

"The essence of the principle of Establishing Good Laws and Regulations for Realizing Quality Regional Legal Products"

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Abstract: The study examined The Essence of The Principle of Establishing Good Laws and Regulations for Realizing Quality Regional Legal Products. The purpose of this study is to find the essence of the principles of the formation of good legislation in realizing quality regional legal products, to find out clearly the implementation of the principles of the formation of good legislation in the formation of regional legal products, and to find the factors that influence the implementation of the principles of the formation of good legislation in realizing quality local legal products.

Keywords: The Essence of the principle, Good legislation, Legal products

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I. INTRODUCTION

The 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a state of law (Rechtstaats). As a legal state, all aspects of life in the fields of society, nationality and statehood including government must be based on laws in accordance with the national legal system. The national legal system is a law that applies in Indonesia with all its elements supporting each other in order to anticipate and overcome problems that arise in the life of the community, nation and state based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

One characteristic of the rule of law (Rechtstaats) is the guarantee of people's rights and sovereignty through the Constitution. The 1945 Constitution of the Republic of Indonesia became the foundation for the implementation of democracy. In line with democratization in various fields of life in the community, nation and state, including in the context of the implementation of regional government so that it is always in line with the concept of State Law and democracy, so that it must accommodate people's aspirations in various regional policies including the formation of regional legal products.

While the formation of regional legal products itself is interpreted as an act of giving birth to a regional legal product, including the regional regulations and their implementing regulations.

The establishment of Regional Legal Products as part of the national legal system is expected to encourage and optimize development which can only be realized if the formation process is supported by methods and methods that are in accordance with legislation, regional needs, and local wisdom seriously so that Legal Products produced can be implemented and effective in people's lives.

Regional Law Products are a strategic instrument as a means of achieving the objectives of decentralization. In the context of regional autonomy, the existence of regional legal products in principle plays a role in maximizing decentralization.

Law Number 23 Year 2014 concerning Regional Government adheres to the principle of regional autonomy to the broadest extent, which is oriented towards the rights, authority and obligations of autonomous regions to regulate and manage their own government affairs and the interests of the local community in accordance with laws and regulations. In carrying out government affairs that are the authority of the region, it is needed. Products of regional law as a legal basis in carrying out regional autonomy in accordance with the conditions and aspirations of the community and the peculiarities of each region.

As for the concretization of the legal issues of administering regional government as intended, among others:

1. The tendency of legal products born by the Regional Government cannot be effective and efficient.
2. Legal products that are born do not set standard operating procedures so that there is a throwing of responsibilities that are unable to solve the problem.
3. Regional legal products are not accompanied by facilities that are expected to be able to support the realization of community welfare.

4. Legal products born mostly in its substance regulate how to increase Regional Original Revenue (PAD) and conduct control, while matters relating to structuring and empowering the community are less appreciated.

In connection with phenomena related to the implementation of regional government, it is deemed necessary for efforts to ensure legal certainty regarding the implementation of regional government through regional legal product instruments.

In essence the national legal system, is a positive law that applies in Indonesia which supports each other in order to anticipate and overcome all legal problems that arise in the life and life of the people, nation and state based on Pancasila and the 1945 Constitution its existence must be obeyed, respected and carried out accordingly.

According to the theory of legal development, that every obstacle and obstacle must not be allowed to continue but efforts must be sought to solve the problem. Besides that, there must be a commitment that the formation of good local legal products (das sollen) if the material contained in it has fulfilled 10 (ten) principles relating to the material content of regional legal products, namely: a. principle of protection; b. Humanity principle; c. National principle; d. Family principle; e. Principle of mediation; f. the principle of *bhinneka tunggal ika*; g. Principle of justice; h. the principle of equal position in law and government; i. the principle of order and legal certainty; and/ or; j. the principle of balance, harmony and harmony.

In this regard, it is not excessive if in terms of *ius conctitutum* the formation of regional legal products should go through the design process by first having to learn, understand and master the existing positive law rules relating to the formation of good legal products and related to material content that will regulated in legal products to be formed.

Referring to the legal phenomena described above as a basis for conducting sociological juridical research on the implementation of the principles of the formation of legislation in the formation of regional legal products. Then the results obtained through the sociological juridical legal research will be set forth in the Dissertation with the title "The essence of the principle of Establishing Good Legislation in Realizing Quality Regional Legal Products".

II. STATEMENT OF THE PROBLEM

Starting from the background described above, in principle there are 3 (three) issues that will be examined through sociological juridical legal research, especially against legal phenomena related to the essence of the principles of the formation of good legislation in the formation of legal products area. The three main issues are concrete in the formulation of the problem as follows:

1. What is the essence of the principle of establishing good legislation in the formation of regional legal products?
2. How is the implementation of the principles of the formation of good legislation in realizing quality regional legal products?
3. What factors influence the implementation of good legal principles in realizing quality local legal products?

III. THEORETICAL FRAMEWORK

A. State Law Theory

1. Legal State Terms

The concept of the rule of law begins with Immanuel Kant's thinking about the rule of law in a narrow sense that places the function of *rechts at staat* only as a means of passively protecting individual rights and regulating state power, namely only serving as a guardian of public order and security.¹ In essence, *Rechtsstaat* relies on the civil law system, which focuses on the administration law.

Conceptually, there are five concepts of the rule of law, namely: *Rechaat*, Rule of Law, Socialist Legality, Islamic Nomocracy, and the rule of law (Indonesia).² Djokosoetono called it the term "democratic legal state (*Demokratische rechtsstaat*), but what is meant is *Rechtsstaat*"³

Muhammad Yamin uses the word law as the same as *rechtsstaat* or government of law, he explained, stating that "the Republic of Indonesia is a legal state (*rechtsstaat*, government of law) not a state of power."⁴ Meanwhile, Muhammad Tahir Azhari, stated that the idea of a rule of law actually began with Plato's writing

¹ Muhammad Tahir Azhary, *State of Law, A Study of Principles Viewed in terms of Islamic Law, Its Implementation in the Medina and Present Country Periods*, Bulan Bintang, Jakarta, 1991, page 66

² *Ibid*, pages 73-74

³ Padmo Wahyono, *Guru Pinandita*, Jakarta, Publishing Board of the Faculty of Economics, University of Indonesia, 1984, page 67.

⁴ Muhammad Yamin, *Proclamation and Constitution of the Republic of Indonesia*, Jakarta, Ghalia Indonesia, 1982, page 72.

about "nomoi". Then the concept of rechtsstaat, the rule of law, socialist legality, the state of Pancasila law, and Islamic nomocracy developed.⁵

The development of the type of state law has consequences for the role of state administrative law. The less interference the state has in people's lives, the smaller the role of state administrative law in it, on the contrary the more intensive state interference the greater the role of state administrative law. The goal of the rule of law is the creation of state, government and community activities.

2. Pancasila Law State

The concept of a legal state used in Indonesia and ever Popular is the term (rechtstaat) . While to give its Indonesian characteristics the attribute "Pancasila" is added so that it becomes "the state of the Pancasila law".⁶ Article 1 paragraph (3) of the 1945 Constitution of the Unitary State of the Republic of Indonesia states that "The State of Indonesia is a legal state", the intended State law is a state that upholds the rule of law to uphold truth and justice and no accountability.

In a state of law, it must guarantee the existence of law enforcement and the achievement of the objectives of the law. Legal existence as an instrument in managing state and administration of government that leads to the achievement of legal objectives. In law enforcement there are elements that always need attention, namely: justice, expediency or use (doelmatigheid), and legal certainty.

The main purpose of the law is order. In addition, the purpose of the law is the achievement of justice and the existence of legal certainty. To achieve order, legal certainty is needed in the interaction between people in society.⁷ Thus it can be concluded that orderly law is created if:

- a. A product of legislation is not contradictory, both vertically and horizontally.
- b. Behavior of executors of state power and community members in accordance with applicable law.⁸

Based on the description above, what is meant by the rule of law is a country that stands above the law that guarantees justice to its citizens. Fairness is a condition for the creation of happiness of life for its citizens.

B. Theory of Establishing Legislation

1. Definition

Theoretically, the term "legislation" (legislation, wetgeving, or gesetzgebung) has two meanings, namely: first the legislation is the formation process / process of forming state regulations, both at the central and regional levels; both legislation are all state regulations which are the result of the formation of regulations, both at the central level and at the regional level⁹

Regulations are laws that are in abstracto or general norms that are generally binding (generally accepted) and their duty is to regulate general matters.¹⁰

2. Power Forms Legislation

Establishing legislation is a power that is attached or attached to the state or government. The power to form legislation only exists in the state or government

In accordance with the functions of state institutions according to the 1945 Constitution, which has functions and duties in the field of the formation of legislation in Indonesia, the People's Consultative Assembly, the DPR and the President; but the authority to make the legislation was broader. According to Bagir Manan, that:

"The power to form legislation is one of the state's powers to make decisions. States through equipment or state positions can make various kinds of decisions. Courts as state courts make decisions in the form of decisions (verdicts) to resolve a legal dispute or provision to provide legal provisions for an application that is not a legal dispute (such as the determination of an heir). The People's Consultative Assembly has provisions, both in the form of legislation and not in the form of laws and regulations (such as the appointment of the President and Vice President). The House of Representatives together with the President make a decision in the form of a Law (in a formal sense). The House of Representatives can also make decisions that are not laws, such as decisions regarding candidates for Supreme Judges and Candidates for the Supreme Audit Board will be

⁵ Muhammad Tahir Azhari, State of Law: A Study ... Loc Cit

⁶ Philipus M. Hadjon, op.cit., page 24

⁷ Mochtar Kusumaatmaja, Legal Function and Development in National Development, Bandung, Bina Cipta, without years, page 2.

⁸ Faisal A. Rani, Fubgsi and Position of the Supreme Court as the Implementation of Independent Judicial Power in accordance with the Understanding of the State of Law, Dissertation, Unpad, Bandung, 2002, p.69

⁹ Maria Farida Indrati Soeprapto, Legislation, (Yogyakarta: Kanisius, 1998), page 3

¹⁰ SF. Marbun and Moh. Mahfud, Op.cit., page 94.

submitted to the President. The President also makes decisions as State Decrees, Decisions concerning Clemency, Amnesty and Abolition " ¹¹

The elements of state administration both at the central and regional levels can form legislation in accordance with the authority limits available to them. The Minister can determine Ministerial Decrees or Ministerial Regulations that are general in nature. At the regional level, the Regional Head together with the Regional People's Legislative Assembly can establish regional-level legislation called Regional Regulation (Perda). ¹²Government decisions or state administration are seen as the original authority of the state administration in making decisions. ¹³

The authority to make and or issue regulations is something very important that must be understood, especially for the drafters of legislation in an effort to avoid legislative pluralism.

3. Principles in Establishing Legislation

a. Definition of Principle

Before discussing the principle of establishing legislation, what must be understood is the notion of the principle itself. Liang Gie¹⁴ say that:

"Principle is a general proposition expressed in general terms without suggesting specific ways of doing it, which are applied to a series of actions to be the right clue for that action"

In that case, Bruggink said that this legal principle provides clear guidelines for actions. Satjipto Rahardjo¹⁵ put forward that:

"Perhaps it is not excessive if it is said, that this legal principle is the" heart "of the legal regulations. We say so because, first, it is the broadest foundation for the birth of a legal regulation. This means that the regulations can eventually be returned to those principles. Unless stated on the basis, this legal principle is worth mentioning as the reason for the birth of legal regulations, or is the ratio of legislation to legal regulations "

In this connection Notohamidjojo¹⁶ put forward that:

"In short, the principles of law are the basics or directives (rechtlijn) in the formation of positive law. Law principles are useful for the practice of law. So to be clear, the principles of law (rechtsbeginselen) embody general guidance for positivizing of in law, for the drafters of legislation and judges "

Based on the explanation above, it can be known about the meaning and function of the principles in forming and changing the Law, namely as a guiding principle. ¹⁷

Guiding rules are needed in an effort to avoid a variety of negative social impacts after the Law is enacted.

In finding the principles in the formation of legislation in Indonesia, Mochtar Kusumatmadja's¹⁸ modern mind was first put forward that:

"In order for law in our country to develop and we can connect with other nations in the world as fellow legal communities, we need to maintain and develop legal principles and concepts that are generally embraced by mankind or universal legal principles. The fact that the principles and concepts are drawn from the world originating from Roman law need not be an obstacle or reduce our dignity and dignity as an independent nation "

The legal principle is not a legal rule, however, there is no law that can be understood without knowing the legal principles that are in it. The legislation that is formed must not ignore the principles of law because it can be ascertained that the rules that are born cannot be effective.

Principles and concepts of universally applicable laws as outlined above will be elaborated into legal principles and concepts that live and develop in Indonesia.

¹¹ Bagir Manan, Sistem ... Op.Cit, page 13

¹² The most unique of Marojahan JS Panjaitan, Op.Cit., Page. 146

¹³ See Bagir Manan, System ..., Op.Cit., Page 17.

¹⁴ Quoted from Sudikno Mertokusumo, Op.Cit., Page 34

¹⁵ Satjipto Raharjo, Op.Cit., page. 45

¹⁶ Notohamidjojo, Op.Cit., page 50.

¹⁷ The most unique of Marojahan JS Panjaitan, Op.Cit., Page 244

¹⁸ Mochtar Kusumaatmadja, Concept ... Op.Cit., Page 183-184

b. Principles for Establishing Legislation

There are two principles that provide guidance or reference in establishing legislation ¹⁹, namely:

1. The Principle of General Law

According to Sudikno Mertokusumo ²⁰, that:

"The principle of general law is the principle of law relating to all fields of law, such as the principle of restitutio in integrum, the principle of *lex posteriori derogat legi priori*, the principle that what is born is not true, for the time being it must be decided (other) by the court"

Notohamidjojo²¹ exemplifying the general law principle as follows:

- a. goode trouw (good faith);
- b. compliance (billijkheid);
- c. each part (justice);
- d. legal certainty;
- e. human virtue (menselijke waardigheid);
- f. work is not an object / item (arbeid is geen waar);
- g. human rights must be respected (eerbiediging van de grondrechten).

Whereas according to Paul Scholten ²², he pointed out that there are 5 (five) principles of general law that apply universally, namely:

1. Personality principle
2. The principle of fellowship
3. The principle of equality
4. Principle of authority
5. The principle of separation between good and bad

Prajudi Atmosudirjo stated that in order to prevent misuse of office and authority, or to achieve and maintain a good and clean government and administration, several principles in the administration of the government are needed. The opinion suggests two categories ²³, namely:

(1) Principles concerning the procedure and / or decision-making process, which when violated automatically make the relevant decision null and void by law without examining the case again.

(2) Principles concerning the truth of the facts that are used as the basis for making decisions

I.C.Van der Vlies divides the principles in the formation of good legislation (*beginselen van behoorlijke regelgeving*) into formal and material principles²⁴:

a) Formal principles

1. The principle of purpose is clear (*beginsel van duidelijke doelstelling*)

This principle includes three things, namely regarding the accuracy of the location of legislation within the framework of the general government policy, the specific objectives of legislation to be established, and the objectives of the parts of the legislation that will be formed;

2. The right organ / institution principle (*beginsel van het juiste orgaan*), that is, each type of legislation must be made by an institution or organ that forms the legislative authority;

3. The principle of the need for regulation (*het noodzakelijkheidsbeginsel*)

4. Principles can be implemented (*het beginsel van uitvoerbaarheid*); i.e. every formation of legislation must be based on the calculation that the legislation formed later can be effectively applied in the community because it has received support both philosophically, juridically, and sociologically since the stage of its preparation

5. Consensus principle (*het beginsel van de consensus*)

b) Material principles

1. The principles of terminology and systematics are correct (*het beginsel van duidelijke terminology en duidelijke systematiek*)

2. The principle can be recognized (*het beginsel van de kenbaarheid*)

3. Principle of equal treatment in law (*het rechtsgelijkheidsbeginsel*)

4. Principle of legal certainty (*het rechtszekerheidsbeginsel*)

5. The principle of law enforcement is in accordance with individual circumstances (*het beginsel van de individuele rechtsbedeling*)

¹⁹ Morajahan JS Panjaitan, Formation and Amendment of Laws based on the 1945 Constitution, Bandung, Library of Reka Cipta, 2017, page 245.

²⁰ Sudikno Mertokusumo, Op.Cit., page. 38

²¹ Notohamidjojo, Op.Cit., Page 54

²² The most unique of Sudikno Mertokusumo, Op.Cit., Page 36

²³ Ibid, page 260

²⁴ Maria Parida Indrati Soeprapto, Op.Cit., Page263. See also A.Hamid S. Attamini, Op.Cit., Pages 321 to 331.

In connection with that, Bagir Manan²⁵ as quoted by Maria Farida Indrati Suprpto in her dissertation also stated that there was an orderly law that included orderly formation (order), orderly substance (content), and orderly enforcement. Based on these three disciplines, there are general elements, which at the same time can become a general rule of law, which includes:

1. The principle of authority

Legislation can only be established and enforced by bodies or officials legally authorized based on attribution, delegation or mandate.

2. The right material principle

Material or an object can only be governed by a certain type of legislation

3. Principles apply to the future (not retroactive).

In principle, all laws and regulations only apply in the future and are not retroactive.

4. The principle of the new legislation overrides the old.

This principle applies to laws and regulations that are equal or new legislation has a higher degree than the old one.

5. Principle of order of laws and regulations

There are several principles that must apply as a consequence of the order of the legislation:

a. Every legislation must be sourced and based on higher laws and regulations.

b. Lower laws and regulations may not conflict with higher laws and regulations, except legislation that exceeds the authority stipulated in the law, TAP MPR, or the Constitution.

c. There are mechanisms for correcting (canceling or declaring invalid) a statutory regulation that conflicts with higher-level laws and regulations.

6. The principle of equality and impartiality

Legislation must regulate and be implemented equally for everyone without discriminating against a particular background.

7. The principle of legitimate motives and goals

Legislation must be based on the right motives and have goals that are justified by law.

8. Principle of certainty, compliance and justice

Legislation must give birth to legal certainty, proper and fair.

9. Public interest principle

Legislation is only made directly or indirectly to fulfill or protect public interests

10. Principles can be implemented.

Legislation must be implemented in a reasonable manner.

2. The Principle of Special Legal Principles

Special legal principles function in narrower fields such as in the fields of civil law, criminal law and so on. The legal fields in question are:

1. The field of criminal law, among others:

a. The principle of law is written and codified by making the minimum criminal provisions beyond codification;

b. The principle of insight in the archipelago, namely criminal law applies to the entire territory of the Republic of Indonesia;

c. Criminal offenses must be based on:

1. The principle of legality;

2. The principle of error;

3. Principle of balance and humanity.

d. Correctional principles in fostering prisoners;

e. The principle of equality in prosecution and in punishment;

f. The principle of *lex specialis derogat legi generalis*;

g. The principle of *lex posterior derogat lege priori*;

h. The principle of presumption of innocence;

i. Principle of compensation and rehabilitation.

2. The principle of civil law, among others:

a. The principle of uniformity in national civil law;

b. The principle of agreement in the law of engagement;

c. The principle of freedom in contracting;

d. The principle of horizontal separation in the law of things; and

e. The principle of good faith in the implementation of the agreement.

²⁵ Quoted from Maria Farida Indriati Soeprpto, Op.Cit., Pages 268-270

Legislation as part of the national legal system, holds a central position in the life of the community, nation and state. This is a consequence of Indonesia as a legal state (rechtsstaat), so that written law is a basic legal instrument besides unwritten law.

4. The function of legislation

The position of legislation in Indonesia is very important, considering that Indonesia is a legal state. The emphasis on the significance of legislation can be seen in the TAP MPR Number II / MPR / 1983, which among others states, that:

1. Increasing and perfecting the development of national law in the framework of reforming the law, by among other things establishing codification and legal unification in certain fields by paying attention to the legal awareness that developed in the community;

2. In an effort to develop national law, it is necessary to continue the steps to draft legislation concerning the rights and basic obligations of citizens in order to implement the Pancasila and the 1945 Constitution.

Given that legislation has an important meaning in the life of the state and administration, so Satjipto Rahardjo said that legislation (written law) has advantages over other social norms.²⁶

Likewise Bagir Manan²⁷ stated that legislation can provide higher legal certainty than customary law, customary law, or jurisprudential law. So that in the welfare state, the task of the government is not only limited to implementing the Law that has been made, however, the government is burdened with the obligation to carry out public interests or seek social welfare, which in its implementation the government is given the authority to intervene (staatsbemoeyenis) in the life of the community, within the limits permitted by law.²⁸

C. Legitimacy Theory and Legal Validity

The theory of validity or legal validity teaches how and what are the conditions so that a legal rule becomes legitimate and valid, so that it can be applied to the community, if necessary by forced effort, namely a legal rule that meets the requirements as follows:

1. The rule of law must be formulated into various forms of formal rules, such as in the form of articles from the Constitution, Laws and various other forms of regulation, international rules such as treaties, conventions, or at least in the form of customs.

2. Formal rules must be made legally, for example if in the form of an Act must be made by parliament together with the government, in the form of a Regional Regulation must be made by the Regional People's Representative Council together with the Regional Government.

3. By law, these legal rules cannot be canceled.

4. For these formal rules there are no other juridical defects. For example, it does not conflict with higher regulations.

5. The rule of law must be applied by law enforcement agencies, such as courts, police, prosecutors.

6. Legal rules must be accepted and obeyed by the community.

7. The rule of law must be in accordance with the soul of the nation concerned.²⁹

Therefore, it can be said that a law that is not made correctly, or a law that is not made by the right party, or a law that is not accepted by society, or an unjust law, is not a law.³⁰

D. The Morality of Law Theory of Lon F. Fuller

Regulatory failure can be caused by 8 (eight) things according to Lon F. Fuller.³¹ Eight failures of legal law can be avoided if there is an emphasis on the contents of legislation with 8 (eight) moral requirements, including:

1. *Laws should be general*

There must be rules as a guideline in making decisions, so the need for the nature of the requirements for generality is necessary. These rules guide the authority so that authoritative decisions are not made on an ad hoc basis and on the basis of free policy, but on the basis of general rules.

2. *They should be promulgated, that citizens might know the standars to which they are being held*

Every rule that becomes a guideline for authority must not be kept secret but must be announced (publication). The requirement that the law be published is because people will not obey the law that is not known by those who are targeted by the law (norm adressaat).

3. *Retroactive rule-making and application should be minimized*

²⁶ Satjipto Rahardjo, Law, Alumni, Bandung, 1996, page 84

²⁷ Bagir Manan, Functions and Material of Legislation Regulations, Op.Cit., Pages 16-21

²⁸ Quoted from Ridwan HR, Revised State Administrative Law, PT. Rajagrafindo Persada, 2010, page 133

²⁹ Munir Fuady, Great Theories (Grand Theory) in Law, Jakarta, Prenadamedia Group, 2013, page 109.

³⁰ Munir Fuady, Great Theories (Grand Theory) in Law, Jakarta, Prenadamedia Group, 2013, page 110

³¹ Quoted from Ahmad Redi, Law on the Establishment of Legislation, Sinar Grafika, 2018, page 44

Rules must be made to be a guideline for future activities so that the law is minimized or receded.

4. *Laws should be undestorable*

The law must be made so that it can be understood by the people.

5. *Free contradiction*

Rules may not conflict with each other, both vertically and horizontally

6. *Laws should not require conduct beyond the abilities of those effected*

Rules may not promote behavior or actions beyond the capabilities of parties affected by the law, meaning that the law must not order something that is not possible.

7. *They should remain relatively constant through time*

The law must not be changed at any time, so the law must be firm.

8. *They should be a congruence between the laws as announced and their actual administration.*

The law must have consistency between the rules as announced with the implementation of the reality.

E. Theory of Legal Effectiveness

Factors that influence the effectiveness of the law according to Soerjono Soekanto,³² include:

1. Own legal factor

The instruments of legislation that are used as instruments in realizing justice, legal certainty and benefits for the public are sometimes lacking in quality or material content is not able to meet the legal needs of the community.

2. Fact of law enforcement

This factor includes those who apply or enforce law / law enforcement. Law enforcement agencies must be able to provide justice, certainty and benefit of law to the community proportionally.

3. Factor facilities or facilities that support law enforcement

The scope of facilities is primarily physical facilities as well as competent human resources, good organizations, equipment and adequate finance as a means to achieve legal objectives

4. Community factors

Law enforcement comes from the community and aims to achieve peace in the community

5. Cultural factors

Value system which is abstract conceptions of what is considered good that must be followed and what is considered bad which must be avoided

Therefore the legislation established must be implemented properly in the midst of society as a means or instrument in the life of the state and the administration of a government that can function in managing community life in all aspects.

F. Local government

1. Democracy and Decentralization

Democracy is an embodiment of the right of the people to determine the way of life of a country's organization. The term democracy according to the Dictionary of Law, democracy (democracie) is the highest form of government or power where the highest source of power is popular power.³³ Tocqueville as quoted by Rienow said that an independent government without the spirit of building regional government institutions meant the same as not having the spirit of popular sovereignty, because there was no spirit of freedom.³⁴

Based on the views as described above, it can be concluded that there are three factors that show the relationship between decentralization and democracy,³⁵ namely:

1) To cultivate the habit of people deciding for themselves various interests concerned directly with them.

2) To provide the best service to people who have different demands.

Decentralization is basically a delegation or surrender of power or authority in certain fields vertically from higher institutions, institutions or officials to subordinate institutions, institutions, or functionaries so that certain authorities are delegated or delegated the power to act on their own behalf in certain matters that is.³⁶

Rationally, Irawan Soetjipto³⁷ dividing decentralization into three priority scales, each of which is:

³² Soerjono Soekanto, Law Effectiveness and the Role of Witnesses, Adolescents of Bandung Work, 1985, page 17

³³ Yan Pranadya Puspa, Dictionary of Law, Various Sciences, Semarang, 1977, page 295.

³⁴ Robert Rienow, Introduction to Government, (New York: Alfred A. Knopf, 1966), Print III, page 573.

³⁵ Bagir Manan, Relations between Center and Region Based on the Decentralization Principle According to the 1945 Constitution, dissertation Doctoral in Constitutional Law, Postgraduate University of Padjajaran, Bandung, 1990, page 39.

³⁶ Andi Mustari Pide, Regional Autonomy and Regional Heads entered the XXI century, Gaya Media Pratama, Jakarta, 1999, page 33-34

1. Territorial Decentralization

More concentrated in the form of bodies or organs based on the region. Form autonomy and co-administration tasks. Autonomy is intended as an independence to regulate and manage their own household, while the task of assistance is a task to help if it is necessary to implement higher legislation.

2. Functional Decentralization

More concentrated on the formation of bodies or organs based on certain goals

3. Administrative decentralization (deconcentration)

Occurs when the Government delegates part of its authority to equipment or organs of the Government itself in the region, namely Government officials in the area, to be implemented

2. Regional Autonomy and Autonomy

Mahfud MD³⁸ divides the four principles of autonomy, namely:

1) Principles of Formal Autonomy

In the principle of formal autonomy the division of tasks, authority and responsibility between the central and regional governments to regulate their own households is not specified in the law. Thus, the principle of formal autonomy provides broad flexibility to the regions to regulate and administer government affairs as their own household affairs.

2) Principles of Maternal Autonomy

The principle of material autonomy starts from the fundamental difference between the affairs of the central government and the regional government, so that the regions only have very limited opportunities to adjust to changing circumstances that might require the transfer of handling the affairs that have been divided

3) Principle of Real Autonomy

In the principle of real autonomy, the transfer of affairs to autonomous regions is based on real factors. In Bagir Manan's view of Tresna's opinion, there is the impression that as a middle ground for real autonomy prioritizes its formal principle, because in the principle of formal autonomy it contains ideas to realize the principles of freedom and independence for the regions, while the principle of material autonomy will trigger regional dissatisfaction and "spanning" relations between the center and the regions.³⁹

3. Regional Autonomy in the Rules of Law

The relationship between the Central Government and the Regions can be traced to the third and fourth paragraphs of the Opening of the 1945 Constitution of the Republic of Indonesia. The third paragraph contains the statement of Indonesian independence, while the fourth paragraph states that after declaring independence, the Government of Indonesia. The National Government is responsible for regulating and managing the Indonesian nation.

As stipulated in the latest Regional Government Act, namely Law Number 23 of 2014 concerning Regional Government, in essence the granting of the widest possible autonomy to the Regions is based on the principle of a unitary state. In a single country the delegation only exists in the state or national government and there is no sovereignty in the Region.

Therefore, no matter how much autonomy is given to the Region, the final responsibility for the implementation of Regional Government will remain in the hands of the Central Government. For this reason, the Regional Government in the unitary state is a unit with the National Government.

Establishment of an autonomous regional government by the central government, including the approval or cancellation of an autonomous regional regulation, by Wolfhoff included in the category of action taking care. But Ateng Syafruddin notes that the form of action to form an autonomous regional government is in fact the same as regulating because it is stipulated by ordinance or law.⁴⁰

The implementation of the wheels of governance in the regions needs to be supported by quality Regional Legal Products. The power to form legislation cannot and will never be transferable to bodies of power that are not State or not government.⁴¹

³⁷ Irawan Soetjipto, History of Regional Government in Indonesia (volume II), Pradnya Paramitha, Jakarta, 1989, page 29

³⁸ Mahfud MD, Legal Politics in Indonesia, Rajagrafindo Persada, Depok, 2012, pages 97 to 100

³⁹ Bagir Manan, op.cit., Page 33

⁴⁰ Wolfhoff, quoted from Ateng Syafruddin, Tidal Regional Autonomy, Binacipta, 1985, page 22-23

⁴¹ Bagir Manan, Politics Legislation, Referee Lecture Materials Indonesian Private Law Faculty Lecturers, Jakarta, 1993, page 1

4. Organization of Regional Government

In contrast to the implementation of government in the center consisting of executive, legislative and judicial institutions, the implementation of Regional Government is carried out by the DPRD and regional heads.

DPRD and regional heads are domiciled as elements of regional government administrators who are given the people's mandate to implement the Government Decree submitted to the Regions. Thus, the DPRD and regional heads are located as partners who have different functions. The DPRD has the function of establishing Regional Regulations, budgets and supervision, while the regional heads carry out the implementation function of Regional Regulations and other Regional policies. However, Muladi⁴² stated that in legal politics not only talking about business (policy) the establishment and renewal of law on legal materials so that they could be in accordance with needs, but also contained in the implementation of legal provisions, law enforcement, affirmation of institutional functions, and guidance of law enforcers.

In regulating and managing Government Affairs which are the authority of the Region, the DPRD and regional heads are assisted by the Regional Apparatus. As a consequence of the position of the DPRD as an element of Regional Government organizers, the composition, position, roles, rights, obligations, duties, authorities and functions of the DPRD are not regulated in a number of laws but are sufficiently regulated in this Act to facilitate an integrated arrangement.

G. Regional Legal Products

1. Definition of Regional Legal Products

Regional law products are legal products in the form of regulations covering regional regulations or other names, regulations, joint regulations of regional heads, regulations of the Regional People's Legislative Assembly, and regional head decisions, decisions of the Regional People's Legislative Assembly, decisions of the Regional People's Representatives Council and Honorary Board decisions.⁴³

Products of regional law are juridical instruments in regulating the implementation of regional government, which are carried out according to the principle of autonomy and co-administration, having legal substance that is local and regional in nature that reflects the philosophical values adopted by the community. Thus, legal norms in regional legal products must be present to find a way out of problems that hinder the implementation of rights, obligations and authority of the community properly. Legal products consist of local regulations and other regulations, which are meant as products of regional law which are formed in the framework of managing regional households as a consequence of regional and autonomous regional autonomy.

2. Types of Regional Legal Products

Regional law products that function as juridical instruments in the implementation of regional government can be categorized into 2 (two) forms, namely in the form of regulations and in the form of stipulations.

Regional law products are in the form of regulations, consisting of Regional Regulations, Regional Head Regulations covering Governor Regulations and Regent Regulations, Joint Regulations of Regional Heads (PB KDH) including Joint Governor Regulations and Joint Regulations of Regents, and DPRD Regulations.

IV. DISCUSSION

A. The Essence of the Principle of Establishing Good Legislation in the Establishment of Quality Regional Legal Products

Regional law products are a fundamental instrument in the implementation of regional government, this is as a consequence of Indonesia as a legal state. As a legal state, all aspects of life in the fields of society, nationality and statehood including government must be based on laws that are in accordance with the national legal system. Thus a quality legal product is needed, so the process of its formation must always be guided by the principle of the formation of good legislation, as described as follows:

1. The Principle of Clarity The aim is that every formation of legislation must have clear objectives to be achieved
2. The Principle of Institution or the Right Forming Officer, is that every type of legislation must be made by a State Institution or an official forming a statutory regulation. The legislation can be canceled or null and void if it is made by a state institution or an unauthorized official

⁴² Muladi, Improvement of Human Resources in the Field of Law through Education and Training, (quoted from the Sixth National Law Seminar in 1994, Book I), National Law Development Agency Ministry of Justice, Jakarta, 1995, page 104-105

⁴³ Quoted from Permendagri Number 80 of 2015 concerning Establishment of Regional Legal Products

3. The Principle of Conformity between Types, Hierarchy, and Content Material, is that in the formation of legislation must really pay attention to the material content that is appropriate in accordance with the type and hierarchy of legislation

4. The principle can be implemented, is that every statutory regulation must take into account the effectiveness of the legislation in the community, both philosophically, sociologically, and juridically

5. The principle of utility and usefulness, is that every legislation is made because it is really needed and useful in regulating the life of the community, nation, and state

6. The Principle of Clarity of Formulation, is that every statutory regulation must fulfill the technical requirements for the preparation of legislation, systematics, choice of words or terms, and legal language that is clear and easy to understand so as not to cause various kinds of interpretations in its implementation

7. The Principle of Openness, is that in the formation of legislation, starting from planning, drafting, discussing, ratifying or stipulating, and promulgating is transparent and open. Thus all levels of society have the widest opportunity to provide input in the formation of legislation.

Research results from 4 (Four) Districts / Cities in South Sulawesi Province, found a number of problematic Regional Legal Products, especially in the form of Regional Regulations canceled by the Minister of Home Affairs as illustrated in the following table

Table 1. Regency / City Regional Regulations that are canceled / revised by the Minister of Home Affairs

Regency / City	Title of Regional Regulation	Number	Total
Bone	Public Service Retribution	2 of 2011	1 (One)
Sinjai	- Retribution of Parking Services on the side of Public Roads	10 of 2012	19 (Nineteen)
	- Health Service Retribution	7 of 2012	
	- Tax on Non-Metallic Minerals and Rocks	6 of 2012	
	- Road Lighting Tax	5 of 2012	
	- Advertisement tax	4 of 2012	
	- Charges for Reimbursement of Printing Identity Cards and Civil Registration Deeds	9 of 2012	
	- Motor Vehicle Testing Retribution	12 of 2012	
	- Wholesale Market Retribution and / or Shops	14 of 2012	
	- Retribution of Slaughterhouses	17 of 2012	
	- Retribution for Recreation and Sports Venues	19 of 2012	
	- Regional Wealth Usage Retribution	11 of 2010	
	- Fisheries Business Permit Levy	23 of 2012	
	- Route License Levies	22 of 2012	
	- Building Construction Permit Levies	20 of 2012	
	- Port Service Retribution		
	- Parking Special Retribution	18 of 2012	
	- Terminal Levy	16 of 2012	
- Market Service Retribution	15 of 2012		
- Telecommunication Tower Control Levy	11 of 2012		
		13 of 2012	
Makassar	Local tax	3 of 2010	1 (one)
Parepare	Management of Regional Property	18 of 2011	1 (one)

Research results from

Data Source: Processed from primary data

Based on the results of these studies, it is clear that one of the principles of the formation of good legislation is not fulfilled in the formation of regional legal products, namely the principle of Conformity between Types, Hierarchy, and Content Material that requires a legal product established by the Regional Government to be correct properly pay attention to the right material in accordance with the type and hierarchy of laws and regulations, so that it has an impact on the quality of legal products produced.

In essence there are three elements of constitutional government. First, the government is carried out in the public interest. Both governments are carried out according to law based on general provisions, not arbitrarily made laws that override conventions and constitutions, and **the three governments are carried out by the will of the people.**

B. Implementation of the Principle of Establishing good legislation in the Establishment of Regional Legal Products

1. Regional Legal Product Planning

a. Regional Regulation Planning

In implementing the principle of establishing legislation that is good in the planning process of Regional Regulations, in 4 (four) Regencies / Cities in South Sulawesi Province is carried out through the Establishment of Regional Regulation Program every current fiscal year. Through an interview with the regional heads of law in each region, the mechanism adopted is almost the same, namely the Regent / Mayor through the Legal Section of the Regional Secretariat submits a letter to the Regional Apparatus Organization to submit to the Regent / mayor the plan to form a regional regulation. The relevant OPD is to ascertain the extent of the urgency of the regional regulation plan before being submitted to the DPRD to be determined to be a Program for Forming a Regional Regulation through a DPRD Decree.

Considering its function as an instrument for planning the formation of regional regulations, Propperda must be a major concern in the stages of establishing regional regulations, because if planning is not optimal, it automatically has an impact on the quality of legal products produced.

b. Regulations for Regents / Mayors and Decrees of Regents / Mayors

The results of the research in 4 (four) districts / cities on the planning of regional legal products in the form of regent / mayor regulations and regent / mayor decisions are almost the same, namely the planning is not systematic through a clear mechanism, but the submission of legal products is only through initiatives from The initiator OPD is directly submitted in the form of a draft without going through a thorough planning process through the Legal Section of the Regional Secretariat.

Through interviews with the Head of Legal Affairs in 4 (four) districts / cities, it was explained that both the regent / mayor's draft regulations and the regent / mayor's decisions could not be carried out maximally like regional regulations, considering that there were far more numbers, so that the time needed was not possible sistematically. To see a comparison of the number of Regulations and Regulations of Regents / Mayors and Decrees of Regents / Mayors in 4 (four) Districts / Cities of South Sulawesi Province as illustrated in table 2 below:

Regency / city	Number of Regional Regulations	Number of regents / mayors	Number of Decrees of Regents / Mayors	Year
Bone	11 (eleven)	51 (fifty five)	458 (four hundred and fifty eight)	2017
Sinjai	18 (eighteen)	78 (seventy eight)		2017
Makassar	7 (seven)	90 (ninety)		2017
Parepare	12 (twelve)	47 (fourty seven)		2017

Source: Data on Legal Section 4 District / City

2. Submission of Legal Product Design

a. Submission of Draft Perda

Article 18 Paragraph (6) of the 1945 Constitution of the Republic of Indonesia states that the Regional Government has the right to stipulate regional regulations and other regulations to implement autonomy and assistance tasks. This article is the source of the authority of the Regional Government in establishing Perda and other rules.

Through interviews with the Legal Affairs Head of the Regional Secretariat and the Chairperson of the DPRD and Chairperson of the Regional Regulatory Agency in 4 (four) Districts / Cities, it was explained that preparing academic texts is a very urgent stage because academic texts act as "quality control" which determines the quality of regulations. area, so that the four regions always include academic manuscripts in every draft

perda draft, except in the draft perda changes that only change as part of the content material, are simply included with an explanation or explanation of matters underlying the revision or amendment to a regional regulation.

b. Submission of Draft Regulations for Regents / Mayors and Decrees of Regents / Mayors

The results of research in 4 (four) districts / cities in South Sulawesi Province found that the submission of the Regents / Mayor's Regulations and Regent / Mayor Decisions was made by submitting a draft from the Proponent Regional Organization to the Regents / Mayors through the Regency / City Regional Secretariat for then harmonization or alignment of the draft is carried out. In the process of harmonization by the Legal Section of the Regional Secretariat each region carries out different steps.

The results of the study in 4 (four) districts showed that, before the signing of the design, harmonization was carried out by a special Team, for Kabupaten Bone carried out by the Harmonization Team formed by the Regional Government in charge of reviewing the draft so as not to conflict with statutory regulations - higher or equal laws and avoid duplication of arrangements in the material content, as well as other districts with different team names but the same purpose and function.

c. Publication / Dissemination of Regional Legal Products

Regional legal products made by local governments must be socialized and published to the public so that they can be easily accessed by the public. One principle of the formation of good legislation that must be fulfilled is the principle of the Principle of Openness, namely that in the formation of legislation, starting from planning, drafting, discussing, ratifying or stipulating, and promulgating is transparent and open. Thus all levels of society have the widest opportunity to provide input in the formation of legislation.

Through interviews with the Legal Affairs Head of the Regency / City Regional Secretariat and the Chairperson of the DPRD, it was explained that all regional legal products formed by local governments should be well socialized to the public. However, due to time constraints, only regional regulations and a number of regent / mayor regulations were socialized, while the regent / mayor's decisions were almost nonexistent. This is where the weakness of the mechanism for the implementation of socialization, because local governments should not be able to make less time excuses for not socializing a legal product, but steps need to be taken that are effective and can be useful and effective in carrying out socialization activities involving all relevant OPDs, so there is a need for synergy between the OPD and the Legal Section of the Regional Secretariat. So it can be concluded that the role of legal product socialization is highly correlated with the application of regional legal products.

V. CONCLUSION

1. In essence there are three elements of constitutional government. First, the government is carried out in the public interest. Both governments are carried out according to law based on general provisions, not arbitrarily made laws that override conventions and constitutions, and the three governments are carried out by the will of the people.
2. Considering its function as an instrument for planning the formation of regional regulations, Properperda must be a major concern in the stages of establishing regional regulations, because if planning is not optimal, it automatically has an impact on the quality of legal products produced.
3. Factors that influence the implementation of the principles of legislation that are good in realizing quality local legal products are Publication / Dissemination of Regional Legal Products. Regional legal products made by local governments must be socialized and published to the public so that they can be easily accessed by the public.

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