

THE ESTABLISHMENT OF PARTICIPATORY REGIONAL REGULATIONS BASED ON LOCAL WISDOM

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Abstract

Purpose of Study: The research aimed to describe the Participatory Regional Regulation based local wisdom and to formulate the model of the participatory regional regulation in the future based on the concept of the Unitary State of the Republic of Indonesia. The regional regulations created by the local governments should involve the local community by raising the local wisdom of the respective region by considering the potential of conflict with the laws and regulations so that they will have the impunity power of being obeyed by the community since they provide impacts for the community tranquility and welfare. The differences among the regional regulation of each region are the manifestation of Bhineka Tunggal Ika, 2) The participatory regional regulation based on local wisdom is prepared for the future by accommodating the strength of society autonomy and organizations of interest by placing them in a more adequate position in the context of promoting the growth of civil society such as by providing the public with access to public information, access to participation and access to justice so that the role of society can be manifested in various forms, including the process of decision-making, management, and control.

Methodology: The research method was qualitative with the empirical juridical approach. The research gives a contribution to the regional Government to ensure regional autonomy as mandated by the Constitution of 1945 can run properly.

Results: The results of the discussion included: 1) the community upheaval that occurs due to the enforcement of local regulation is assumed as the decline of national democracy.

Implications/Applications: The regional regulations are derived from the thought rooted in participatory approaches as the implication of the efforts to enact a democratic development model based on democracy; hence, they must be done by reforming the regulations that situate law within the community and humanity as the main focus.

Keywords: *Regional Regulation, Local Wisdom, Participatory*

INTRODUCTION

The Indonesian constitution clearly mandates that the special form of the Unitary State of the Republic of Indonesia cannot be changed. ([Constitution of Indonesia 1945](#)) It can be interpreted that Indonesia as the form of the Unitary State will never be changed. In fact, Indonesia is a country consisting of various tribes with different languages and cultures. Meanwhile, in the Article 32 (1) Constitution, 1945 is also mandated to promote the national culture of Indonesia in the midst of the civilization of the world by ensuring the freedom of society in maintaining and developing its cultural values.

The solution of these issues, which is in the Article 18 Constitution of 1945 which states that every local government is given full authority to regulate its region in which each of them has the local wisdom related to the different identities and cultures. Inevitably, the model of one local regulation will be different from other regions adjusting the local wisdom of each region. The motto Bhineka Tunggal Ika can represent the ideas above.

In the Bhineka Tunggal Ika concept, the local regulation should be a reflection of the way of life for grassroots which encompasses the culture and identity of the area. Therefore, it is possible if the local regulation will be different in each region. In addition, society participation should also be involved in the arrangement of local regulation so that the local regulation is established because of the society's necessity for the current culture and identity.

Some of the regional regulations are based on local wisdom and involve the society participation is The Regional Regulation of Surakarta Number 3 of 2008 on Management of Street Vendors and The Regional Regulation of Nusa Tenggara Province Number 2 of 2016 on Halal Tourism. In addition, there are still found the nonparticipatory local the local regulation of Brebes regency number 2 of 2011 on Spatial Plan of Brebes regency in 2010-2030 and the regional regulation of Gowa Regency number 5 of 2016 on Structuring customary institutions and local culture.

The Office of House of Regional Representative in Gowa regency was burned after the regent issued the regional regulation

number 5 of 2016 on Structuring customary institutions and local culture of Gowa regency. The kingdom urged the Gowa parliament to revoke the law because it violates the rules of the kingdom that has been prevailing and growing in society. (<https://m.tempco.co/read/news/2016/09/26/058807373/tolak-perda-lembaga-adat-massa-bakar-gedung-dprd-gow> a) It indicates that the process of forming the regional regulation does not involve the participatory of society so that the regional regulation that should function to curb instead causing riots in the community.

Based on the background above, the problem statements in this research are How is the overview of the Participatory Regional Regulations based on local wisdom in the frame of the Unitary State of Republic of Indonesia? And How is the formulation of a model of the Participatory Regional Regulation for the future based on the local wisdom in the frame of the Unitary State of Republic of Indonesia?

METHODS

This study is a qualitative study with a normative juridical approach. It used a case study with purposive sampling with population is autonomy local governments that are indicated to create and establish regional regulations based on local wisdom and those that exclude local wisdom as the comparison. The research determined the samples, namely NTB Province, Surakarta City, Brebes Regency, and Gowa Regency. To analyze the results of the field study, a descriptive qualitative method was employed to describe the effectiveness of the implementation of Participatory Regional Regulation based on local wisdom. The result of the analysis was then formulated into a model of Participatory Local Regulation based on the concept of the Unitary State of the Republic of Indonesia.

RESEARCH RESULTS AND DISCUSSION

The Concept of the Participatory Regional Regulation Based on Local Wisdom in The Unitary State of The Republic of Indonesia

The Regional Regulation of Surakarta No. 3 of 2008 on The Management of Street Vendors

Regarding with the management and arrangement of street vendors, the Local Government of Surakarta has enhanced the socialization of the Regional Regulation No. 3 of 2008 on the Management of Street Vendors due to the significance of the regulation on the real practices of street vendors.

In the arrangement of street vendors, the Local Government of Surakarta invites over its citizens to prioritize deliberation. In fact, the Local Government of Surakarta is very open to receiving feedback at any time. There is no social stratum between citizens and their leaders. People are encouraged to think smart in addressing the problems related to street vendors. By moving street vendors into an organized location, the economic value will increase significantly without sacrificing the dignity of the citizens as civilized human beings.

The Regional Regulation of West Nusa Tenggara Province No. 2 of 2016 About Halal Tourism

The purpose of the Regional Regulation of West Nusa Tenggara Province No. 2 of 2016 concerning Halal Tourism is to provide security and convenience of service for the tourists so as they can enjoy the tour safely, halal and also provide convenience for tourists and managers in tourism activities. Meanwhile, the purpose of Halal Tourism is as a guideline for the managers of tourism in providing Halal Tourism services for the tourists.

The regional regulation is a form of top-down policy and also the society willingness in the form of bottom-up policy. The Regional Regulation concerning Halal Tourism was derived from the Governor Regulation No. 51 of 2015 on Halal Tour. The basis of the establishment of Regional Regulation No. 2 of 2016 on Halal Tourism carried out by Provincial Legislative Assembly (DPRD) and the Governor of NTB is the Governor Regulation. Hence, the establishment of this regulation was based on the previous governor regulation is an implication of top-down power, while this regulation is also the aspiration of the public or bottom up power. In fact, a mosque is built almost in every 100 meters in NTB. Therefore, Lombok is famous as the City of Thousand Mosques since almost 96 percent of people in NTB are Muslims. Thus, the regulation of a Shari'a-based regional regulation becomes the aspiration of the society in which most of them are Muslims.

The Regional Regulation of Brebes Regency No. 2 of 2011 on Spatial Planning of Brebes Regency of 2010 – 2030

In terms of format and content, the Regional Regulation No. 2 of 2011 on Spatial Planning of Brebes Regency has adopted the Regional Regulation of Central Java Province No. 6 of 2010. However, the content has been adapted to the conditions of Brebes Regency. This regional regulation is very extensive (Articles 93-94) in the recall section. The contents of this regional regulation are: (1) Objectives, policies and spatial arrangement of the regency, (2) District spatial plan, (3) Plan of spatial districts, (4) Determination of regency strategic area, (5) Direction of spatial utilization (6) Provisions to control

the utilization of district spatial planning, which contain general provisions of zoning, permit licenses, incentives and disincentives, and direction of imposition of sanctions.

In order for development to be sustainable, it is necessary to have a policy of natural resource management planned in accordance with the carrying capacity of the environment. By harmonizing the environmental conditions (natural and socio-cultural) then every area that is built must be in accordance with its designated zones, such as plantation zone, agriculture, and others. This requires balanced spatial planning so that the utilization of space that is not in accordance with the carrying capacity of the environment can be avoided. (Absori, 2006; Ameen et al., 2018)

The policy of spatial development, particularly related with the development of protected areas (Articles 6 and 7) and spatial planning of protected forest areas (Articles 32, 33 and 34) should be emphasized on the importance of conservation. However, the existing programs only include the reforestation of Slamet Mountain in Sirampong and Paguyangan sub-districts, areas with a slope of 40%, and areas prone to landslide/erosion lands, but exclude other areas such as the hills of the Kumbang Mountain in Bantar Kawung, Salem and Banjarharjo sub-districts. The urgency to reduce erosion rates, landslides and topsoil erosion results in the high sedimentation in coastal rivers, such as Babakan river, Kebuyutan river, and Pemali River, as well as the efforts and measures to map and overcome disasters, especially landslides, floods, and drought in the dry season.

The Regional Regulation of Gowa Regency No. 5 of 2016 on Local Customary Institutions.

The draft of Regional Regulation on the Regulation of Customary Institutions and Local Culture was ratified by the Local Legislative Assembly of Gowa Regency. This determination was made in the Plenary Meeting of the Local Legislative Assembly of Gowa Regency in August 2016 based on the approval of the Special Committee through a lengthy process and several revisions. Initially, the title of this regional regulation draft was the draft of Regional Regulation on Customary Institution. However, after the formulation process, it was finally decided to change the former title into the Regional Regulation on Customary Institutions and Local Culture.

Due to the controversy, after this regulation was ratified, the DPRD Office of Gowa Regency was burnt down by irresponsible people. Consequently, the Gowa Kingdom urged the parliament to revoke the regulation because it was considered to violate the rules of the Gowa Kingdom that have been deep-rooted in the community. (<https://m.tempo.co/read/news/2016/09/26/058807373/tolak-perda-lembaga-adat-massa-bakar-gedung-dprdgowa>.)

Basically, it was triggered by their article 1 point 3 it is stipulated that the Regent is the Regent of Gowa as the Chairman of the Regional Adat Institute that performs the function and role of Sombaya. In addition, Article 2 also states that the Local Government of Gowa Regency can establish a local customary institution with the basis in the capital of the regency, sub-district, and village or kelurahan.

The Future Participatory Regional Regulation Model Based on Local Wisdom in the Unitary State of the Republic of Indonesia

From the above explanation, it can be seen that the process of the establishment and involvement of the local community did not reflect a participatory regulation hence the regional regulation that should function in the community turned to cause a riot.

From the description of four regulations, it can be drawn an analysis that in Indonesia, there are regional regulations formulated by the local governments by involving the community participation based on local wisdom and also those without involving the community participation that has a propensity to create insecurity in the community. The Regional Regulation of Brebes Regency No. 2 of 2011 on Spatial Planning of Brebes Regency for 2010-2030 and the Regional Regulation

of Gowa Regency No. 5 of 2016 on the Establishment of Customary Institution and Local Culture, according to North and Selznick, are included in the conservative/orthodox/elite law product since they tend to reflect the social perspective of the political elite and become a positivist instrumental or a tool of state ideology and program implementation.

The Regional Regulation of Surakarta No. 3 of 2008 on the Management of Street Vendors and the Regional Regulation of West Nusa Tenggara Province No. 2 of 2016 on Halal Tourism are included into responsive law products because they consider the public desire and have a commitment to the creation of substantial justice rather than procedural justice. (Philippe Nonet and Philip Selznick, 2008; Osman et al. (2018) According to Nonet and Selznick, responsive is defined as open to the public, adaptive in the community development, critical to institutions that establish authority or legal products and further encouragement for transformation.

The character of responsive legal product within the framework of the constitutional law system in Indonesia can essentially interpret legal ideas and transform it into legislation. Legal ideals are derived from Pancasila which is the philosophical

grondslag and common platform as the pillar of the state. The activities of law-making institutions are manifested into the common platform values that uphold the culture, prevailing values in the community and local wisdom inherent in them. (Wahyu Nugroho, 2013; Martínez et al. (2018)) According to Kelsen, Pancasila is the grundnorm in Indonesia as the basic norm which is of course loaded by local wisdom. Automatically, the rules below should also have to conceive the local wisdom.

Lawrence Meil Friedman propounded an interesting anecdote about this case, “Without Legal culture, the legal system is inner –a dead fish lying in a basket, not a living fish swimming in its sea”. (Lawrence Meil Friedman, 1979) It means that the law in this country will be undoubtedly hopeless like a dead fish if it is not supported by the culture of the nation.

Based on Article 14 of Law No. 12 of 2011 on the Establishment of Laws and Regulations, regional regulations incorporate the material contained in the framework of the implementation of regional autonomy and assistance tasks, and accommodate the special conditions of a region as well as perform as a further elaboration of the higher legislation/regulation. The establishment of regional regulation must confirm the principle of the establishment of good legislation as stipulated in Article 5 which includes the clarity of objectives, appropriate institution or officials, suitability between type, hierarchy and material content, workability, usability and effectiveness, clarity of formulation, and openness. In addition, Article 96 states that the community, whether an individual or group of persons having an interest in the substance of the regulation draft shall be entitled to provide verbal and/or written input in the formulation of legislation.

In order to realize aspirational regional regulations, strong access to information is required for the community, access to active participation and access to justice as the basis for the objectives and orientation of local regulations and the study of academic texts is not only oriented to the conditions but is able to identify problems in the local community, so the resulting regulation will be qualified. (Absori, Fatkhul Muin, 2016, Golkar et al. (2014))

Consequently, a regional regulation made by the local government should involve the community by raising the local wisdom of the area by considering the clash potential with the legislation. Thus, regional regulation will have the power of enforceability that will be obeyed by the community because it offers peace and prosperity. The existence of powerful regional regulation in society shall not oppose the concept of Bhineka Tunggal Ika in the Unitary State of the Republic of Indonesia.

Based on the Decree of the Constitutional Court No. 137/PUU-XIII/2015, the Constitutional Court inquires a judicial review for the Law No. 23 of 2014 on Regional Government as proposed by the Association of Local Government of Indonesia. The Constitutional Court granted the petition for the review of Article 251 paragraph (2), paragraph (3), paragraph (8) and paragraph (4) on the statement “the cancellation of regency/ municipal regulation and regent/mayoral regulation as referred to in paragraph (2) is stipulated by the decree of the Governor as the representative of the Central Government”, the Law No. 23 of 2014 on Regional Government. It means that the Constitutional Court declares regional regulations as the legal products made by local governments and DPRD cannot be revoked by ministers or governors as the representatives of the Central Government. However, the cancellation of a legal product in the form of a regulation can be revoked if it is conducted through a judicial review mechanism in the Supreme Court. It also shows that the existence of local regulation is an agreement of the local community in the area that is applicable and recognized, therefore, the Central Government also cannot easily revoke a regional regulation.

According to Satjipto Rahardjo, the development of law and social development cannot be separated as different processes which run independently. In this case, legal life is a part of a larger social process. In the development of law, it cannot be separated from the centralistic and planning features so that there is a retrenchment that pulls the law into the vortex of the development wave with all of its characteristics. The development of national law requires the accumulation of resources in a larger society. Law became one of the foundations that are also a necessary resource of development. (Satjipto Rahardjo, 1997)

The legal development, in the form of the establishment of regional regulation, should provide the community with greater access in order to strengthen the autonomy of the society towards civil society. The community access includes the access to public information, access to participation, and access to justice by properly accommodating the rights of the people to a clean and healthy environment and the obligation of the State to ensure the rights are properly carried out. Access for society has been less developed during this time. It is caused by: **First**, the lack of regulation and mechanism to realize the participation of the community. **Second**, the absence of perception, intention, and willingness of the public officials to realize the participation of society that is genuine and significant. **Third**, the absence of community awareness of the rights and urgency of community participation in the administration of the State. **Fourth**, the capacity and quality of community members and government officials to participate in the process are relatively low. (Indro Sugianto, 2003; Hojati et al., 2014)

CONCLUSION

The regional regulation is the agreement between the local government and the local people to organize a more peaceful life together. The diversity of regional regulations of each region is a reality that cannot be evaded because Indonesia is a *Bhineka Tunggal Ika* in the Unitary State of the Republic of Indonesia. The regional regulation made by the local government should involve the community by raising the values of local wisdom of the respective area by considering the potential of conflict with the provision of the legislation. Thus, the regional regulation will have the power of enforceability that will be obeyed by the community because it will improve the peace and prosperity of people.

To realize a participatory model of regional regulations based on local wisdom in the future, the involvement of the community autonomy and relevant organizations, such as non-governmental organizations and customary organizations, should be accommodated properly and situated in a more adequate position in the context of the efforts toward the growth of civil society. The role of society can be manifested in various forms, including the process of decision-making, management, and control.

REFERENCES

Constitution of Indonesia 1945

Absori, "Deklarasi Pembangunan Berkelanjutan Dan Implikasinya Di Indonesia" ("Declaration of Sustainable Development and Its Implications in Indonesia"), *ILMU HUKUM Journal*, Vol. 9, No. 1, 42, (2006)

Ameen, A. M., Ahmed, M. F., and Abd Hafez, M. A. (2018). The Impact of Management Accounting and How It Can Be Implemented into the Organizational Culture. *Dutch Journal of Finance and Management*, 2(1), 02. <https://doi.org/10.20897/djfm/91582>

Philippe Nonet and Philip Selnizk, "Hukum Responsif" ("law and Society in Transition: Toward Responsive Law") 84, (2008).

Wahyu Nugroho, Mendesain Undang-undang yang Responsif dan Partisipatif Berdasarkan Cita Hukum Pancasila ("Designing a Responsive and Participatory Law Based on the Idea of Pancasila Law"), *PROGRESSIVE LAW CONSORTIUM Proceeding*, 140 (2013)

Hojati, M., Rezaei, F., & Irvani, M. R. (2014). Study the Effects of Cognitive and Metacognitive Learning Strategies to Increase Student Motivation and Probation of Sama Vocational Schools Probation Students of Najaf Abad Branches in School Year 2013-2014, *UCT Journal of Management and Accounting Studies*, 2(2): 35-40.

Lawrence Meil Friedman, *Law and Society; an Introduction*, 7, (1979)

Absori, Fatkhul Muin, "Penyusunan Peraturan Daerah Dalam Kerangka Otonomi Daerah: Suatu Tinjauan Terhadap Pembentukan Perda Yang Aspiratif." ("Preparation of Local Regulations in the Framework of Regional Autonomy: An Overview of the Formation of an Aspirational Regulation"), *4TH NATIONAL CONFERENCE OF THE MUHAMMADIYAH UNIVERSITY POSTGRADUATE GRADUATE PROGRAM Proceedings*, 226 (2016)

Satjipto Rahardjo, "Pembangunan Hukum Nasional dan Perubahan Sosial, dalam Identitas Hukum Nasional" (":Development of National Law and Social Change in National Law Identity"), 171-172, (1997).

Indro Sugianto, "Mensinergikan Kekuatan Masyarakat Sipil dalam Penegakan Hukum Lingkungan" ("Synergizing the Power of Civil Society in Enforcing Environmental Law"), 15, (2003).

Osman, S., Yang, C. N. A. C., Abu, M. S., Ismail, N., Jambari, H., & Kumar, J. A. (2018). Enhancing Students' Mathematical Problem-Solving Skills through Bar Model Visualisation Technique. *International Electronic Journal of Mathematics Education*, 13(3), 273-279.

Golkar, M., Golkar, A., AbbasianKasgari, A., & HosseiniToudeshki, E. (2014). Determining the Factors Influencing the Brand Equity from the Perspective of the Consumer in Iran Chocolate Industry (Baraka Chocolate), *UCT Journal of Social Sciences and Humanities Research*, 2(2): 47-57.

Martínez, Armenio Pérez, Aimara Rodríguez Fernández, and Susana Hinojosa de Aguilar. 2018