

Implications of Amendment of Law Number 12 Year 2011 into Law Number 15 Year 2019 in the Process of Forming Regional Regulations

Lita Tyesta ALW*
 Diponegoro Univeristy
 litatystalita@gmail.com

Amalia Diamantina
 Diponegoro University

Abstract. Law Number 15 Year 2019 about First Amendment to Law Number 12 Year 2011 concerning the Formation of Regional Regulations has brought changes in the process of establishing laws and regulations. The change is an additional one stage which was originally only five stages starting from planning to enactment, with the changes there are additional stages of monitoring and review. This research aims to get a picture of how the implementation of the changes in the stages of the formation of local regulations, namely the monitoring and review, especially in the Province of Central Java, whether there is an improvement both in the material content and its implementation. The method used in this study is a normative juridical research method with a statutory approach and a comparative approach which was then analyzed using a descriptive perspective. From this research, it can be concluded that the existence of Law Number 15 Year 2019 as changes to Law Number 12 Year 2011 does not necessarily have implications for the process of forming regional products, particularly those related to the harmonization, rounding, and stabilization.

Keywords: *implication, the changing of law number 12-year 2011, formation of regional regulations*

INTRODUCTION

The executive review was born from the consequence of the authority of the Central Government to oversee the implementation of regional autonomy by regional governments, particularly on regional regulation products. This form of testing is also known as an administrative review because it is carried out by the authorized State administrative body or official such as the authority of the Minister of Home Affairs or the Governor. This authority is also known as repressive supervision in the field of legislation. Supervision of regional legislative products is carried out so that the content of regional regulations does not have a conflict with higher

laws and the public interest [1].

Constitutional Court Decree Number 137 / PUU-XIII / 2015 and Number 56 / PUU-XIV / 2016 has revoked the Government's authority to cancel regional regulations through executive review. Revocation of the Minister of Home Affairs' authority to cancel Regional Regulations does not eliminate their obligation to supervise and evaluate the content and substance of Regional Regulations to maintain stability and regional autonomy unity within the framework of the Unitary State of the Republic of Indonesia. This is stated in Minister of Home Affairs Regulation Number 80 Year 2015, which has been updated by Minister of Home Affairs Regulation Number 120 Year 2018 concerning Amendment to the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products. Within this regulation, stated that the Government, in this case, the Minister of Home Affairs, still has the authority to carry out evaluation, facilitation, verification, and gradual clarification of regional products in the form of Provincial/Regency/City's Regional Regulations and The District Head Regulations.

However, with Law Number 15 Year 2019 concerning Amendments to Law Number 12 Year 2011 concerning Formation of Laws and Regulations, in Article 58 paragraph (2) regulates that harmonizing, rounding, and consolidating the conception of the Provincial Level Regional Regulation draft originating from the Governor shall be carried out by the ministry or state institutions which carries out governmental affairs in the field of Legislation Formation, even though the intended minister is the Minister of Law and Human Rights. The question that arises is whether with a change in the stages of formation of legislation as regulated in Law Number 15 Year 2019 will have implications for changes in authority at the regional level related to the stages of harmonizing, rounding, and consolidating the conceptualization of the draft provincial regulations originating from the Governor which so far have been carried out by the Ministry of Home Affairs.

METHOD

This research used a normative juridical method that focuses on the study of legal norms contained in legislation regarding the formation of regional level legislation, namely various laws and regulations that are both directly and indirectly related to the formation of regulations legislation in the main regions after changes to Law Number 12 Year 2011 concerning Formation of Regulations and Regulations. The approaches used in this study are: first, the statutory approach; used to research and examine Law Year 15 of 2019 concerning Formation of Regulations and Regulations to find out whether there are any implications related to the process of establishing regulated regional regencies/municipalities or regional regulations at the provincial level. Second, a comparative approach to compare between Law Number 12 Year 2011 concerning Formation of Laws and Regulations Number 15 Year 2019 concerning Amendment to Law Number 12 Year 2011 concerning Formation of Regulations and Regulations. The analysis used was descriptive prescriptive analysis which was expected from this research also generates ideas for the future after the enactment of Law Number 15 Year 2019. Data taken were based on primer legal material in the form of various laws and regulations related to research and secondary legal material as a complement in the form of books or articles/journals related to this research.

RESULT & DISCUSSION

Substantially, there was a change in Law Number 12 Year 2011 concerning Formation of Statutory Regulations into Law Number 15 Year 2019 concerning Amendment to Law Number 12 Year 2011 concerning Formation of Laws and Regulations relating to the task of harmonizing regional legal products. In Central Java Province, the task is delegated to the regional working unit who is in charge of the formation of regional products, namely the Regional Secretary Legal Bureau. This is in accordance with Regional Regulation Number 9 Year 2016 and implementing regulations in the form of Governor Regulation Number 250 Year 2016 concerning the Main Tasks and Functions of the Central Java Province Legal Bureau. Whereby, the tasks include implementing the preparation, harmonization, research and development, promulgation, alignment, harmonization, and enactment of regional products.

Harmonization in the Indonesia Dictionary online version means harmonization and alignment [2]. According to L.M. Gandhi as quoted by Soegiyono, et al the harmonization of the law includes the adjustment of laws and regulations,

government decisions, judges' decisions, legal systems and legal principles aimed at increasing legal unity, legal certainty, justice, usefulness without obscuring and sacrificing legal pluralism [3]. Harmonization basically must include several aspects as Kusnu Goesniadie argues in Sapto Budoyo, namely component of legal material (legal substance) in the form of statutory regulations, unwritten law, and the principle of law as an external order and the principle that underlies the internal order of a regulation; structural component (legal structure) consisting of various public institutions or institutions and the component of culture (legal culture) which includes the attitudes of legal subjects, namely humans involved in the process of forming and implementing and enforcing the laws and regulations [4].

With the existence of Law Number 15 Year 2019, it will strengthen the importance of the harmonization process in the formation of laws and regulations. Indeed, the formation of laws and regulations must pay attention to the type, level, forming officials, principles, techniques, and language as stipulated in the guidelines. Conceptually, it needs to pay attention to 3 E, namely Efficacy, Efficiency, and Effectiveness. This was as initiated by Helen Xanthaki, on Transferability of Legislative Solutions [5].

Efficacy means that a regulation must be able to produce what is needed in the legislation process and not conflict with the same norm or above. Efficiency also means that the resulting regulations must pay attention to the costs and benefits that can achieve the final goal, namely the achievement of prosperous conditions for its address. While effectiveness is related to the legal norms contained in the regulations must produce following the objectives, so as not to cause adverse effects but otherwise will produce benefits not measured in quantity but also quality. Of the three components, the efficacy component is very compatible with the meaning of harmonization. Furthermore, Xanthaki gives signs of failure (inefficiency) in a regulation, namely failure of communication of the law message; failure to enlist supportive action to the law; failure to forestall avoidance of the action required by the law; failure of enforcement and failure of the law's moral obligation [6]. The intended failure can occur if the formation process ignores the three things.

The principles of creating good regulations contain formal and material principles which stated in article 5 and 6 respectively [7]. The formation of regional legal products is regulated in Law Number 12 Year 2011 concerning Formation of Legislation which in principle remains through the stages of planning, drafting, discussion, ratification, and enactment. Law Number 12 Year 2011 has been implemented with Presidential

Regulation Number 87 Year 2014 concerning Regulations for Implementing Law Number 12 Year 2011. It has even been followed up with Central Java Province Regulation Number 6 Year 2016 concerning Formation of Regional Legal Products

On the one hand, the Central Java Provincial Government has the authority to form a Regional Regulation as a consequence of the granting of autonomy. The process of formation still refers to the guidelines as regulated in Law Number 12 Year 2011, only the Province has the authority to conduct evaluations for regional regulations at the district and city level. Regional regulations created to carry out both the substantive and technical nature of the procedures for the implementation [8]. To follow up on this provision, Minister of Home Affairs Regulation Number 80 Year 2015 concerning Regional Legal Products was later amended by Minister of Home Affairs Regulation Number 120 Year 2018 concerning Amendment to Minister of Home Affairs Regulation Number 80 Year 2015 concerning Regional Legal Products. In the Minister of Home Affairs Regulation provision, it gives several authorities related to the formation of regional legal products at the Provincial level to harmonize and synchronize legal products at the district and city levels in the Central Java Province. Ministerial Regulations must be both vertically and horizontally harmonized, so it creates a good, interrelated, and unamied regulations environment [9].

This is a consequence of the position of the Province of Central Java, in this case, the Provincial Legal Bureau as the regional apparatus in charge of its main law related to the formation of regional products; verify and compare the results of facilitation with the draft regulation before being given a registration number; clarify the form of study and evaluation of local regulations to determine compliance with laws and regulations, public interests and decency. This as a consequence of the guidance and supervision in the preparation of regional legal products by the province to the district/city is to carry out the function of the province as a representative of the central government in the region. As an illustration, the graphic below shows the Legal Bureau related to the above processes.

From Figure 1, it can be explained that until the end of 2019, the Legal Bureau has carried out various stages in the process of forming regional legal products, in the form of evaluating 35 regional legal products and facilitating as many as 536 which all stages are related to harmonization and cyclization.

The practice that has been carried out so far is harmonization and synchronization related to the existence of new regulation, namely the enactment of Law Number 15 Year 2019 concerning

Amendments to Law Number 12 Year 2011 concerning Formation of Regulations, in principle the duties of the Central Java Province Law Bureau have no changes in duties and functions. Although it is clearly stated in Article 58 paragraph (1) of the Law that Harmonization, Rounding, and Consolidation of the Draft Concept of Provincial Regulations originating from the Provincial Regional House of Representatives is coordinated by the Provincial Regional House of Representatives' specialty that deals specifically with the field of legislation. Whereas in paragraph (2), it states that the harmonization, rounding, and consolidation of the draft Provincial Regulation originating from the Governor shall be carried out by the ministry or agency that carries out governmental affairs in the field of Legislative Formation. The Ministry referred to in this provision is the Ministry of Law and Human Rights and followed up at the regional level conducted by the Regional Office of Law and Human Rights of Central Java Province.

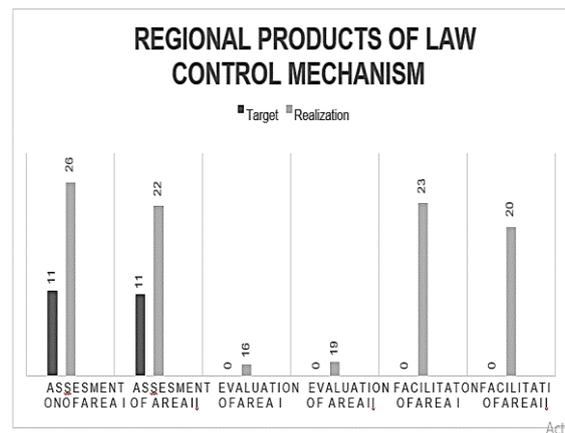


Figure 1. Regional Products of Law Control Mechanism

The role of the Legal Bureau as a harmonizer and synchronizer continues to run. The results of the harmonization and synchronization of the Legal Bureau were submitted to the Regional Office of the Ministry of Law and Human Rights for synchronization and harmonization based on Law Number 15 Year 2019. Submission is intended as well as synchronization and harmonization requests from the Ministry of Law and Human Rights Regional Office. Up to early May 2020, the Legal Bureau have already sent 4 draft regulations that were asked for harmonization and synchronization to the Ministry of Law and Human Rights Regional Office. In fact, only 1 draft was received in the form of a Letter Regarding Submission of Results of Harmonization of the Draft Regulation of the Central Java Province [10].

The instrument for the development and

supervision of regional legal products has been implemented by executive agencies through the Ministry of Home Affairs and the provincial government. The mechanism is clear and orderly so it has been regulated in Law Number 23 Year 2014 concerning Regional Governments and Minister of Home Affairs Regulation Number 80 Year 2015 as amended by Minister of Home Affairs Regulation Number 120 Year 2018. While other provisions in Law Number 15 Year 2019 also regulate the authority of the Regional Representative Council to conduct monitoring and supervision related to the harmonization of regional legal products. If it is implemented, there will be a longer chain of drafting local legal products so that it is ineffective and inefficient. In addition, the realm of guidance carried out by the Regional Representative Council should be aimed to monitor the implementation of laws and regulations implemented in the regions, including overseeing the implementation of regional regulations. With this authority, Regional Representative Council is closer to form a regional representation that able to accommodate matters related to the implementation of regulations at the central level in the regions, and can periodically evaluate the implementation of central regulations in the regions. The descriptions above can illustrate that the Provincial Legal Bureau is on two legs, one leg is in the Ministry of Home Affairs, related to the personification of the region which has the authority to establish regional regulations as a follow up to the implementation of regional autonomy. The other leg is located as a representative of the Central Government in the Region. Therefore, in future, it is necessary to do the harmonization of regulatory authority related to the harmonization of regional legal products. So that there are clarity and timeliness, the authority of the Ministry of Law and Human Rights Regional Office regarding harmonization should not increase the length of the process of forming Regional Regulations.

Due to the fact, the parameters used by the Legal Bureau and the Ministry of Law and Human Rights Regional Office will be used as a material for discussion in the Provincial Regional House of Representatives with the executive. The Legal Bureau sees that harmonization and synchronization are input recommendations for the perfection of the draft regulation. While the Ministry of Law and Human Rights Regional Office results of harmonization and synchronization recommendations are not a kind of agreement but only the fulfillment of the requirements as stated in the Harmonization Submission Letter from the Ministry of Law and Human Rights Regional Office. So, whatever the results cannot stop the formal process of the Legal Bureau that has been running by referring to Law

Number 23 Year 2014 and Law Number 15 Year 2019. Because if it is to wait from the Ministry of Law and Human Rights Regional Office, the entire political process and administrative process in the provincial government and Provincial Regional House of Representatives are stopped. The Regional Office's standard operational procedure in conducting guidance through harmonization and synchronization has no clear timeline.

It is needed to be regulated in implementing regulations for Law Number 15 Year 2019 for example at the ministry level for the harmonization and synchronization processes carried out at the Ministry of Law and Human Rights Regional Office must clearly set the timeline.

CONCLUSION

From the description above, it can be concluded that the existence of Law Number 15 Year 2019 as changes to Law Number 12 Year 2011 does not necessarily have implications for the process of forming regional products, particularly those related to the harmonization, rounding, and stabilization. The Minister of Home Affairs still has the authority related to the evaluation, facilitation, verification, and clarification of regional legal products. In the future, a grand design must be made clearly related to the stages of harmonization, rounding and stabilization as to what, the mechanism, its coordination with the region and the period to the results.

REFERENCES

- [1] J. Radix, "Kewenangan Mendagri Membatalkan Peraturan Daerah Dalam Kedudukannya Sebagai Lembaga Eksekutif," *E-Journal Universitas Dr. Soetomo*, vol. 13, no. 2, pp. 1-25, 2017.
- [2] [Online]. Available: <https://kbbi.web.id/harmonisasi>. [Accessed 29 Mei 2020].
- [3] Soegiyono, "Pentingnya Harmonisasi Pembentukan Peraturan Perundang-Undangan," *Kajian Kebijakan dan Hukum Dirgantara*, vol. I, no. 2, p. 8, 2015.
- [4] S. Budoyo, "Konsep Langkah Sistemik Harmonisasi Hukum Dalam Pembentukan Peraturan Perundang-Undangan," *Jurnal Ilmiah CIVIS*, vol. IV, no. 2, p. 609, 2014.
- [5] H. Xanthaki, "On Transferability of Legislative Solution: The Functionally Test," in *Drafting Legislation A Modern Approach*, H. Xanthaki, Ed., Burlington, Ashgate Publishing Limited, 2008, p. 17. Quoted by Lita Tyesta ALW in "Perkembangan Pembentukan Peraturan Perundang-undangan, Kajian Normatif Delegated Legislation d Indonesia (Studi

- Kasus: Peraturan Komisi Pemilihan Umum).
- [6] H. Xanthaki, H. Xanthaki, "On Transferability of Legislative Solution: The Functionally Test," in *Drafting Legislation A Modern Approach*, H. Xanthaki, Ed., Burlington, Ashgate Publishing Limited, 2008.
- [7] R. D. Putranto, I. Perwira, S. Dewi and T. Murwadji, "Big Data Based Law In The Process of Forming Legislation In Indonesia," *International Journal of Philosophy and Social Theory*, vol. 25, no. 2, pp. 118-124, 2020.
- [8] S. Santoso, "Implementation of Regional Regulations In Supporting Regional Autonomy," *Social Science and Humanities Journal*, vol. 3, no. 10, pp. 1530-1534, 2019.
- [9] H. K. Putra, Sudarsono, Istislam and E. Widiarto, "Legis Ratio Of Minister Regulation Arrangement In Law No. 15 Of 2019 About The Amendment to Law No. 12 Of 2011," *International Journal of Rerearch In Business And Social Science*, vol. 9, no. 3, pp. 182-190, 2020.
- [10] "Data From Central Java Provincial Legal Bureau," 2020.