legislative body.

The people have mandated regional government and Regional House of Representatives as components of regional administration to exercise the delegated administration to the regions. The Regional House of Representatives and regional heads must increase the involvement of the people in a policymaking process because they have been entrusted with a mandate by them. Similarly, in the process of formulating regional regulations, the fact that the Regional House of Representatives and regional heads have been given a mandate by the people should be a consideration to increase community participation in the regional regulation development process, both in terms of quantity and quality. However, many studies show that people's involvement in the regional regulation development process has remained low. As a result, many regional regulations are considered "problematic" because, in practice, they restrict or increase the responsibilities of people in the region that are not governed by higher laws and regulations (both the Constitution and the Law).¹⁹

4.3 Strengthening Regional House of Representatives Legislative Function in Regional Autonomy

The legislative function of the Regional House of Representatives is one of their three functions, especially after the wide-ranging autonomy was granted in accordance with Article 18 paragraph (5) of the 1945 Constitution that

¹⁷ Jimly Assiddiqie, *Perihal Undang Undang* (Jakarta: Konstitusi Press, 2006).

¹⁸ *Ibid.* 34

¹⁹ R. Siti Zuhro", *Kisruh Peraturan Daerah: Mengurai Masalah Dan Solusinya* (Yogyakarta: Ombak, 2010).

was continued in the Law Number 22 of 1999, as amended by Law Number 32 of 2004, and finally amended by the Law Number 23 of 2014 concerning Regional Administration. By delegating the authority to regulate and manage its regional government affairs, it has direct implications for the dynamics of regional regulations.

Normatively, the Regional House of Representatives and the regional head share authority in the development of regional regulations, but it is still indicated that the development has to be managed by the Regional House of Representatives. This is in accordance with Article 62 of Law Number 12 of 2011 on the formulation of regulatory. The aforementioned Article 62 only applies to DPRD at the Regional House of Representatives at a provincial level where the mentioned regional head is the governor. On the other hand, while at the regency/city level, as stated in Article 63 of Law Number 12 of 2011, "the provisions regarding the formulation of Provincial Regulations as referred to in Article 56 to Article 62 of Law Number 12 of 2011 shall apply *mutatis mutandis* to the preparation of regency/city regional regulations".

After the issuance, the Law Number 17 of 2014 is deemed reducing the authority of the legislative function of Regional House of Representatives at the provincial or regency/city levels because in developing provincial or regency/city regional regulations, they have to collaborate with the governor at the provincial level and the regent/mayor at the regency/city level. This is in contrast to the Law Number 32 of 2004, stating that the Regional House of Representatives creates a regional regulation that is discussed with the regional head to arrive at a mutual agreement. The distinction is obvious based on this. According to the Law Number 17 of 2014, the Regional House of Representatives develops a regional regulation with the support of the regional head, implying that the regional head also has a legislative function. On the other hand, in the Law Number 32 of 2004, the Regional House of Representatives does not require regional heads in developing a regional regulation. In this case, the regional head exists to approve the regulation that has been addressed. Therefore, it can be seen that the most recent law on regional administration dilutes the essence of their legislative role.

The Regional House of Representatives is a component that, in collaboration with the regional head, administers regional administration. However, even though the Regional House of Representatives and the regional head are components of regional administration, they have a different function. The roles of the Regional House of Representatives are to draft regional regulation, to control the budget, and to supervise. On the other hand, the regional head is in charge of putting regional regulation and legislation into action. In other words, the Regional House of Representatives has more authority than the region in developing regional regulations. To establishing legal products, the Regional House of Representatives must take advantage of each region's wisdom, potential, innovation, competitiveness, and creativity as a differentiator between the House of Representatives legislative function and the Regional House of Representatives' role as the organizer of the regional administration.

Ideally, the Regional House of Representatives legislative role should be able to establish an aspirational and sensitive regional regulation as its obligation as well as the authority held by lawmakers since granting authority to stipulate a regional regulation is an attempt to offer power to the area based on its localization conditions. In reality, to create an aspirational and responsive regulation, the formulation of regional regulations does not base on public participation. This is in accordance with Article 354 (1) of the Law Number 23 of 2014, which states that in the regional administration, the local government encourages public participation. This is supported by the fact that there are no provisions in the Law Number 23 of 2014 concerning Regional Administration that enable region regulation to involve the people by promoting community involvement in its development.

Article 96 paragraph (3) of Law Number 23 of 2014 states that to carry out its functions, people's aspiration is taking into account by the in the Regional House of Representatives. However, the notion about taking people aspirations into account is not mentioned in Article 97, which states that the function of regional regulation formation as referred to in Article 96 paragraph (1) letter a is implemented by: (a) discussing with the governor and approve or not approve the regulation draft; (b) proposing the provincial regulation draft, and (c) developing the regulation programs formation with the governor. Similarly in Article 101 concerning responsibilities and authorities does not specify that the Regional House of Representatives has the responsibility or authority to take people's aspirations into account. This also applies to the Regency/City House of Representatives in performing their regency/city level administration.

5. Conclusion

Based on the discussion, several conclusions can be drawn. The Regional House of Representatives, with the regional head, implement regional government policies based on wide-ranging autonomy. Autonomy is being implemented to improve public welfare, public services, and regional competitiveness. In order to do this, the Regional House of Representatives drafts a regional regulation that is approved by the regional head jointly. To

formulate a regional regulation that can improve public welfare, public services, and regional competitiveness, this process should involve the people.

In addition, the Regional House of Representatives also must be able to balance its executive's position by consistently implementing the Regional Legislation Program (Promega, Program Legislasi Daerah). The compiled Prolegda must serve as a guideline for the formulation of laws and regulations so that instead of a wish list, it will create a list of legislative criteria that the community truly requires. In terms of feedback for its preparation, the Regional House of Representatives needs to create a special working group to gather and process the people's aspirations through their commissions so that it is in line with the people's needs.

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