

## **The Authority of Regional Representatives Council of the Republic Of Indonesia in the Formulation of Legislation**

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**Abstract:** Regional Representatives Council of the Republic of Indonesia is only authorized to formulate legislation related to regional autonomy, a relationship between central and regional government, district establishment, merge or partition, natural and other economic resource management, and the balancing of central and regional finance. Therefore, in producing other legislation related to the interests of the district, Regional Legislative Councils of the Republic faced many problems in articulating the aspirations of the people they represent in order to include into other legislation.

**Keywords:** Authority, Regional Legislative Councils, legislation

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### **I. INTRODUCTION**

The formulation of legislation is as such the formation of legal norms<sup>1</sup>. In each legislation formulated by the state serves specific purposes. According to Asshiddiqie, the purpose of formulating legislation by the state is to provide certainty, equity, and utility. In short, each legal norm should result in equality between certainty (*zekerheid*), equity (*billijkheid, evenredigheid*) and utility<sup>2</sup>. Therefore, there are two essential principles in the formulation of legislation, i.e., formal legality principle and material legality principle. The formal legality principle is the principle of appropriate organization or institution. The principle clarifies which organizations are authorized to establish a regulation<sup>3</sup>. Furthermore, so that the formation of legislation is reliable, proper institution or organization to formulate the draft of legislation should be decided. Each type of legislation should be formulated by authorized institution/officials. Legislation can be canceled or considered invalid if it is formulated by an unauthorized party<sup>4</sup>.

Based on the provisions in the legislation, Article 5 of Law No. 12 of 2012 regarding the formulation of legislation states that some principles are vital in the formulation of legislation. One of the principles is the principles of appropriate institutions or officials. Every type of legislation should be formulated by state institutions or officials authorized to formulate that particular type of legislation.

Based on the consensus among experts and based on provisions in Law No. 12 of 2011, the validity of a legislation is determined by the institution authorized to formulate the legislation. If legislation is formulated by unauthorized institutions or officials, the legislation can be canceled or considered void by law.

Regional Representatives Council of the Republic of Indonesia is a state institution which is limitedly authorized in the formulation of legislation, thus it is not authorized to formulate any legislation, but only legislation related to regional autonomy, relationship between central and regional government, district establishment, merge or partition, natural and other economic resource management, and the balancing of central and regional finance. Because the material of a law product is not solely written in one legislation, but it is dispersed in some legislation to which the Regional Representatives Council is not authorized, it creates some problems which need to be studied such as who is authorized to formulate legislation and the limit of Regional Representatives Council authority in formulating legislation.

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<sup>1</sup> Yuliandri, *The principle of formulating good legislation, ideas of sustainable legal formation*, RadjaGrafindo Persada, Jakarta, 2010, p. 25.

<sup>2</sup> Jimly Assiddiqie, *The matter of legislation*, Konstitusi Press, Jakarta, 2005, p. 4.

<sup>3</sup> Jazim Hamidi dan Kemilau Mutik, *Legislative Drafting, The series of an academic manuscript of the formulation of regional legislation*, Total Media, Yogyakarta, 2011, p. 23.

<sup>4</sup> Suhariyono, *The improvement in the quality of legislation formulation in Indonesia*, Jurnal Legislasi Indonesia, Vol. 4. No. 2-June 2007, Directorate General of Legislation of the Law and Human Rights Ministry, p. 42-43.

## II. REVIEW OF LITERATURE

### A. Authority in the formation of legislation

According to Bordin and Jelinek<sup>5</sup>, the highest authority is held by the state, and the state makes regulations for the citizens. The state as the highest organization in a nation, according to Vallohoven<sup>6</sup>, is given the authority to regulate everything and to formulate law. Therefore, the responsibility to make regulation for the citizens belongs to the state. It is in line with Locke<sup>7</sup>, who states that one of the authorities of a state is to formulate legislation. The formation of law is the process of law formulation conducted by the government by following some requirements. The government official to make legislation is those who are authorized to make legislation, especially the legislation applying to members of the public, by law shall be formulated through the pre-determined regulation<sup>8</sup>. Furthermore, according to Pot<sup>9</sup>, the formulation of law or legislation shall be without any fault, following the format is written in the underlying legislation which becomes the foundation of the decision.

Law which can be considered legislation should be general and comprehensive, universal, and amendable. The legislation to be general and comprehensive means that it is not specific or narrow. In addition, it should be universal because it is formulated to regulate events in the future. It is not made for a particular event. The legislation should have a clause which allows re-evaluation when necessary, to be amended accordingly<sup>10</sup>.

Although legislation is general, comprehensive, and universal as proposed by Manan<sup>11</sup>, it has a limited scope because its formulation is influenced by politic, economy, social, culture, and defense and security. Therefore, legislation can be outdated faster than changes in society. According to Apeldoer<sup>12</sup>, to meet the need of the society, legislation should be formulated based on all factors correlated to society, i.e. economy, religion, moral, politic, and social.

According to Meuwissen<sup>13</sup>, legislation is a type of law formulated through the most significant and modern procedures. In legislation, abstract models of behavior are created to solve concrete problems in society. Furthermore, according to Meuwissen<sup>14</sup>, there are two central moments in the formulation of legislation.

#### a. Ideal political moment

The process of formulating legislation is a political action, and legislation is a goal of political processes. However, legislation is not merely a result of empirical politic contestation, but it also has normative aspects. An ideal element of legislation is that it realizes what legal principles (such as law idea) expect.

#### b. Juridical-technical moment

The formulation of law through the formulation of legislation relies on the ability to demonstrate general understanding (in terms of principles and general definition) into a concrete normative manuscript (texts, sentences, and articles). In formulating legislation, excellent skills and understanding of law are required. Based on Meuwissen's idea presented above, institutions and officials authorized to formulate the legislation should consider an ideal moment, which will integrate with a normative moment, and interact with a political moment. The result of dialectic interaction will be accommodated into a special moment to become legislation<sup>15</sup>. Particularly, for the formulation of legislation in Indonesia, in addition to the moments and principles described above, some other elements need to be considered, i.e.<sup>16</sup>

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<sup>5</sup>InSoehino, *The science of the state*, Liberti, Yogyakarta: 1998, pp. 154-155.

<sup>6</sup>InNotonagoro, *Politics of a legal system and agricultural development*, Bina Aksara, Jakarta:1984, p. 99.

<sup>7</sup>InFaisal A. Rani, *The function and position of the Supreme Courts as the executor of judicial power based on the philosophy of a constitutional state*, Syiah Kuala University Press, Banda Aceh: 2009, p. 24.

<sup>8</sup>InAbdul Latif dan Hasbi Ali, *Politics of a legal system*, Sinar Grafika, Jakarta, 2010, p. 63.

<sup>9</sup>*Ibid*, p. 68.

<sup>10</sup>Satjipto Rahardjo, *The science of legal studies*, Citra Aditya Bakti, Bandung, 2006, p. 83-84.

<sup>11</sup>InRidwan HR. *State administration law*, RajaGrafindo Persada, Jakarta: 2006, p. 98.

<sup>12</sup>LJ. Van Apeldoer, *Introduction to Law Science*, Pradnya Paramita, Jakarta: 2001, p. 378.

<sup>13</sup>In Otong Rosadi and Andi Desmon, *The study of politics of law, an optic of the science of law*, Thafa Media, Yogyakarta: 2012, pp. 125-126.

<sup>14</sup>*Ibid*

<sup>15</sup>Jazim Hamidi and Kemilau Mutik, *Op. Cit.*, 2011, p. 23.

<sup>16</sup>Minister of Law and Human Rights. *National Legislation Program of 2005-2009. Paper presented at a seminar on the implementation of Law No. 10 of 2004 in regional legislation based on Law No. 32 of 2004*, Surabaya, 25 May 2005. p. 2. Pataniari Siahaan, *the politics on legal system in the formulation of law after the amendment of the 1945 Constitution*, Konpress, Jakarta: 2012. p. 354.

1. The loyalty to the vision of The Youth Pledge and the proclamation of independence, and philosophical values in Pancasila, the foundational philosophical theory of Indonesia, and constitutional values in the 1945 Constitution.
2. The implementation of the constitutional state of Indonesia which is democratic, just, prosperous and safe.
3. The development of new legal norms and institutions in supporting and guiding the people sustainably, orderly, smoothly, and safely.

In the formation of legislation, to ensure that the above principles are considered by institutions authorized to form the legislation, a supervision system for each legislation should be established.

#### **B. Authority of Regional Representatives Council of the Republic of Indonesia in the formation of legislation**

Article 22d of the 1945 Constitution states that:

- (1) Regional Representatives Council may propose to the House of Representatives the bills related to regional autonomy, a relationship between central and regional government, district establishment, merge or partition, natural and other economic resource management, and the balancing of central and regional finance, and other matters related to the balancing of central and regional finance.
- (2) Regional Representatives Council may participate in the discussion of bills related to regional autonomy, relationship between central and regional government, district establishment, merge or partition, natural and other economic resource management, and the balancing of central and regional finance, and propose opinions to the House of Representatives for the bills related to taxation, education, and religion.
- (3) Regional Representatives Council may supervise the implementation of legislation related to regional autonomy, relationship between central and regional government, district establishment, merge or partition, natural and other economic resource management, the implementation of state revenue and expenditure, taxation, education, and religion, as well as report the result of the supervision to the House of Representatives as feedback to follow up.

Based on Article 22d of the 1945 Constitution above, Regional Representatives Council of the Republic of Indonesia is given an authority to formulate law. The authority covers an authority to propose bills, discuss and supervise the implementation of legislation as referred to in Article 22d, paragraphs (1), (2), and (3). The authority granted to Regional Representatives Council to formulate legislation as explained above is emphasized by Law No 17 of 2014 regarding People's Consultative Assembly, Legislative Council, House of Representatives, and Regional Representatives Council. In Article 249, paragraph (1), the Regional Representatives Council is given authority and duty to:

- a. propose the bills related to decentralization, central and local relations, the establishment and expansion as well as the merging of regions, management of natural resources and other economic resources, as well as relating to the financial balance of central and local to the House of Representatives;
- b. participate in the discussion related to the matters referred to in paragraph a;
- c. prepare and submit an inventory of problems related to bills from the House of Representatives or the President with regard to the matters referred to in paragraph a;
- d. give consideration to the Parliament on the bills related to the state budget and the bills related to taxation, education, and religion;
- e. supervise the implementation of the law on regional autonomy, establishment, expansion, and the incorporation of local, national and regional relationships, management of natural resources and other economic resources, the implementation of the state budget, taxes, education, and religion;
- f. present the results of monitoring of the implementation of the law on regional autonomy, establishment, expansion, and the incorporation of local, national and regional relationships, management of natural resources and other economic resources, the implementation of the budget law, taxation, education, and religion to Parliament as consideration to be followed;
- g. accept the results of the financial state of the Supreme Audit Agency as a material consideration to the Parliament made on the draft legislation related to the state budget;
- h. give consideration to the Parliament in the election of members of the Supreme Audit Agency; and
- i. draw up a program of national legislation related to regional autonomy, central and local relations, the establishment and expansion as well as the incorporation of the area, the management of natural resources and other economic resources, as well the financial balance of central and local.

Furthermore, based on Article 249, paragraph (1) of Law No. 2 of 2018 regarding the second amendment of Law No. 17 of 2014 regarding People's Consultative Assembly, Legislative Council, House of Representatives, and Regional Representatives Council, the authority of Regional Representatives Council of the Republic of Indonesia as referred to above was amended to add 1 (one) more paragraph, i.e. paragraph j, which gives authority to monitor and evaluate the regional bills and regulation.

The implementation of the authority of Regional Representatives Council as referred to in Article 249 above, according to Article 251, is narrated in the regulation of Regional Representatives Council regarding rules and regulations. These rules and regulations are covered in the regulation of Regional Representatives Council, No. 1 of 2014 regarding rules and regulations.

In Article 4 paragraph 1 of the regulation of Regional Representatives Council, No. 1 of 2014, it is stated that Regional Representatives Council is granted duties and authority to:

- a. together with The House of Representatives and the government, prepare National Legislation Program regarding the bills related to regional autonomy, relationship between central and regional government, district establishment, merge or partition, natural and other economic resource management, and the balancing of central and regional finance, and other matters related to the balancing of central and regional finance.
- b. propose to the House of Representatives and government the bills as referred to in paragraph a;
- c. participate in discussing the bills related to those specified in paragraph a with the House of Representatives and government;
- d. participate in discussing the bills proposed by the president or the House of Representatives related to those specified in paragraph a with the House of Representatives and government;
- e. provide feedback to the House of Representatives on the bills related to the state budget and other bills related to taxation, education, and religion;
- f. supervise the implementation of the law referred to in paragraph a and the implementation of law referred to in paragraph d;
- g. report the result of monitoring of the implementation of the law as referred to in paragraph f to the House of Representatives as a consideration to follow;
- h. receive the results of the financial inspection conducted by the Supreme Audit Agency as a source of consideration to be submitted to the House of Representatives regarding the state budget and as a base for evaluation of the implementation of state budget law based on the authority of the Regional Representatives Council.

The legislation presented above are related to regulations in Article 43, paragraph (1) and (2) of Law No 12 of 2011 regarding the formulation of law which states that (1) the bills may be proposed by the House of Representatives or president or Regional Representatives Council. Therefore, it is evident that the Regional Representatives Council is authorized to formulate legislation, but the authority is limited to only legislation related to legislation related to regional autonomy, relationship between central and regional government, district establishment, merge or partition, natural and other economic resource management, and the balancing of central and regional finance.

### **III. CONCLUSION**

Based on the 1945 Constitution, Law No. 17 of 2014, Law No. 12 of 2011, and regulations of the Regional Representatives Council of the Republic of Indonesia No. 1 of 2014, the authority of the Regional Representatives Council in the formulation of legislations is restricted to legislations related to legislations related to regional autonomy, relationship between central and regional government, district establishment, merge or partition, natural and other economic resource management, and the balancing of central and regional finance, and the Regional Representatives Council is not authorized to formulate other legislations. Meanwhile, there are a lot of other legislation which cover materials related to the regional documents. Therefore, the government should consider removing the limitation of the authority given to the Regional Representatives Council, so each legislation related to regional interest can be drafted by the Regional Representatives Council.

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