



Pengawasan Dewan Perwakilan Rakyat Daerah Terhadap Peraturan Kepala Daerah

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Abstract

The constitution is all the provisions and basic rules regarding state administration. A country's existence cannot be separated from the underlying constitution. The supervisory function is one of the spirits of the people's representatives. Supervision is the main role or responsibility of DPRD in representing the community. Supervision must be carried out in a structured and good manner, so that the community is truly fulfilled in conveying their aspirations as well as controlling the work carried out by the government, in this case the regional head. From the results of the research it is concluded that First, Regulations on regional head regulations are regulated in the Minister of Home Affairs Regulation Number 120 of 2018 concerning Amendments to the Minister of Home Affairs Regulation Number 80 of 2015 concerning the Formation of Regional Legal Products. and Law Number 23 of 2014 concerning Regional Government. In the formation of governor regulations, there are two main types: those mandated by higher rules and those formed based on the authority of the regional head. The Riau Province Regional People's Representative Council (DPRD) has the authority to oversee the formation of gubernatorial regulations that are mandated by higher rules, while for gubernatorial regulations that are more related to autonomy functions, the DPRD has no obligation or right to oversee either the ratification or implementation. Second, Although each member of the DPRD has a supervisory function, their responsibilities are limited to commissions in public hearings without a special agenda for annual or semesterly supervisory meetings. Third, Regarding the ideal concept of regulation related to supervision of regional head regulations, considering that there are only general rules, it is necessary to make specific rules related to this supervision. This technical supervision can be made by the Minister of Home Affairs or by the regions themselves, considering that regional authority in regulating their own households has been legitimized through regional autonomy. In addition, technical regulations related to this supervision will strengthen the performance of the DPRD in legislation and supervision..

Keywords: supervision, regional head, DPRD function

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INTRODUCTION

The constitution is all the basic provisions and rules regarding state administration. A state cannot be separated from the existence of an underlying constitution. Constitutions can be in the form of written basic laws which are commonly called Basic Laws, or they can also be unwritten. The constitution is the basis of a country's legal order, in which there is protection for Human Rights (HAM) and regulates the distribution of power (Distribution of Power) in state administration. The constitution is usually also referred to as the country's

fundamental law, because the constitution is the basic rules. The basic rules will later become a reference for the birth of other legal rules that exist below them.

Each regional apparatus has an interrelated relationship which is inseparable in the administration or implementation of regional government policies which of course must be in accordance with applicable laws and regulations. The DPRD is a regional people's representative institution and serves as an element of regional government administration. Regency/city DPRD has the following functions:

1. Function of Forming Regency/City Regional Regulations,
2. Supervisory Function, and
3. Budget Function.

DPRD supervision includes supervision of the implementation of regional regulations and other statutory regulations, regional head regulations, APBD, regional government policies in implementing regional development programs, and international cooperation in the region. Not only that, as part of regional government, the DPRD is actually also responsible for supervising public services.

The regional government structure is a form of decentralization of power including the DPRD and regional government. DPRD is separated from regional government with the aim of further empowering DPRD and increasing regional government accountability to the people. The DPRD's rights are quite broad and are directed at absorbing and channeling community aspirations into regional policies and carrying out supervisory functions. The function of the DPRD in the field of supervision is a follow-up to the functions played by the previous DPRD, namely the legislative function and the budget function, because the objects supervised by the DPRD are mostly policies and programs resulting from the legislative and budget functions, therefore the function Supervision is an integral part that cannot be separated from other functions.

From the provisions of article 101 paragraph (1) of Law Number 23 of 2014 concerning Regional Government, the Provincial DPRD has functions, one of which is a supervisory function. In terms of supervision, the DPRD carries out supervision over the implementation of regional regulations (*perda*) and other statutory regulations, regional head regulations, APBD, regional government policies in implementing regional development programs, and international cooperation in the region. Supervision activities are not the aim of a government activity, but are to ensure that all instruments in government run well in carrying out state goals.

The existence of DPRD supervision will provide quite effective protection for the executive in carrying out government bureaucratic administration optimally. In carrying out supervision, the DPRD should have a supervisory plan or agenda. This is very necessary so that the supervision carried out can be effective and efficient and can truly prevent things that violate the law and human rights from occurring. If monitoring is not programmed properly, it is feared that the following things will happen:

1. The scope of DPRD supervision is neglected
2. Duplication of supervision with other supervisory institutions;
3. Lack of quality supervision;

4. Supervision has not been effective.

Internal factor barriers are: education, experience, socio-economic conditions, work programs and secretariat. External factor obstacles are: changes in laws and regulations, political party recruitment and community participation.

Regional Head Regulations in the hierarchy of statutory regulations can be interpreted through Article 8 paragraphs (1) and (2) of Law Number 12 of 2011 concerning the Formation of Legislative Regulations. That statutory regulations other than those mentioned in the hierarchy are still possible to exist as long as they are ordered by higher regulations. This legislative product is included in the scope of delegated legislation/secondary legislation.

Regional Heads in carrying out public service functions where to carry out their authority, the Governor/Mayor/Regent needs legal instruments that are coercive in nature. The authority to form legal products is inherent in the Government along with the obligation to regulate and manage public interests.

The authority to form legal products by regional heads is based on several reasons, namely:

A. The scope of administrative law is so broad that it is impossible for all of it to be stated in formal law

B. The very fast dynamics of public services cannot possibly be followed by changes in laws, in fact the public often demands fast and responsive administrative action (emergency laws)

C. Further arrangements are always related to assessments from a detailed and measurable technical perspective.

The granting of legislative authority to the administration is then more often referred to as "regulation", because there is no element of "policy" in it, "to regulate/make policy". This is different from the term "legislation" which refers more to the maker "legislator/law maker" which means a representative institution/creating laws. Apart from being a Legislative Regulation, the Regional Head Regulation is also a Policy Regulation. These two different positions of Regional Head Regulations as Legislative Regulations and Policy Regulations certainly have implications for different legal consequences. As the regulations were not prepared using the legislative method together with the DPRD, regional head regulations are not free from errors. Mistakes occur not only in preparation, but also in implementation and other things. Therefore, supervision which is mandated by the DPRD is very necessary in this matter.

For example, in Riau Province there is Regulation of the Governor of Riau Number 19 of 2021 concerning the Dissemination of Information on Government Administration within the Riau Provincial Government. This regulation regulates the mechanism for disseminating information, including the work of the mass media in covering government administration in Riau Province. Riau Governor Regulation Number 19 of 2021 has been widely rejected by existing press organizations and media companies. This is because several articles in it have the potential to limit press freedom in disseminating information related to the administration of the Riau Province government. Even though it was rejected by many levels of society, there was no information on supervision carried out by the Riau Province DPRD regarding Riau Governor Regulation Number 19 of 2021 concerning the Dissemination of Information on Government Administration

within the Riau Provincial Government. In fact, the DPRD should be able to carry out its supervisory function over regulations issued by the regional head.

The supervisory function is one of the spirits of people's representatives. Supervision is the DPRD's main role or responsibility in representing the community. Supervision must be carried out in a structured and good manner, so that the community's rights are truly fulfilled in conveying their aspirations as well as controlling the work carried out by the government, in this case the regional head. Based on this, the author conducted research entitled "SUPERVISION OF REGIONAL PEOPLE'S REPRESENTATIVE COUNCIL REGARDING REGIONAL HEAD REGULATIONS".

Problem Formulation

1. How are regional head regulations regulated?
2. What are the problems with DPRD supervision of regional head regulations?
3. What is the ideal concept for DPRD supervision of regional head regulations?

Research Objectives and Uses

1. Research Objectives

- a. Knowledge of regional head regulations
- b. Know the ideal concept of DPRD supervision of regional head regulations
- c. Know the ideal concept of DPRD supervision of regional head regulations

2. Usefulness of Research

- a. Research is useful for the author as a requirement for obtaining a bachelor's degree in law (S1) at the Faculty of Law, University of Riau.
- b. This research is expected to provide additional knowledge in the field of Administrative Law, especially studies related to state administration, especially DPRD supervision of the Governor
- c. It is hoped that this research will be useful for parties related to the title of this research, especially the public, financing business actors, academics and law students.

Theoretical Framework

Legislative Theory

The terms Legislation and Legislative Regulations come from the word Law, which refers to the type or form of regulations made by the State. In Dutch literature, the term *wet* is known which has two meanings, namely *wet in formale zin* and *wet in materiele zin*, namely the definition of a law which is based on its content or substance. The word *invitation* has a different notation from the word *law*. What is meant in the context of using this term is what is related to the law, not the word *law* which has other connotations.

According to Bagir Manan who quoted P.J.P's opinion regarding *wet in materiele zin*, it describes the meaning of legislation in a material sense, the essence of which is, among other things, as follows:

- a. Legislative regulations are in the form of written decisions. Because it is a written decision, statutory regulations are written legal rules (*geschrevenrecht*, written law)
- b. Legislative regulations are formed by officials or positions (bodies, organs) who have the authority to make "regulations" that apply or are binding on the general public (*algemeen*)

c. Legislation is generally binding, not intended to always be binding on everyone. General binding only indicates that the statutory regulations do not apply to concrete events or specific individuals.

In forming Legislative Regulations, this must be done based on the principles of forming good Legislative Regulations, which include:

- a. clarity of purpose
- b. appropriate institutions or forming officials
- c. correspondence between types, hierarchies, and content materials
- d. can be implemented
- e. usefulness and usefulness;
- f. clarity of formulation;
- g. openness.

Regional head regulations are statutory regulations at the regional stage which regulate a smaller scope than the statutory regulations above. In relation to the principles of forming statutory regulations, it is necessary to look at clarity of purpose, suitability between type, hierarchy and material content and the effectiveness of the statutory regulations. In connection with this principle, supervision by the DPRD of regional head regulations needs to be carried out, starting from planning, ratification, to implementation of regional head regulations.

Legal Political Theory

The term supervision in many ways is synonymous with control. In the General Indonesian Dictionary, the meaning of the word control is supervision, inspection. So the word control means to supervise, check. According to Sujamto, in Indonesian, the controlling function has the view of supervision and control. This supervision is in a narrow sense, which Sujamto defines as all efforts or activities to find out and assess the actual reality regarding the implementation of tasks or work whether they are appropriate or not. As for control, the meaning is more forceful than supervision, namely all efforts or activities to guarantee and direct the implementation of tasks as they should.

The term supervision is known and developed in management science, because supervision is an element in management activities. Regarding the term supervision, George R. Terry stated that "control is to determine what is appropriate to evaluate it, and apply corrective measures, if necessary to ensure results in keeping with the plan." Furthermore, Newman argued that "control is assurance that the form of conformity to plan" This means that the emphasis of supervision is an effort to ensure that the implementation of a task is in accordance with the plan. Thus, according to him, supervision is an ongoing action, not at the end of a process.

Every supervisor desires to effectively and efficiently achieve their goals. So, through the explanation above, it can be concluded that to carry out supervisory actions, the following elements are needed:

- a. Clear authority of the authorities
- b. The existence of a solid plan as a testing tool for the implementation of a task to be supervised
- c. Supervisory actions can be taken on an ongoing activity process or on the results achieved from that activity;

- d. The monitoring action ends with the preparation of a final evaluation of the activities carried out and matching the results achieved with the plan as a benchmark; and
- e. Furthermore, the supervisor's actions are continued with follow-up both legally and legally.

Supervision is the main task of the legislative body in government. This main task is an effort to control power so that it is not used arbitrarily or injure people's rights. Therefore, supervision not only needs to be carried out *de jure*, but also *de facto* or real so that the output of supervision, namely good governance, can be realized.

Conceptual Framework

1. Supervision is the process of observing the implementation of all organizational activities to ensure that all work being carried out runs according to a predetermined plan.
2. The Regional People's Representative Council, hereinafter abbreviated as DPRD, is a regional people's representative institution whose position is as an organizing element of Regional Government.
3. Position is a collection of duties and responsibilities assigned by an authorized official to a person, either for the full time or the time in response shows the things that are done, not the person.
4. Authority is what is called formal power, power that comes from legislative power (given by law) or from administrative executive power. Authority which usually consists of several authorities is power over a certain group of people or power over a sector of government.
5. Regional Government is the administration of government affairs by regional governments and regional people's representative councils according to the principle of autonomy and assistance duties with the principle of the widest possible autonomy within the system and principles of the unitary State of the Republic of Indonesia as intended in the 1945 Constitution of the Republic of Indonesia.
6. Regional Government is the Governor, Regent, or Mayor, and regional apparatus as elements of regional government administration.

Research Methods

Type of Research

Type of research used. Judging from the point of view of the method used, this type of research/approach uses normative legal research. Normative legal research is library legal research,

Data Collection Techniques

Literature Study is a data collection technique by examining, examining and analyzing library literature that has a correlation with what is being researched.

Data Analysis

Through research, analysis will be carried out from the data collected and processed. The research methodology applied must be in accordance with the science of which it is based. In this research, the data analysis carried out is qualitative analysis, which will produce descriptive data. The research results will

be presented again in systematic sentences so as to provide a clear picture of the problem.

LITERATURE REVIEW

General Overview of Legal Science

The term legislation (legislation, *wzetting*, or *gesetzgebung*) in several literatures has two different meanings. In the general dictionary that applies, the term legislation can be interpreted as legislation and making laws, the term *wetgeving* is translated to mean laws and the entirety of state law. According to Bagir Manan, the definition of statutory regulations is any written decision issued by an authorized official or office environment which contains rules of conduct which are of a general nature or binding.

In Law Number 10 of 2004 concerning the establishment of statutory regulations, the two meanings in Article 1 and number 2 are formulated as follows:

- a. Formation of Legislative Regulations is the process of making legislative regulations which basically starts from planning, preparation, drafting techniques, formulation, discussion, ratification, promulgation and dissemination.
- b. Legislative Regulations are written regulations established by state institutions or authorized officials and are generally binding.

General Overview of Authority

Authority comes from the basic word authority which is defined as authority, the right and power that one has to do something. Authority is formal power, power granted by law or from executive power or legislative power. However, there is a difference between the meaning of authority and authority, authority (*authority gezag*) is what is called formal power, power that comes from the power granted by law, while authority (*competence bevoegheid*) only concerns a certain "*onderdeel*" (part). from authority.

Within authority there are authorities (*rechtsbevoegdheden*). Authority is the scope of public legal action, the scope of government authority, not only includes the authority to make government decisions (*bestuur*), but includes authority in the context of carrying out tasks, and granting authority and the distribution of authority is primarily determined in regulations. legislation.

RESEARCH RESULTS AND DISCUSSION

Regulations regarding Regional Head Regulations

Regional government administrators in carrying out their duties, authority, obligations and responsibilities and with the authority of higher statutory regulations can determine regional policies which are formulated, among other things, through regional regulations, regional head regulations and other regional provisions. The regional policies in question must not conflict with higher laws and regulations and the public interest and hinder investment.

Talking about regional head regulations as regulated in Article 6 of the Minister of Home Affairs Regulation Number 80 of 2015, there are 2 (two) types:

- a. governor's regulations;
- b. regent/mayor regulations.

Each regional head regulation is prepared by regional government administrators at the provincial/regency/city level. Governor regulations are prepared based on orders from higher laws and regulations and are based on authority. So that in its preparation one of the elements/requirements for the formation of the governor's regulation must be fulfilled. Higher statutory regulations are closely related to the hierarchy of statutory regulations. Where the hierarchy of statutory regulations is regulated in the provisions of Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislative Regulations, namely:

1. The 1945 Constitution of the Republic of Indonesia
2. Decree of the People's Consultative Assembly;
3. Laws/Government Regulations that interfere with Laws;
4. Government Regulations;
5. Presidential Regulation;
6. Provincial Regional Regulations; And
7. Regency/City Regional Regulations.

Authority (authority) is the right to do something or order others to do or not do something in order to achieve certain goals. Meanwhile, "authority" according to Law Number 30 of 2014 concerning Government Administration is the right possessed by Government Agencies and/or Officials or other state administrators to take decisions and/or actions in administering government. From these two definitions, it can be interpreted that authority is a right that is in the hands of a person and is supported by full legitimacy which is used for certain purposes/interests.

Based on the attachment to Law Number 23 of 2014 concerning Regional Government as amended several times, most recently by Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government, government affairs/authorities have been divided between the central government, provincial government, and district/city government. The division of government affairs or authority aims to create efficiency, effectiveness and synergy between the branches of government power in realizing equitable social welfare. Armed with government affairs/authorities that have been divided in order to carry out regional autonomy, this is the basic capital that regional heads have in establishing regulations.

The Problem of DPRD Supervision of Regional Head Regulations

In the state administration system, the Regional People's Representative Council (DPRD) is designated as one of the elements of government administration. As stated in Article 1 paragraph (2) of Law Number 32 of 2004, it is the organizer of DPRD affairs in the system and principles of the Unitary State of the Republic of Indonesia as intended in the Law. The 1945 Constitution of the Republic of Indonesia. The position of the DPRD as mandated by Law Number 32 of 2004 has the implication that regional heads and DPRD truly have equality and equality and there is no domination of either one. The DPRD was placed in the regional government structure together with the regional head, the pattern of relations between the regional head and the DPRD was carried out in a subordinate manner in the sense that there was no bargaining position for the DPRD regarding all policies issued by the regional head, so that the existence of

the DPRD during the New Order was no more than just a rubber stamp for legalize every program and activity proposed by the regional head, let alone having to exercise control over the running of the regional government.

The Ideal Concept of DPRD Supervision of Regional Head Regulations

Supervision carried out by the DPRD is related to the implementation of government affairs. So supervision carried out by DPRD members over executive institutions can be interpreted as a process or series of monitoring, inspection and evaluation activities on the implementation of public policies which are carried out to ensure that all policies, programs or activities carried out by public institutions run in accordance with the rules set out. has been previously set. Therefore, it is necessary to strengthen the role of the DPRD as a legislative institution that has a supervisory function, both in the legislative process and over the running of government, including the consequences of monitoring policies issued by the Regional Head.

The legislative function in question is the function of the DPRD to form regional regulations together with the regional head.

What is meant by supervisory function is the function of the DPRD to supervise the implementation of laws, regional regulations, and regional head decisions as well as policies established by the regional government. Optimizing the role of the DPRD is a need that must be immediately resolved, so that it can carry out its duties, authority and rights effectively as a regional legislative institution. Optimizing this role is very dependent on the level of ability of DPRD members, so one of the efforts made can be identified with efforts to improve the quality of human resources, namely the DPRD members themselves.

The ideal concept with the aim of increasing the supervisory role of the DPRD, especially regarding policies or Regional Head Regulations that are issued, must continue to be monitored with the need for standard standards for supervision of community reports because the DPRD is a representation of the community, so any reports from the community, especially regarding the supervisory role of the DPRD, must continue to be increased. .

The ideal concept of regulation regarding the DPRD's supervisory function is only mentioned in Article 42 Letter c of Law Number 32 of 2004 without further details regarding the limits of authority and how supervision should be related to the existence of Article 42 Letter c of Law Number 32 of 2004 as the Law that is general, so there is a need for a special Law as a technical regulation that regulates in more detail the supervisory authority of the DPRD over Regional Head Regulations and according to researchers there should be a need for a Minister of Home Affairs Regulation as a special rule that regulates the DPRD's supervisory authority over regional head regulations. in accordance with Hans Kelsen's opinion which states that norms are tiered in layers in a hierarchical structure. In other words, the legal norms below apply and originate and are based on higher norms, and higher norms also originate and are based on even higher norms and so on until they stop at the highest norm which is called the Basic Norm (Grundnorm) and still according to Hans Kelsen, it is included in a dynamic norm system. Therefore, law is always formed and abolished by the institutions whose authorities have the authority to form it, based on higher norms, so that

lower (inferior) norms can be formed based on higher (superior) norms, in the end the law becomes hierarchical. -levels and layers form a hierarchy.

CLOSING

Conclusion

1. Based on the research results above, regional government administrators have the power to make regional policies through regional regulations, regional head regulations, and other regional provisions. However, these policies must not conflict with higher laws and regulations or hinder investment. Regional head regulations are divided into governor regulations and regent/mayor regulations, arranged based on the authority granted. Regulations regarding regional heads are regulated in Minister of Home Affairs Regulation Number 120 of 2018 concerning Amendments to Minister of Home Affairs Regulation Number 80 of 2015 concerning the Establishment of Regional Legal Products and Law Number 23 of 2014 concerning Regional Government.

2. In the formation of governor regulations, there are two main types: those ordered by higher regulations and those formed based on the authority of the regional head. The Regional People's Representative Council (DPRD) of Riau Province has the authority to supervise the formation of gubernatorial regulations ordered by higher regulations, while for gubernatorial regulations which are more related to autonomous functions, the DPRD has no obligation or right to supervise both their ratification and implementation. Even though each member of the DPRD has a supervisory function, their responsibility is limited to the commission in hearing meetings without a special agenda for annual or semi-annual meetings under supervision. This supervision is important to control power so that it does not misuse or harm people's rights. Therefore, supervision not only needs to be carried out formally but also in real terms to ensure good governance.

3. Regarding the concept of ideal regulation regarding supervision of regional head regulations, considering that there are only general rules, it is necessary to make special rules regarding this supervision. This technical supervision can be carried out by the Minister of Home Affairs or by the regions themselves, considering that regional authority in regulating their own households has received legitimacy through regional autonomy. Apart from that, these technical regulations related to supervision will strengthen the DPRD's performance in legislation and supervision.

Suggestion

1. Every government affairs problem in the region should not only be resolved by regional head regulations alone, but also involve the DPRD as the party that has the authority regarding legislation.

2. The function of the DPRD must be further improved, especially in the implementation and application of the law itself as well as improving the quality of Human Resources in the DPRD, especially in the field of supervision

3. There is a need for special regulations as technical regulations in the form of Minister of Home Affairs Regulations with the aim of ensuring legal certainty and increasing the role and supervisory function of DPRD Institutions over Regional Head Regulations

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**Interview with Mr. Wenda Hartanto, Expert Staff for the Regional Regulation
Formation Agency (Bapemperda) of the Riau Province DPRD on
December 6 2023**