

Formulation of Regional Regulations Based on Laws and Regulations

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Abstract: This study aims to analyze the principles, procedures, and authorities in the formation of Local Regulations (Perda) by local governments in Indonesia in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia and Law Number 32 of 2004. Based on these provisions, local regulations are important instruments that support the implementation of regional autonomy, where the local government and the Regional People's Representative Council (DPRD) jointly have the legislative authority to formulate local regulations that regulate regional household affairs and the interests of local communities. The research method used is normative juridical with a literature approach, examining primary legal sources such as laws and regulations, as well as secondary literature from relevant journals and articles. The results show that local regulations are formed through joint approval between the DPRD and the regional head, taking into account philosophical, juridical, and sociological foundations that reflect the values of Pancasila and applicable legal norms. The novelty of this research is the emphasis on the importance of the DPRD's control function over the implementation of Perda and APBD, as well as the identification of various challenges in the regional legislative process that are sometimes affected by local political constraints. In conclusion, local regulations play a significant role in supporting regional autonomy, but must be designed so that they do not conflict with the public interest and higher regulations.

Keywords: Formation; Regional Regulations; Laws And Regulations

Abstrak: Penelitian ini bertujuan menganalisis prinsip, prosedur, dan kewenangan dalam pembentukan Peraturan Daerah (Perda) oleh pemerintah daerah di Indonesia sesuai dengan amanat Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 serta Undang-Undang Nomor 32 Tahun 2004. Berdasarkan ketentuan ini, Perda merupakan instrumen penting yang mendukung pelaksanaan otonomi daerah, di mana pemerintah daerah dan Dewan Perwakilan Rakyat Daerah (DPRD) secara bersama-sama memiliki wewenang legislasi untuk menyusun Perda yang mengatur urusan rumah tangga daerah dan kepentingan masyarakat lokal. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan kepustakaan, menelaah sumber hukum primer seperti peraturan perundang-undangan, serta literatur sekunder dari jurnal dan

artikel yang relevan. Hasil penelitian menunjukkan bahwa Perda dibentuk melalui persetujuan bersama antara DPRD dan kepala daerah, dengan memperhatikan landasan filosofis, yuridis, dan sosiologis yang mencerminkan nilai-nilai Pancasila dan norma hukum yang berlaku. Kebaruan dari penelitian ini adalah penekanan pada pentingnya fungsi kontrol DPRD terhadap pelaksanaan Perda dan APBD, serta identifikasi berbagai tantangan dalam proses legislasi daerah yang kadang terpengaruh oleh kendala politik lokal. Kesimpulannya, Perda berperan signifikan dalam mendukung otonomi daerah, namun harus dirancang agar tidak bertentangan dengan kepentingan umum dan peraturan yang lebih tinggi.

Kata kunci: Pembentukan; Peraturan Daerah; Peraturan Perundang-undangan.

INTRODUCTION

Based on the 1945 Constitution of the Republic of Indonesia Article 1 Paragraph (1), the Republic of Indonesia is a Unitary State in the form of a Republic. Then Article 18 Paragraph (1) determines: The Unitary State of the Republic of Indonesia is divided into provincial regions and the provincial regions are divided into regencies and cities, each of which has a regional government, which is regulated by law.¹

The division of the country's territory into provincial regions and within the provincial regions consists of regency / city regions, as well as regional governments, as stipulated in Paragraph (2) "The provincial, regency and city governments regulate and manage their own government affairs according to the principles of autonomy and assistance tasks".² As a complement to the administration of the Government and an element of regional government, a regional people's representative body is formed, as stipulated in Paragraph (3) "The provincial, district and city governments have Regional People's Representative Councils whose members are elected through general elections". Then the Governor, Regent, and Mayor respectively as the head of the provincial, regency, and municipal governments are democratically elected.³

In the administration of government in the regions, local governments are given the widest possible autonomy, except for government affairs which are determined by law to be the affairs of the Central Government. In order to implement broad autonomy in the region, the regional government has the right to establish regional regulations

¹ Reynold Simandjuntak, "Negara Kesatuan Republik Indonesia Perspektif Yuridis Konstitusional," *De Jure, Syariah Dan Hukum* 07, no. 01 (2015): 57–67.

² Azlan Thamrin, "Politik Hukum Otonomi Daerah Dalam Mewujudkan Tata Kelola Pemerintahan Yang Baik Di Bidang Kesehatan," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 4, no. 1 (2019): 33–51, <https://doi.org/10.35673/ajmpi.v4i1.130>.

³ Tria Hilda, Hadi Prabowo, and Ika Sartika, "Analisis Program Beras Daerah (Rasda) Guna Mewujudkan Kesejahteraan Rumah Tangga Sasaran Penerima Manfaat (Rts-Pm) Di Kabupaten Malinau Provinsi Kalimantan Utara," *Jurnal Kebijakan Pemerintahan* 5, no. 2 (2022): 29–43, <https://doi.org/10.33701/jkp.v5i2.2807>.

and other regulations to implement autonomy and assistance tasks.⁴

Based on the provisions of Article 1 number 10 of Law no. 32 of 2004 concerning Regional Government, what is meant by regional regulations are Provincial Regional Regulations and / or Regency / city regional regulations. Further provisions regarding these regional regulations are regulated in articles 136 to 149 of Law No. 32 of 2004. Local regulations are made by local governments in order to carry out regional autonomy within the unitary state of the Republic of Indonesia.

The existence of regional regulations is an extension of the granting of authority to the regions in managing and regulating their own households, because there are parts of regional affairs that are not regulated in law and must be further regulated by regional regulations. In connection with the authority to form Regional Regulations (Perda) has been emphasized in. Law No. 32 Year 2004 Article 42 paragraph (1) letter a stipulates that: "The DPRD has the duty and authority to form local regulations that are discussed with the regional head for joint approval". Furthermore, it is further emphasized by Act No. 27 Year 2009 on MPR, DPR, DPD and DPRD: The provincial DPRD has the duty and authority: to form provincial regulations together with the governor, to discuss and give approval to draft regional regulations regarding the provincial budget proposed by the governor. Meanwhile, the authority of the Regency / City DPRD is confirmed in Article 344: (1) The regency/city DPRD has the duty and authority to form regency/city regulations together with the regent/mayor, to discuss and give approval to the draft of regency/city regional budget proposed by the regent/mayor.

The DPRD and the Regional Head jointly determine the Regional Budget (APBD) and other Regional Regulations. The Regional Head leads the Regional Government to implement the APBD and other regulations. In addition, the DPRD also supervises the Regional Head in implementing the APBD and other Regional Regulations. In the context of the duties and authority of the Regional Head, directing and controlling the regional bureaucracy. There are several tasks that must be carried out, namely: implementing regional policies, enforcing regional regulations, providing public services to regional citizens, and collecting and processing information to be submitted in the form of recommendations to the Regional Head. The region is an autonomous region as a unit of government in the region and which has attributive authority authorized to make regulations to organize its households. The authority to regulate lies with the Regional Government and DPRD as the holder of the DPRD function in the region. Local regulations are the implementation of DPRD functions.

⁴ Septi Nur Wijayanti, "Hubungan Antara Pusat Dan Daerah Dalam Negara Kesatuan Republik Indonesia Berdasarkan Undang-Undang Nomor 23 Tahun 2014," *Jurnal Media Hukum* 23, no. 2 (2017): 186–99, <https://doi.org/10.18196/jmh.2016.0079.186-199>.

Perda are all regulations made by local governments to implement other higher-level regulations.⁵ Therefore, the material of local regulations generally contains, among others: 1. Matters relating to local households and matters relating to local government organizations; 2. Matters relating to tasks and assistance (Mendebewindl thus the local regulation is a legal product of the local government in order to implement regional autonomy, namely exercising the right and authority to regulate and manage its own household affairs as well as the local regulation is legality to support the Provincial Government as an autonomous region.⁶

Law Number 10 Year 2004 regulates several principles regarding local regulations: 1) The Regional Head enacts the Perda with the approval of the DPRD; 2) Local regulations are formed in the implementation of autonomy, assistance tasks and further elaboration of higher laws and regulations; 3) Lokal regulations may not conflict with the public interest, other local regulations, or higher laws and regulations; 4) Local regulations may contain provisions on the cost of coercive law enforcement or imprisonment for a maximum of six months or a fine of up to five million rupiah; 5) Decree of the Regional Head is stipulated to implement the Perda; 6) Regulations and Decrees of the Regional Head that regulate, shall be published in the regional gazette; 7) Local regulations may appoint certain officials as investigators of violations of local regulations (PPNS Perda and Regional Head Decree).

Local regulations are the result of joint work between the Governor / Regent / Mayor and the DPRD, therefore the procedure for forming local regulations must be reviewed from several elements of the government, namely the DPRD Element is a Local Regulation is a form of regional level legislative product, therefore it cannot be separated from the DPRD. The participation of the DPRD in forming local regulations is related to the authority of the DPRD in the legislative field or which can indirectly be used as a support for the legislative function, namely the right of investigation, the right of initiative, the right of amendment, approval of the Draft Regional Regulation (Ranperda). The element of participation is intended as the participation of parties outside the DPRD and Local Government in preparing and forming Ranperda or Perda.⁷

There are several requirements for making good laws and regulations, including the making of regional regulations, which can also be adopted for the formation of regional regulations, including: 1) Philosophical Requirements, namely the relationship between the moral values of a nation as a way of life (in Indonesia, it is accumulated in

⁵ Bagir Manan, *Menyongvong Fajar Otonomi Daerah* (Yogyakarta: PSH FH UII, 2002).

⁶ Rosjidi Ranggawidjaja, *Pengantar Ilmu Perundang-Undangan Indonesia* (bandung: Penerbit Mandar Maju, 1998).

⁷ *Ibid*, hal. 77.

Pancasila; 2) Juridical Requirements, namely the existence of a legal basis on which a regulation is issued, besides that it is also the basis for the institution / agency that issues the formed regulation. 3) Juridical requirements are divided into two: a. Formal, which is a regulation / law that forms the basis of regulations / laws for institutions / agencies to issue certain regulations; b. Material, which is the basis in terms of (material) as well as a review in terms of legal science, especially in terms of sociology, namely the extent to which regulations / laws can change public awareness of the law.⁸

METHOD

This research is normative research, namely legal research by making a review of library materials (legal literature) and statutory approaches (statue approach) as primary data sources, such as law books and legal regulations that contain results that are appropriate and related to the subject matter of the research. Then it is also supported by secondary data, namely journals, the internet, articles, principles, theories sourced from law books, and opinions of legal experts. This research is a type of Normative Juridical research. Normative data collection techniques are carried out by means of literature studies (library research), namely, looking for concrete legal certainty from the source of the material obtained which is related to the subject matter of the research. In conducting this research, the author uses a qualitative analysis method, namely the prescriptive or descriptive method, which is a study or analysis of all sources of legal materials used in this normative research. For this reason, the results of the normative juridical analysis will be connected to the subject matter that occurs in this research, in order to produce an objective assessment and answer a problem in the research.

DISCUSSION

Principles of Local Regulation Formation

Based on Law Number 32 of 2004, the position is important, because it is an element of the regional government in organizing regional government.⁹ The position of DPRD as the Regional Legislative Body is equal to and a partner of the Regional Government, as well as carrying out the function of control or supervision of the Regional Government. Based on Law No. 32/2004, the duties and authorities of the DPRD are as follows:¹⁰

- a. Form local regulations that are discussed with the Regional Head for joint approval;
- b. Discuss and approve the draft Regional Regulation on the Regional Budget together with the Head of the Region;

⁸ Nur Wijayanti, "Hubungan Antara Pusat Dan Daerah Dalam Negara Kesatuan Republik Indonesia Berdasarkan Undang-Undang Nomor 23 Tahun 2014."

⁹ A. Zarkasi, "Pembentukan Peraturan Daerah Berdasarkan Peraturan Perundang-Undangan," *Jurnal Ilmu Hukum INOVATIF 2*, no. 4 (2004): 104–20.

¹⁰ Manan Bagir, *Menyongsong Fajar Otonomi Daerah* (Yogyakarta: Pusat Studi Hukum U11, 2001).

- c. Carry out supervision of the implementation of Regional Regulations and other laws and regulations, Decisions of the Governor. Regent and Mayor, Regional Revenue and Expenditure Budget, Regional Government Policy, and International Cooperation in the region;
- d. Propose the appointment and dismissal of the Regional Head/Deputy Regional Head to the President through the Minister of Home Affairs for the Provincial DPRD and to the Minister of Home Affairs through the Governor for the Regency/City DPRD;
- e. To elect a Deputy Regional Head in the event of a vacancy in the position of Deputy Regional Head;
- f. Providing opinions and considerations to the Regional Government on plans for international agreements in the region;
- g. Giving approval to the plan of International cooperation carried out by the Regional Government;
- h. Requesting an accountability report of the Regional Head in organizing regional government;
- i. Form a Supervisory Committee for the Regional Head Election;
- j. Supervising and requesting KPUD reports in organizing regional head elections;
- k. Give approval to the plan of cooperation between regions and with third parties that burden the community and the region.

During the New Order era, there was a systematic attempt to make DPRDs dysfunctional as legislative bodies. This began by placing the DPRD as part of the regional government, alongside the head of the region. With such a construction, it was easier for regional heads to place DPRDs in a very weak position, because Governors, Regents and Mayors, in addition to their position as Regional Heads, are also Regional Heads, which are an extension of the Central Government in the regions. Another aspect that is commonly practiced in order to weaken the position of DPRDs is through control mechanisms over these institutions. Control can be exercised in two very effective ways¹¹ *First, it is done through internal mechanisms within the DPRD. In the regions, there is an unwritten mechanism, but it strongly colors the interaction between DPRD and the Regional Head, namely the half-room or one-room mechanism, Second, Recalling, The last way carried out by the Regional Head for critical DPRD members is to remove them from the institution, which is very popularly known as recalling.*¹²

In relation to that, there is a fundamental difference between what is regulated in Law No. 32 Year 2004 and Law No. 22 Year 1999, especially regarding the duties and

¹¹ Affan Gaffar M.Ryass Rasyid, Syaokani, *Otonomi Daerah Dalam Negara Kesatuan* (Yogyakarta: Pustaka Pelajar Kedesama dengan PUSKAP, 2002).

¹² Wulan Pri Handini, "Problematika Kedudukan Dewan Perwakilan Rakyat Daerah (Dprd) Diantara Kekuasaan Legislatif Dan Eksekutif," *Majalah Hukum Nasional* 49, no. 1 (2019): 117-49, <https://doi.org/10.33331/mhn.v49i1.95>.

authority of DPRD in forming local regulations. Law No. 22 Year 1999 regulates several principles regarding local regulations, as follows^{13,14}:

1. The Regional Head enacts the Perda with the approval of the DPRD;
2. Local regulations are formed in the context of organizing autonomy, assistance tasks and further elaboration of higher laws and regulations
3. Local regulations must not conflict with the public interest, other local regulations, or higher laws and regulations;
4. Local regulations may contain provisions on the cost of coercive law enforcement, or imprisonment for a maximum of six months or a fine of six million rupiah;
5. Decree. Decree of the Regional Head is stipulated to implement the Perda
6. Decree of the Regional Head which regulates, shall be published in the regional gazette;
7. Local regulations may designate certain officials as officials investigating violations of local regulations (PPNS Perda and Regional Head Decree).¹⁵

As for the scope of authority to form local regulations, it is determined that local regulations regulate domestic affairs in the field of autonomy and domestic affairs in the field of assistance tasks. In the field of autonomy, local regulations can regulate all government affairs and community interests that are not regulated by the Central Government. In the field of assistance, local regulations do not regulate the substance of government affairs or community interests. Local regulations in the field of assistance only regulate the procedures for implementing the substance of government affairs or the interests of the community.¹⁶

After Law No. 22/1999 was replaced by Law No. 32/2004, the principles of local regulation formation were determined as follows: (1) Local regulations are stipulated by the Regional Head after obtaining joint approval from the DPRD; (2) Local regulations are formed in the context of organizing autonomy, assistance tasks and further elaboration of higher laws and regulations by taking into account the characteristics of each region; (3) Local regulations may not conflict with the public interest and / or higher laws and regulations; (4) Local regulations are formed based on the principles of the formation of laws and regulations; (5) The public has the right to provide input orally or in writing in the context of preparing or discussing draft regulations; (6) Local regulations may contain provisions on the cost of coercive law enforcement, or

¹³ *Ibid.*

¹⁴ Bagir Manan, *Ibid*, hal. 142.

¹⁵ *Ibid.*

¹⁶ Bagir Manan, *bid*, hal. 72.

imprisonment for a maximum of six months or a fine of up to Rp. 50,000,000, - (fifty million rupiah). (7) Regional Head Regulations and/or Regional Head Decrees shall be stipulated to implement Regional Regulations.¹⁷ (8). Local regulations take effect after being promulgated in the regional news sheet. (9). Local regulations may designate certain officials as certain investigating officials as investigating officials for violations of local regulations (PPNS Perda); (10) Promulgation. Local regulations in the Regional Gazette and Regional Head Regulations in the Regional Gazette.

If in one session the DPRD and the Governor or Regent/Mayor submit draft local regulations on the same material, the draft local regulations submitted by the Governor or Regent/Mayor shall be discussed to be enacted as local regulations. The Governor or Regent/Mayor shall submit the draft bylaw no later than 30 (thirty) days after the draft is jointly approved. In the event that the draft. local regulation is not stipulated by the Governor or Regent/Mayor within 30 (thirty) days, the draft local regulation shall legally become a local regulation and shall be promulgated by including it in the regional gazette.¹⁸

A law and regulation does not apply eternally, because of the development of society, the regulations also undergo changes or are declared invalid. A statutory regulation is declared invalid if:¹⁹

1. Canceled.

The revocation of laws and regulations can be real, meaning that the new laws and regulations explicitly state that the old laws and regulations are revoked. For example, Law Number 5 of 1974 was replaced by Law Number 22 of 1999 concerning Regional Government. In addition, the formation of a regulation can be done secretly, meaning that it does not explicitly state that the regulation is revoked. Furthermore, if a regulation appears that regulates something that was previously regulated by the previous regulation, it is declared invalid.

2. A law is declared invalid if the period of its enactment has expired.
3. In reality, these laws and regulations can no longer be enforced in accordance with the times.

The existence of the sequence of laws and regulations is a system of laws and regulations with various consequences as follows: 1) Every legislative product can only be issued by the authorized person; 2) A type of legislation can only contain material in

¹⁷ *bid*

¹⁸ Elita Tampubolon, Ranap Sitanggang, and Haposan Siallagan, "Fungsi Dewan Perwakilan Rakyat Daerah Sebagai Unsur Penyelenggara Pemerintah Daerah Berdasarkan Undang – Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah," *Visi Sosial Humaniora* 1, no. 1 (2020): 21–30, <https://doi.org/10.51622/vsh.v1i1.30>.

¹⁹ Kemas Arsyad Somad, "Kedudukan DPRD Dalam Pemerintahan Daerah Di Indonesia Pasca Perubahan UUD 1945," *MMH Jilid 40* 40, no. 4 (2011): 479–83.

accordance with the level of the type of legislation; 3) Lower laws and regulations must not conflict with higher laws and regulations; 4) The issuance of each legislative product must be directed towards the realization of society as mandated in the objectives of the state; 5) If there is a product of legislation that does not tact the principles in the legislation system, it will result in the destruction of a system of legislation itself.²⁰

In the theory of legislation, it is known that there are forms of legislation at the central level and forms of legislation at the regional level. According to Amiroeddin Syarif, there are 3 types of legislation in Indonesia today²¹ : 1) The types prescribed by the 1945 Constitution; 2) Implementing regulations found in practice. Examples: Keppres, Inpres, Permen, Kepmen, Inmen, Regulations of Non-Departmental Government Institutions and other state regulations; 3) Regional level regulations in the context of implementing regional autonomy.

Based on Amiroeddin's opinion above, the forms of legislation at the central level are: (1) Laws (2) Presidential Decrees (3) Ministerial Decrees (4) General Decrees (5) State Agency Decrees. Meanwhile, the forms of legislation at the regional level are: (1) Provincial Regulations, (2) Regency Regulations, (3) City Regulations (4) Governor Decrees, divided into two: (a). Decrees that have the nature of regulating (Regelling) (b). Decisions in the nature of Determination (Beschikking). (5) Regent/Mayor Decisions are twofold: (a) Regulating Decree (Regelling) (b). Decisions in the nature of Determination (Beschikking). (6). Governor Instruction, Regent/Mayor Instruction.

Basic Legislative Framework

In order to make laws and regulations and regional regulations, there are 3 (three) bases or foundations as follows :²² 1) Philosophical Foundation ; legislation is produced that has a philosophical foundation (philisofische grondslag) if its formulation or norms are justified (rechtvaardiging) philosophically studied. So the law has a reason that can be justified when thought about in depth; 2) Sociological Foundation ; a law is said to have a sociological foundation (sociologische grondslag) if its provisions are in accordance with the general belief or legal awareness of the community. Juridical Foundation ; the juridical foundation (rechtgrond) or also known as the legal foundation is the basis contained in the provisions of a higher degree of law. The juridical foundation can also be divided into two types, namely: a) Formal aspects are legal provisions that authorize the forming body; b) The material aspect is the legal provisions on what problems or issues must be regulated.

In making laws and regulations, apart from considering the basis as mentioned

²⁰ Zarkasi, "Pembentukan Peraturan Daerah Berdasarkan Peraturan Perundang-Undangan."

²¹ Amiroeddin Syarif, *Perundang-Undangan, Dasar, Jenis Dan Teknk Membuatnya* (Jakarta: Bina Aksara, 1987).

²² "Ibid. Amiroeddin Syarif,," n.d.

above, it must also pay attention to legal principles. Legal principles are the main pillar for every law formation. According to Satjipto Rahardjo, legal principles can be interpreted as something that is considered by the legal community concerned as a basic truth or basic truth.²³ Legal principles according to Padmo Wahjono are divided into two things:

1. Principles of lawmaking.
2. Legal principles concerning the substance of laws and regulations are legal principles that are closely related to the content material of laws and regulations that will be designed.²⁴ Regarding the type of principle of this legislation, Amiroeddin Syarif suggests 5 principles, namely:²⁵
 - 1) The principle of the level of hierarchy; namely, a piece of legislation must not contradict the core of legislation of a higher level or degree.
 - 2) The law is inviolable; this principle is related to the right to test legislation (Foetsingrecht) , the right to test materially and the right to test formally.
 - 3) Special laws override general laws (lex specialis derogat lex generalis); general laws are those that regulate the main issues but the arrangements specifically deviate and the provisions of the general law.
 - 4) The law does not apply retroactively;
 - 5) The new law overrides the old law (lex posteriori derogat lex priori); if there is a problem regulated in a law (old), also regulated in the new law, then the provisions of the new law apply.²⁶

Starting from the foundation and principles of of legislation mentioned above, a basic framework of legislation is drawn up. legislation. In general, the basic framework of legislation contains things as follows²⁷:

1. Title / naming, which is a special sign that the type of legislation has been known from the beginning. By reading the title, each reader can already observe the possibility of further content and purpose. This part of the title contains the following points: (a). Type of legislation (b). Number of legislation (c). Year of legislation (d). The name of the legislation.
2. Preamble, namely a statutory regulation consists of: (a). Concerns (b). Legal basis.
3. The body that contains the formulation of laws and regulations.

²³ Volume Dharmasisya, Jurnal Fakultas, and Ricky Endrie Saragih, "" Dharmasisya " Jurnal Program Magister Hukum FHUI PENINGKATAN PENDAPATAN DAERAH" 2, no. December (2022).

²⁴ Sunaryati Hartono Dalaam Ronny Sautma Hotma Bako, *Op.Cit*, n.d.

²⁵ Padmo Wahyono dalam Ronny Sautma Hotma Bako, *Pengantar Pembentukan UndangUndang RI* (bandung: PT. Citra Aditya Bakti, 1991).

²⁶ Amiroeddin Syarif, *Op.Cit.*, hat. 78-84

²⁷ Bagir Manan, *Dasar-Dasar Perundang-Undangan Indonesia*, Cetakan 1 (Jakarta: Indonesia Hill, Co, 1999).

4. Closing, namely laws and regulations that end the regulations made which contain: (a). Formulation of legislation (b). Date of ratification (c). Signature of the authorized official.

Content Material of Local Regulations

Prior to the enactment of Law No. 10/2004 on the enactment of Laws and Regulations, it still referred to MPR-RI Decree No. III/MPR/2000 on the Source of Law and the Order of Laws and Regulations. Local regulations have officially become a source of law and are included in the order of laws and regulations. After the issuance of Law No. 10/2004 on the Formation of Legislation, which replaced MPR Decree No. III/MPR/2000, it was confirmed in Article 12, that the content material of local regulations is all content material in the context of regional autonomy and assistance tasks, and accommodates special regional conditions as well as further elaboration of higher laws and regulations. The content material of village regulations at the same level is all material in the context of organizing village affairs or at the same level as well as further elaboration of higher laws and regulations. The content material regarding criminal provisions can only be contained in laws and regional regulations.²⁸

In the field of autonomy, Perda can regulate various types of taxes and levies that have been delegated to the regions. This can be seen from the provisions in Law No. 34/2004 on the Amendment of Law No. 18/1997 on Regional Taxes and Levies. In Article 2 paragraphs (1) and (2) of the Law, the types of provincial taxes are determined, consisting of: (a) Tax on motorized vehicles and vehicles on water; (b) transfer tax on motor vehicles and vehicles on water; (c) motor vehicle fuel tax; (d) underground and surface water collection and utilization tax. The types of Regency / City Taxes consist of (a) Hotel Tax; (b) Restaurant Tax; (c) Entertainment Tax; (d) Billboard Tax (e) street lighting tax; (f) tax on extraction of class C excavation material; (g) parking tax. Then in paragraph (4), it is determined that by Regional Regulation, types of Regency/City Taxes other than those stipulated in paragraph (2) may be stipulated which meet the following criteria:²⁹

- a. Tax and not levy;
- b. The Tax Object is located or exists in the relevant Regency / City Regional Area and has a community in the relevant Regency / City Regional Area;
- c. The object and basis of tax imposition do not conflict with the public interest;
- d. The tax object is not a Provincial tax object and a central tax object;

²⁸ Eka N.A.M. Sihombing, "Problematika Penyusunan Program Pembentukan Peraturan Daerah (Problems on Forming Local Regulations Programs)," *Jurnal Legislasi Indonesia* 13, no. 3 (2016): 285–96.

²⁹ Novrianza dan Imam Santoso, "Dampak Dari Pelecehan Seksual Terhadap Anak Di Bawah Umur," *Jurnal Pendidikan Kewarganegaraan Undiksha* 10, no. 1 (2022): 54, <https://doi.org/https://doi.org/10.23887/jpku.v10i1.42692>.

- e. The potential is sufficient;
- f. No negative economic impact,
- g. Taking into account aspects of justice and the ability of the community;
and
- h. Preserve the environment.³⁰

Furthermore, in Article 4 of Law No. 18/1997 on Regional Taxes and Retribution, it is emphasized that taxes are stipulated by local regulations. Local regulations on taxes do not apply retroactively. Local regulations on taxes may regulate provisions regarding:³¹ (a) Provision of reduction, relief, and exemption in certain cases on the tax principal and/or sanctions; (b) procedures for the elimination of expired tax receivables; (c) The principle of reciprocity. Article 18 paragraph (1) regulates the object of Retribution which consists of (a) General Services; (b) Business Services; (c) Certain Licenses. Paragraph (2) emphasizes that Retribution is divided into three classes: (a) General Services Retribution; (b) Business Services Retribution; (c) Specific Licensing Retribution. In Article 18 paragraph (4) of Law No. 18/1997 on Regional Taxes and Retribution, it is emphasized that local regulations may stipulate types of retribution other than those stipulated in paragraph (3) in accordance with their autonomous authority and fulfill predetermined criteria. Then Article 24 paragraph (1) states, retribution is stipulated by Perda. Perda on retribution may stipulate provisions regarding: (a). Retribution period; (b). Granting of relief, reduction, and exemption in certain cases on the principal of retribution and/or sanctions. (c). Procedures for the write-off of expired retribution receivables.

The provisions in Law No. 34/2000 are guidelines for provincial or regency/city regions to further regulate the material and types of taxes or levies that can later be regulated in local regulations for each region.³²

In terms of its making, it is appropriate that the position of Provincial Regulations and District/City Regulations should be seen as equivalent to laws in the sense that they are merely legal products of the legislature. However, in terms of its content, it should be the position of regulations that regulate mated within the scope of a more specific applicable area. Thus, laws have a higher position than Provincial Regulations, and Regency/City Regulations. Therefore, according to the principle of hierarchy of laws and regulations, lower regulations must not contradict higher regulations.^{33,34}

³⁰ Novendri Mohamad Nggilu, "Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo," *Lambung Mangkurat Law Journal* 5, no. 2 (2020), <https://doi.org/10.32801/lamlaj.v5i2.150>.

³¹ Dalinama Telaumbauna, "Tinjauan Yuridis Penetapan Kedaruratan Kesehatan Masyarakat Akibat Covid-19," *Jurnal Education and Development* 8, no. 2 (2020): 30–36.

³² Dewi Widiyastuti, "Implementation of the Delimitation Contradiction Principle in Land Registration Activities at the South Sorong District Land Office," *Journal of Law Justice (JLJ)* 2, no. 2 (2024): 91–106.

³³ Mochamad Adib Zain, "Peran Desa Adat Dalam Merumuskan Dan Mengimplementasikan Ketentuan Pidana Berasal Dari Hukum Yang Hidup Dalam Masyarakat Sebagaimana Diatur Dalam KUHP Baru," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 12, no. 1 (2023): 1–25,

However, as a consequence of the affirmation of the principle of separation of executive, legislative and judicial powers in the text of the amendments to the 1945 Constitution, the products of regional legislatures may conflict with those of the central government. For example, if a provincial or regency/city local regulation that has been legally enacted conflicts with a ministerial regulation at the central level, the court must determine that the local regulation applies to its region.³⁵

According to Bagir Manan, considering that local regulations are made by units of self-government (autonomous), with an independent sphere of authority as well, then in testing them against higher-level legislation, it should not be solely based on "Ranking" but also on the "sphere of authority". Local regulations that contradict higher level laws and regulations (except the 1945 Constitution) are not necessarily wrong, if it turns out that higher level laws and regulations violate regional rights and obligations guaranteed by the 1945 Constitution or the Local Government Law.³⁶

Related to this, Maria Farida Indrati Soeprapto argues: Provincial Regulations and Regency / City Regulations still have a hierarchy, if there is a duty of assistance from the center, Regency / City Regulations must be subject to Provincial Regulations.³⁷ Law No. 10/2004 on the Formation of Legislation emphasizes that Pancasila is the source of all sources of State law. The 1945 Constitution of the Republic of Indonesia is the Basic Law in Legislation. The type of hierarchy of laws and regulations is regulated in Article 7 of Law Number 10 of 2004, stating:³⁸

1. Constitution of the Republic of Indonesia 1945;
2. Law / Government Regulation in Lieu of Law;
3. Government Regulation;
4. Presidents Regulation;
5. Local Regulation;
 - a. Provincial Regulation;
 - b. District/City Regional Regulation;
 - c. Village Regulation/equivalent regulation.

A law in the broadest sense encompasses all laws regulating a particular matter or

<https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/1101%0Ahttps://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/download/1101/321>.

³⁴ Gerson Sem Buinei et al., "Restorative Justice Approach in Dealing with Crimes at Police Level (A Study at Polresta and Polres Sorong)," *Journal of Law Justice (JLJ)* 2, no. 1 (2024): 1–12.

³⁵ Rmly Asshiddigie, *Konstitusi Dan Konstitusionalisme Indonesia, Pusat Studi HTN FHUI, Jakarta, 2004, Hal. 279-280.* (Jakarta: Pusat Studi HTN FHUI, 2004).

³⁶ Manan Bagir, *Teori Dan Politik Konstitusi 2004, Hal. 142., Cet. Kedua* (Yogyakarta: FH UII Press, 2004).

³⁷ Maria Farida Indrati Soeprapto, "Masalah-Masalah Yang Terkait Dengan Peraturan Perundang-Undangan Indonesia Setelah Amandemen UUD," (*Makalah*) *FH UII*, 2003.

³⁸ Ferderika Massa and Wan Norhasniah, "Implementation of Ticket Sanctions for Traffic Violations Based on Law No . 22 of 2009 at the Sorong City Police Traffic Unit," *Journal of Law Justice (JLJ)* 2, no. 2 (2024): 78–90.

problem. In this connection, the question arises as to whether a law should regulate as much or as little material as possible. What must be regulated in the law is what is needed in practice and no more than that, so a law must be complete in content, but there is no need to contain provisions that are not useful.³⁹ Realizing that there are so many laws and regulations, of course, anticipation is needed for further arrangements. A certain regulation can regulate certain matters delegated by other regulations in the field of state administration that are not regulated in laws or other regulations.⁴⁰

For practical reasons, it is often not necessary for the entire material to be regulated in the law in the formal sense, but only the main points and material, while the implementing regulations can be regulated in government regulations or other regulations.⁴¹ What is meant by the material must be complete, according to Irawan Soejito: explains as follows: That a law must regulate a material depends mainly on the nature and form of the law concerned. Talking about the legal substance that needs to be regulated in every law, it is inseparable from the theory created by Roseau which states that a law must be formed by the opinion of the general will, where this is the whole people who directly take part in the formation of community rules without the mediation of representatives.⁴² In this regard, according to A. Hamid Attamimi, there are 9 content materials and legislation, namely:

1. Strictly mandated by the Constitution and MPR Decrees
2. Further regulates the provisions of the Constitution
3. Regulates the interests of human rights
4. Regulates the rights and obligations of citizens
5. Regulates the division of state power
6. Regulates the main organization of the highest / highest state institutions
7. Regulates the division of state territories/regions
8. Regulates who is a citizen and how to obtain a citizen
9. Declared by a law to be regulated by law.⁴³

Furthermore, Bagir Manan proposed 5 (five) measures to determine the material or object that must be regulated by law, namely ⁴⁴:

1. The material set out in the 1945 Constitution, there is a provision stating that

³⁹ Irawan Soejito, *Membuat Undang-Undang* (Yogyakarta: Liberty, 1988).

⁴⁰ Hamid Attamimi S.A, "Peranan Keputusan Presiders Republik Indonesia Dalam Penyelenggaraan Pemerintahan Negara," *Disertasi Program Pasca Sarjana Univ. Indonesia* (Jakarta, 1990).

⁴¹ "Irawan Soejito, Op.Cit, Hal. 219.," n.d.

⁴² Maria Farida Indrawati, "IlmuPerundang-Undangan Dasar-Dasar Dan Pembentukannya," *U1* (Jakarta, 1996).

⁴³ "Hamid Attamimi S.A., Op.Cit, Hal. 219.," n.d.

⁴⁴ *Ibid.*

certain matters are regulated

2. Before the 1945 Constitution was amended, there were 16 items of content that the 1945 Constitution expressly ordered to be regulated by law. Currently, after the fourth amendment, the 1945 Constitution has 36 content matters that are ordered to be regulated by law.
3. The content that was to be regulated by law was the provisions, composition, powers and procedures of the judicial bodies referred to in Article 10(1) to be regulated by separate laws. Laws on General Courts, State Administrative Courts and Religious Courts were then enacted.
4. Laws are formed in order to revoke or add to existing laws.
5. Laws are formed because they concern matters relating to basic rights or human rights. So the content of the law is matters concerning human rights.
6. Matters relating to the interests or obligations of many people.

CONCLUSION

Based on the description that has been stated, it can be concluded that Local Regulations are formed by the DPRD together with the Governor in the Provincial region and in the Regency/City Region formed by the Regency / City DPRD together with the regent/mayor, in accordance with the mechanism specified in the legislation to be discussed together and to obtain joint approval of the draft local regulations before being passed into Local Regulations. The Basic Framework of Legislation includes three bases or foundations, namely the Philosophical Foundation, i.e. legislation is produced, has a *philosophical foundation (philisofische grondslag)* and if the formulation or norms get justification (*rechtvaardiging*) and are studied philosophically. then the law has a justifiable reason. Then the *Sociological* Foundation a piece of legislation is said to have a sociological foundation (*sociologische grondslag*) if its provisions are in accordance with the general beliefs or legal awareness of the community, and Juridical Foundation; (*rechtgrond*) or also known as the legal basis is the basis contained in the provisions of higher legal provisions. The content material of Perda is all content material in the context of regional autonomy and assistance tasks, and accommodates special regional conditions as well as further elaboration of laws and regulations, and must not conflict with higher laws and regulations.

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