



The Function of Legal Theory in Forming of the Regional Regulation in the Investment Sector Based on Electronic Transactions

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Abstract. The increase of investment fraud on the internet that is loss to the community and to the regions, marked by the number of cases of complaints to the OJK being handled by the Regional Investment Alert Task Force. Law Number 23 of 2014 stipulates that Investment is a mandatory government affair which is the authority of the Regions. Based on Article 236 paragraph (1) of Law Number 23 of 2014, the regions have the authority to form Regional Regulation. Indonesia has Law Number 11 of 2008 concerning ITE. However, there are no Regional regulation that regulate investment activities in ITE. Local governments need to establish regional regulations in the in the investment sector based on Electronic Transactions, as a legal umbrella at the Regional level. Formation of Regional Regulation requires relevant legal theory and legal principles. legal issues: How does the function of Legal Theory and Principles of Efficiency and effectiveness in the Formation of Regional Regulation in the investment sector based on Electronic Transaction? Method : Normative legal, statutory approach. Analysis and processing using legal theory namely Legislation Theory, Authority Theory, Legal Protection Theory, are presented in a descriptive-qualitative manner. Results of the study: The function of legal theory in the formation of Regional Regulations in the Field of Electronic Transaction-Based Investment is as the foundation and basis for compiling content material, so that the purpose of forming Regional Regulations is to have legal force both philosophically, juridically and sociologically can be achieved. The function of the principle of usability and usability is to become the basic thoughts that provide direction to Regional Regulation makers in formulating content material, so that the use of ITE continues to maintain the principle of prudence and benefit amid the rapid progress of electronic transactions and the freedom to choose technology in society.

Keywords: Electronic Transactions, Investment, Legal Theory, Regional Regulation.

1 Background of Problem

The goal of establishing regional government is to expedite the enhancement of public welfare. In order to accomplish the desired outcome, the regional government must establish regional regulations when implementing regional autonomy, as stated in Law Number 23 of 2014 on Regional Government Article 236. One of the main engines of the local economy is investment. Investment is a mandatory government matter under Article 12 Paragraph (2) Letter L, which is under the jurisdiction of the Regional Government. Investment, according to Eduardus, is the commitment of several monies or other resources that are being used now in order to reap several benefits later on Eduardus (2001). However, the rise of investment fraud on the internet has impacted society at a loss, marked by the many reports to the Regional Police and to the Financial Services Authority handled by the Regional Investment Alert Task Force. To solve this issue, local government plays a critical role. Law Number 8 of 1995 concerning capital markets, Law Number 11 of 2008 concerning information and electronic transactions and their amendments Number 19 of 2016, and Law Number 25 of 2007 concerning investment capital and its derivatives are just a few of the regulations pertaining to investments that be specified by the government. Tongam claims that the main issue is that the Task Force still lacks a legal framework, which affects its ability to play a "blunt" role in intervening when businesses are found to be breaking the law. Regulations at the regional level governing investment activities based on electronic transactions do not yet exist, so there are empty norms. Regional governments in accordance with their authority have to stipulate regional regulations as preventive legal protection at the regional level. Law Number 12 of 2011 concerning Formation of Legislation mandates that good laws and regulations, particularly those pertaining to efficiency and effectiveness, should serve as the foundation for the creation of regional regulations. crucial to the development of regional regulations.

1.1 Legal Issues

1. What is the function of legal theory in the formation of Regional Regulation in the investment sector Based on Electronic Transactions ?
2. What is the function of the principles of efficiency and effectiveness in the formation of Regional Regulation in the investment sector based on electronic transactions ?

2 Literature Review

2.1 The Concept of The Principle of Usability and Efficiency

3.1.1.Oeripan Notohamidjoyo Conveying the understanding of fundamental legal principles varies depending on the understanding adopted by the author concerned Valerine (2014).

3.1.2. *Legal principles are "tendencies required by law by our understanding of decency," according to Paul Scholten.. Legal principles are the fundamental ideas that underpin the legal system. They are expressed in statutory regulations and judicial rulings, and they serve as the foundation for all other provisions and decisions. regarded as an explanation In 1975, Notohamdoyo.*

Legal principles are the fundamental ideas that underpin the legal system. They are expressed in statutory regulations and judicial rulings, and they serve as the foundation for all other provisions and decisions. regarded as an explanation In 1975, Notohamdoyo Formation of Legislation. "What is meant by the principle of usability and effectiveness is that every Legislation is made because it is really needed and useful in regulating the life of society, nation, and state," the author explains in his explanation. the efficacy principle that is taken into consideration when creating laws or regulations.

3.1.3. *Concept of Transactions Electronic*

Legal actions conducted through the use of computers, computer networks, and/or other electronic media are known as electronic transactions. Furthermore, one or more sets of electronic data, such as text, voice, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegrams, telex, and telecopy, are also related to one or more sets of electronic information. Or similar symbols, letters, numbers, signs, Access Codes, letters, or processed perforations that are comprehensible to those who possess the necessary skills. Law Number 11 of 2008, as amended by Law Number 19 of 2016 on Information and Electronic Transactions (henceforth referred to as UU-ITE), contains Article 1 in numbers 1 and 2.

3.2. *The concept of theory of law*

The object of contemplative legal theory is the general phenomenon of positive law, its purpose is theoretical, its perspective is internal, and the theory of truth that is adhered to is pragmatic, namely the consensus of expertise (peers) and its use leads to the improvement of legal practice Atmadja (2020). The concept of Legal theory of J.J.H. Bruggink Salman (2004). Bruggink explains that legal theory is "all interrelated statements regarding the conceptual system of legal rules and legal decisions, and that system is an important part of being positive".

Based on the understanding of legal theory according to the expert, it can be understood that legal theory as the basis for the formation of law, the phenomenon of positive law, is pragmatic and the agreement of the lawmakers, the perspective is internal.

3.3. *Teori Kewenangan*

According to H.D. Van Willem Konijnenbelt, who quoted J.B.J.M. ten Berger, the theory of authority is the exercise of attributional sources of authority, which are defined as the delegation of legislative authority to government organs Ridwan (2014).

3.4. *Teori Legislasi*

Sally Wehmeir mengartikan legislasi atau legislation adalah:

- a. Law or set of law passed by a parliament,

b. The process of making passing laws: legislation will be difficult and will take time Salman (2016).

Roscoe Pound claimed that a sociological study was conducted at the time the legislation was formed. For laws and regulations to be effective, they must meet three requirements: they must have a foundation for their legal, sociological, and philosophical validity. 2015; Sirajuddin.

The process of creating legislation to produce positive law (in the sense of statutory regulations) is known as legislative theory. This legislation begins with the planning stage of the legal process and continues through preparation, formulation, discussion, ratification, promulgation, and distribution of legal products. The Momentum Theory is one of the theories of legislation. Using the Momentum Theory to solve problematic behavior that will be changed through regulation with regional regulations is highly relevant when forming local regulations. Meuwissen contends that there are two key stages in the creation of laws and regulations: the political-ideal stage and the technical stage. (2016) Suantara. Memorandum politik-idiil is related to the regulations governing the laws that are enforced. The formulation of perundang-undangan laws is a political strategy, goal, and outcome of the political process. In actuality, though, it has a normative component in addition to being the product of a political constellation crystallizing. It is implied by the ideal moment that legal principles—that is, legal ideas and ideals, particularly Pancasila—should come to pass. Therefore, when it comes to the creation of laws and regulations, politics and law are closely related. Technical Moment, on the other hand, has to do with the capacity to translate understandings into tangible normative texts. 3.5. Theory of Legal Protection According to Philipus M. Hadjon, there are two categories of legal protection: "repressive legal protection and preventive legal protection." Whereas repressive legal protection seeks to settle disputes, preventive legal protection uses the law to stop disputes from happening. (1987) Philipus.

3 Research Method

3.1 The type of research used in this research is normative legal research.

The goal of the Normative Legal Research Method is to study legal norms by looking at the law from an internal perspective. Pasek (2015). This normative legal research departs from the absence of regulatory norms/incomplete norms, so what is needed is legal argumentation.

3.2 Research Approach,

The approaches used in legal research are statutory approaches, case approaches, historical approaches, comparative approaches, and conceptual approaches, according to Peter Mahmud Marzuki Peter, 2008. The research approaches used by researchers in this study include statutory approaches, case approaches, and conceptual approaches.

3.3 Sources of Legal Materials

Legal materials are divided into two categories: (1) primary legal materials, which are court decisions and statutes with binding authority; and (2) secondary legal materials, which are legal journals whose writers are regarded as having scientific authority and whose works are frequently cited by other legal writers.

3.4 Problem Approach

Approach to the problem, including: emphasizing laws and regulations (statutory approach), concept approach, an interdisciplinary approach, related to studies from the perspective of investment law, philosophy, economics and politics.

3.5 Legal Material Collection Techniques and Problem Analysis

Collection of legal materials through library research at the Warmadewa University Library, private collection, with a Card system consisting of: citation cards according to the subject matter, substance citations that are relevant to the problem, analysis cards.

Analysis of the problem through the steps: text description of laws and regulations, systematization, evaluation, strengthened by legal arguments or legal reasoning in the Indonesian context which is built through deductive-inductive logic.

4 Analysis of the Result Research

4.1 Analisis terhadap the function of legal theory in the formation of Regional Regional in The Investment Sector Based on Electronic Transactions,

In her book *Science of Legislation*, Maria Farida Indrati discusses the creation of laws and regulations in Indonesia, noting that a key component of a nation's administration is the creation of just laws and regulations that are well-balanced, amiable, and simple for society to follow. Cristina (2007). Bruggink states that legal theory is a whole statement that is interrelated with the context of legal rules and legal decisions, which has a double meaning, which can mean product and can also mean process. According to Burkhardt Krems Hamid (1990), there are two primary components to the creation of laws and regulations (*Staatliche Rechtssetzung*): the process of deciding what regulations should contain (*inhalt der regelung*) and the actions involved in carrying out regulatory forms (*form der regelung*). Creating laws and regulations is a multidisciplinary process. T. Koopman stated that the function of forming statutory regulations is increasingly needed for its presence, because in a country based on modern law (*verzorgingsstaat*) Mahendra (2007), the main purpose of forming laws is no longer to create codification of values and norms of life that have settled in society, but to create modifications or changes in people's lives. In the meantime, the creation of regional laws and regulations, encompassing the stages of planning, drafting,

discussing, ratifying or stipulating, enacting, and disseminating, is what is meant to be understood by the term "formation of regional regulations."

Article 14 of Law Number 12 of 2011 outlines the content material for Provincial Regional Regulations and Regency/City Regional Regulations, which includes content material in the context of implementing regional autonomy and co-administration tasks as well as accommodating regional special conditions and/or further elaboration of higher laws and regulations. This content material relates to the content of regulations, in this case regional regulations. Additionally, as per Law U No. 12 of 2011's Article 15 paragraph (1), criminal provisions may be included in regional regulations.

Applying momentum theory to the creation of regional regulations is highly pertinent. Because politics and law are intertwined, momentum theory cannot be disregarded. In particular, the process of creating regional regulations requires the ability to translate political understandings into practical normative texts in addition to political understandings.

A long-term investment in one or more owned assets with the expectation of future profits is also referred to as an investment. Either a person or an organization with extra money can decide to make an investment. 2011 Sunariyah. Oleh karenanya kegiatan investasi perlu mendapatkan perlindungan hukum.

The development of regional investment regulations based on electronic transactions is an extension of preventive legal protection for the investor community in the area, which is preventive in nature, in line with Philipus M. Hadjon's theory of legal protection. An examination of how legal theory contributed to the creation of regional investment sectors based on electronic transactions It is possible to argue that legal theory serves as the cornerstone or basis for the creation of laws and regulations, in this case the Electronic Transaction-Based Investment Regulations, by utilizing the legal theories previously mentioned.

4.2 Analisis terhadap the function of the Principles of Efficiency and effectiveness in the Formation of Regional Regulation in the investment sector based on Electronic Transaction.

Every legal regulation is rooted or based on a legal principle, namely a value that is believed to be related to the management of society to achieve a just order. Because the material truth of a legal system that forms the formal basis of a legal system refers to the principles that form the foundation of the building of all legal rules that apply as positive law that must be obeyed in which country it is enforced Amadja (2018).

Positive law norms are based on a legal principle that is actually an abstraction of a more general rule whose application goes beyond what positive law norms provide. These legal precepts stem from human reason and conscience, which enable people to discriminate between right and wrong, fair and unjust, and humane and inhumane.

Paul Scholten claims that legal principles serve as a guide for the creation of laws, ensuring that the community's needs are met by creating laws that adhere to the formation principles of good law. Legal principles are the fundamental ideas that form the basis of the legal system. They are expressed in statutory regulations and the decisions of judges, and each of these can be regarded as a description of a particular pro-

vision or ruling. In the legal domain, if we have reached the consensus that Pancasila is the source of all sources of state law, then it makes sense that when we discuss principles, we think that the source of all legal principles is Pancasila, Pancasila is firmly adhered to as a basic rule, as a *beginsel rechtsideologie* or ideological principle Indonesian law.

Indonesian national principles which originate and are derived from Pancasila, including: prosperity of the people". The Republic of Indonesia Constitution of 1945 states, in paragraph 33, (1), "The economy is structured as a joint venture based on the principle of kinship." This statement is connected to the Principles of Joint Ventures and Families. The governance of the modern Indonesian state and social life, which tends to develop towards industrialization and depends on advanced science and technology, must maintain a life of mutual cooperation based on the principles of joint effort and kinship.

An examination of how the aforementioned legal principles are used to form regional regulations Operation As mirrored in the national legal principles based on Article 33 of the 1945 Constitution of the Republic of Indonesia, the formal legal principles of usability and efficiency are included in the principle of benefit. As a result, the thinking paradigm for creating a regional regulation on electronic transaction-based investments is to make the usability principle and its application into fundamental ideas that guide the formulation of Perda norms and regulations, which can be considered as an extension of Pan-casila values.

5 Conclusion and Recommendation

5.1 Conclusion

1. The function of legal theory in the formation of Regional Regulations in the Field of Electronic Transaction-Based Investment is as the foundation and basis for compiling content material, which is used in the planning, preparation, discussion stages. Applying momentum theory, specifically in the technique of drafting regional regulations, requires not only political understanding, but also the ability to formulate these understandings into concrete normative texts. Thus the regional regulations formed have legal validity both philosophically, juridically and sociologically.
2. The function of the principles of usability and effectiveness is to become the rationale that gives direction to Regional Regulation makers in compiling content materials. so that investors who use Electronic Information and Transactions (ITE) continue to maintain the principle of prudence and expediency amid the rapid progress of electronic transactions and the freedom to choose technology in society.

5.2 Recommendation

1. To Regional Governments (both Regional Heads and Regional People's Representative Councils) who are authorized by law to draw up Regional Regulations, to propose a draft regional regulation (Council initiative or Government Initiative) regarding Investment Based on Electronic Transactions, with contents based on legal

theory and principles -relevant legal principles. so that the regional regulations formed have legal validity, both philosophically, juridically and sociologically.

2.To the investor community who use Information and Electronic Transactions (ITE) in investment activities, to maintain the principle of prudence and expediency amidst the many applications that offer investment on the internet and choose legal ones to get legal protection.

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