

Regional Regulations Based on Religious Content in the Framework of NKRI: Examples and Impacts

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Abstract. Within the framework of the Republic of Indonesia, Indonesia implements regional autonomy. Through regional autonomy, regions can form regional regulations based on local content to regulate and manage their regional interests but the contents must comply with the provisions of the higher laws and regulations. That means regional regulations can not contain matters about religion and religious content which is the absolute authority of the central government. The reality happens contrary to the rules and regulations because there are some regional regulations to control religious matters. This paper uses the juridical normative approach with qualitative analysis. This study concludes that there are some examples of regional regulations based on religious contents that lead to some problems including justification from the society, sectoral and regional egoism, gap between majority and minority, and lastly the persecution that happened because the gap has become something normal.

Keywords: regional regulations, religious content, law enforcement

INTRODUCTION

Indonesia is a country with a heterogeneous population with different religions and beliefs. This is a legacy that must be maintained and preserved as a whole. However, diversity also brings differences which become one of the internal threats to national unity and integrity. Because differences will also present differences of opinion, differences in desires, and differences in interests that have the potential to cause conflict. All of these differences have been accommodated by the founding fathers with Pancasila as the unifier and motto of *Bhinneka Tunggal Ika* which was chosen as a binder.

NKRI with a very large and wide area of territory carrying out the wheels of government with regional autonomy. Indonesia in the framework of the NKRI based on Article 1 paragraph (3) and Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia allows regions to form laws and regulations at the regional level, namely Regional Regulations. But, the real circumstances that occur in society, there are regional regulations based on religious contents have aroused a sense of nationalism as a whole nation. Religious contents

that are written on some regional regulations, for example, the obligation to be able to read and write the Qur'an, the obligation to wear Muslim attire, certain religious education, and the forming of the gospel city. Factors underlying the emergence of this kind of regulation are influenced by historical, juridical, sociological, and political matters [1].

New threats to Indonesia arising from the devolution of authority from the Central Government to Regional Governments should be the central government intervening to prevent it based on applicable laws and regulations [2]. Conflicts will not often occur if all regional legislative functions run by the awareness of their duties and authorities facing the Central Government based on applicable laws and regulations. Religion can not only be understood only as faith and belief but also used as a "way of life" and human rights needs of the importance of the meaning of religiosity of human life so that the relationship between followers of religion runs peacefully. So the regulation of religion for shared life should not be carried out by an unauthorized level of government. For Indonesia which has a heterogeneous population, the resolution of this phenomenon is an urgent need.

METHOD

Normative research is done to generate new arguments, theories, or concepts as prescriptions in solving the problems encountered. The normative juridical approach takes based on the main legal material by analyzing the theories, concepts, principles, and laws and regulations associated with this research [3].

The data obtained in this thesis research is difficult to measure with certainty through numbers, the data obtained will be explained and analyzed with words and sentences. Qualitative data analysis techniques are based on a variety of writings relating to laws and regulations that are used as a foundation and expert opinion as material for comparison of theory and reality in practice so that data will be generated that truly illustrates the problem. The data obtained in this legal writing research will be explained and analyzed in the form of logical and systematic written reports to get conclusions. Data is analyzed and processed into a research report that is presented in writing and arranged systematically and completely about research activities, discussion, and

conclusion. These data are analyzed using a law, concept, and case approach.

RESULT & DISCUSSION

First, the Solok District Regional Regulation Number 10 the Year 2001 on the Compulsory Al-Qur'an Reading for Students and Brides has substance for elementary-high school students and brides-to-be for reading al-Qur'an. Cleverness in this Region Regulation is defined as being able to read the Qur'an fluently by the knowledge of recitation and proven by certificates. In terms of format, this regulation is not by the provisions of the writing of a regulation that has a passage with the phrase "By the Grace of God Almighty", but uses the phrase "With the Grace of Allah Subhanahu Wata'ala". This regulation contains sanctions for students and brides who do not implement the provisions for the clever reading of the Qur'an. Sanctions for students are not acceptable at the next level of education or transfer to another school. While sanctions for brides are delaying marriage. There are no clear and explicit exceptions for students and prospective brides who are not Muslim because in the article on the transitional provisions it is only written that non-Muslim students adjust to the guidelines and provisions that apply to adherents of non-Islamic religions.

Second, Solok District Regulation Number 10 the Year 2002 concerning Muslim Dressing Obligations has the substance that to maintain the honor and dignity of students, students, employees, and employees in Muslim attire when they go to school, campus, and office. The general public is also encouraged to dress in Muslim daily life and when attending official events. In terms of format, this regulation is not by the provisions of the writing of a regulation that has a passage with the phrase "By the Grace of God Almighty", but uses the phrase "With the Grace of Allah Subhanahu Wata'ala". In this Region Regulation there are inconsistencies in exceptions for non-Muslims because, in Article 1 regarding General Provisions, people are people who live and work in Solok Regency. Similarly, in the translation of Muslim dress obligations, the general public also gets obligations. In Article 1 there is no elaboration on what is included in the general public category. It is only in the article about other provisions that the Regional Regulation only applies to those who are Muslim.

Third, Siak District Regional Regulation Number 3 the Year 2015 concerning Procedures for Nominating, Election, Appointment Appointment, and Termination of the Head of Government has the substance that the prospective headman must be able to read the Qur'an at the oral examination stage. With the enactment of this regulation, the Siak Regency Regulation regarding the Procedures for Nominating, Election, Appointment of Appointment

and Dismissal of the Village Head is revoked so that it equates the position of the Penghulu with the Village Head. There are exceptions for candidates who are not Muslim, so they are not required to take an oral exam reading the Qur'an. This seems unfair because other religion also holds an understanding of their Holy Bible. The higher law and regulations do not rule about equalization of positions between penghulu and the village head.

Fourth, the Manokwari Regional Regulation Draft of the Gospel City. This draft regulation appeared in Manokwari to establish the status of Manokwari City as the City of the Gospel in Indonesia. The presence of regional regulations based on the content of the Islamic religion seemed to provide equal opportunities that the gospel was also worthy to be used as a basis for the content of the regional regulation. In 2005, the idea of the Manokwari Regional Regulation Draft began with a preliminary thought: preserving the history of the inclusion of the gospel in Papua. The idea was aimed at preserving Manokwari as the first place the gospel entered Papua and became a city of civilization that could continue. This idea was interpreted by the public as "Gospel Regional Regulation". Problems that arise in Manokwari show identity politics and the dominance of one religion that leads to discriminatory politics [4].

Fifth, the Region Regulation of Kudus Regency which is also based on the content of Non-Formal Religious Education, namely the Region Regulation of Kudus Regency Number 3 the Year 2013 concerning Madrasah Diniyah Takmiliyah. This regulation means passing the recommendation to be stipulated. This Regional Regulation was established before Permendagri Number 80 of 2015 so that it still uses a clarification mechanism. The clarification mechanism is carried out by the Provincial Government at the time the Regional Regulation is enacted. Regulations that have been set will be more difficult to do the monitoring. When the President and the Minister of Home Affairs stated to cancel the Regional Regulation whose contents were not suitable including religious content, this Region Regulation did not receive further executions [5].

Sixth, the Blora Regency Regional Regulation on the Implementation of Non-Formal Religious Education in 2018. The Blora Regency Council once submitted a request for facilitation regarding a draft regulation based on religious content. Based on the aspect of authority that can be seen in Article 10 of Law No. 23/2014 concerning Regional Government, religion becomes the absolute authority of the Central Government, not the Regional Government. Likewise, based on the matrix of the Division of Concurrent Government Affairs between the Central Government and the Provincial and Regency/City Regions contained in Attachment to Law Number 23 of 2014 concerning Regional Government point A,

the limits of the authority of Regency/City Governments in terms of regulating non-formal education is in the scope of management and curriculum by the local content of each region. So this confirms that the Regency/City Government cannot include religion in the area's non-formal education.

Seventh, the Kendal District Draft Regulation on Non-Formal Religious Education which is still in the form of the Kendal District Council initiation, which also regulates grants from the Province in 2017. At that time the Kendal Regency Council consulted directly with the Ministry of Law and Human Rights and recommendation is given to determine the initiation of the draft regulation to become a regulation. However, when the Kendal Regency Council consulted with the Provincial Legal Bureau, recommendations were not given. The study was given by the Ministry of Law and Human Rights only sees Law No.12/2011 concerning the Formation of Legislation as a legal basis. In fact, besides that the legal basis in drafting the Regional Regulation also includes Article 18 of the 1945 Constitution of the Republic of Indonesia, and Law Number 23 the Year 2014 concerning Regional Government [6].

Nanggroe Aceh Darussalam Province is an exception in this explanation because based on Law Number 11 the Year 2006 Nanggroe Aceh Darussalam Province can form and uses Qanun (Muslim religion based regional religion). From the explanation above, can be stated that matters contained in the examples of local regulations based on religious content includes some important things. The use of the term illiterate free movement can be more generalized to increase the ability and interest in reading in general, not only limited to the scope of the Qur'an. Regency/city must first know and understand well the percentage of illiterates in their area generally. The use of clever phrases is very subjective and has different standards for everyone, a person's understanding of the religion cannot only be seen from his intelligence and fluency in reading the scriptures and that is not urgent or very important for the running of regional governance. A person's honor and dignity are not determined by Muslim attire and The Holy Book does not specify criminal sanctions for the people who are not or are not fluent and are good at reading it or a requirement about the certificate on this matter.

Regional regulations based on religious contents are not by the standards and provisions of the drafting as stated in Appendix of Law Number 2 the Year 2011, the Central Government's authority through the Ministry of Religion to regulate the issue of religion as stated in Article 10 paragraph (1) of Law Number 23 the Year 2014, there is no further regulation of the same for other religious converts and there are very subjective phrases that can only be applied to a certain religion. The explanation

above also shows an example of a strong threatening aspect against Indonesia's unity that comes from inside. This leads to justification from the society as phrases of the shariah law or the gospel law growing in the media and the society that the certain meaning of these phrases can not be found in regulations; sectoral and regional egoism as the regency/city council push out their greed to put in their interests to regional regulations without concerning the higher rules and regulations, enlarge the gap between majority and minority that leads to superiority, selfishness, and intolerance.

On 14th February 2020, Romesko Purba, the public relations of the Parish Church of Saint Joseph Karimun who purely strives over the construction and improvement of the church and the Building Permit, shockingly reported to the Police by a group of people that decline his good intention. That is the example of how intolerance mindset grows because regional regulations that contain religious matters do not obey the higher regulations are left long without strong law enforcement. If the law in form of regulations could be used well as a tool of social engineering as stated by Roscoe Pound, the chance to create a modern law to educate people and change their desire for the welfare of society is higher [7].

Clear law enforcement from the state and society are needed. Central Government must always watch over meticulously the passage of regional regulations from the initiation to the monitoring mechanism. The authority of the Government to supervise local regulations is very broad including those that conflict with interests and decency [8]. Provincial governance legal bureau holds a very important role to filter the regional regulation drafts that contain religious matters based on the principles that are written in Law Number 23 the Year 2014, the regional regulations that are still applied must be quickly revoked according to the mechanism in Law Number 12 the Year 2011 junto Law Number 15 the Year 2019, The Constitutional Court Decree Number 137/PUU-XIII/2015 and Number 56/PUU-XIV/2016, active and collective acts from society to convey a common interest in the public hearing forum for regional regulation and to watch over and submit a request for judicial review to the Supreme Court related to the content regional regulations that harm or not accommodate the interests of followers of other religions.

CONCLUSION

Regional regulations based on religious content are found within the framework of the Unitary Republic of Indonesia. This is caused by regional selfishness in compiling regional regulations with the opportunity to use local content, some regional legislatures also lack understanding of the basic division of authority for the formation of regional regulations with the central government. Even

though all is written in Law Number 12 the Year 2011 and Law Number 23 the Year 2014. The provincial government holds an important role as a filter to decide which legal draft is essential or not for the sake of regional autonomy and good harmony with the central government. Based on the theory "Law as a tool of social engineering" by Roscoe Pound, it is needed for the central government to amend the law, adding strict sanction for regency/city that still using religious matters instead of local content for their regional regulations draft.

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