

Nature of Forming Local Products in the Indonesian State Systems

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Abstract: The purpose of this study is (1) to explain and find the essence of the formation of regional law in the unitary state composition system based on the 1945 Constitution of the Republic of Indonesia, (2) explain, analyze the importance of legal products in the implementation of regional autonomy, (3) explain, analyze and formulate the forming ideal regional legal products in the Indonesian constitutional system. This research is included in the descriptive research category, namely research that intends to describe one or several social phenomena that occur in society. This research is also categorized as a juridical-normative research. This research is also categorized as explanatory research, that is research that intends to test the truth of theories in Constitutional Law, particularly the science of legislation, processes and mechanisms for the formation of legal products, Local Government Law and State Administrative Law regarding the perspective of the concept of regional authority in publishing regional laws and regulations that are inseparable in the government system in the Republic of Indonesia.

Keywords: Legal Products, Regional anatomy, Regional Law

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I. INTRODUCTION

Since the reformation in 1998 the dynamics of the Indonesian constitution brought many changes to the socio-political order in this country and these changes cannot be separated from the spirit of democratization to live in an open, dynamic and constitutional life. The administration of government in the unitary state of the Republic of Indonesia also regulates the decentralization and regional autonomy as affirmed in Article 18 of the 1945 Constitution of the Republic of Indonesia (the 1945 Constitution of the Republic of Indonesia) which requires the government to implement decentralization politics in the field of constitution, which asserts that:¹

- a. The regions of Indonesia are divided into provinces, and will also be divided into smaller regions;
- b. These regions are autonomous or merely administrative areas.

Regional autonomy is essentially the right of each region to manage its own household, while decentralization is essentially the delegation of authority. Thus, regional autonomy is not possible without decentralization and decentralization in Indonesia can only be actualized through the implementation of regional autonomy.

One part of the administration of the State which must be based on the 1945 Constitution is the formation of regional legal products in the state administration system that has been mandated in Law of the Republic of Indonesia Number 12 of 2011 on Legislation Making (hereinafter referred to as Law No. 12 of 2011) and Law of the Republic of Indonesia Number 23 of 2014 on Local Government (hereinafter referred to as Law No. 23 of 2014) as an instrument for the realization of participatory regional regulations to encourage the community achieves its welfare. One part of the administration of the State which must be based on the 1945 Constitution is that the formation of regional legal products in the constitutional system has been mandated in Law No. 12 of 2011 and Law No. 23 of 2014 as an instrument for the realization of regional regulations which is participatory to encourage the community to prosper.

Regional legal products that philosophically serve the interests of the people (the people interest) in the sense of the design and formation of a regional regulation are based on the development of society, then adjusted to the things that are required by the needs of the community and then arranged logically. Thus, the formation of regional legal products is formed only in the form of a collection of regulations, but it contains the

¹Kansil, C. S. T. & Kansil, Christine S. T. (2001). *Pemerintahan Daerah di Indonesia: Hukum Administrasi Daerah*. Jakarta: Sinar Grafika, p. 43.

development needs of the community and rests on the morals and interests of the community and runs within the corridor of the constitution and applicable laws and regulations.

In full, the Regulation of Minister of Internal Affairs of the Republic of Indonesia Number 53 of 2011 on Formation of Regional Law Products, then replaced with the Regulation of Minister of Internal Affairs of the Republic of Indonesia Number 1 of 2014 on Formation of Regional Law Products (hereinafter referred to as Regulation of Minister of Internal Affairs No. 1 of 2014), and finally the Regulation of Minister of Internal Affairs of the Republic of Indonesia Number 80 of 2015 on Formation of Regional Law Products (hereinafter referred to as Regulation of Minister of Internal Affairs No. 80 of 2015), states the nature and type of regional legal products (provinces and districts/cities), namely:

1. Regional legal products are “regulatory” in nature, including: (a) Regional Regulations; (b) Regional Head Regulation; (c) Joint Regional Head Regulations; (d) Regulations of the Regional House of Representatives; (e) Decrees of Regional Heads; and (f) Decisions of the Regional House of Representatives.
2. Regional legal products are “stipulations”, including: (a) Decrees of Regional Heads, (b) Decisions of Regional Representatives, (c) Decisions of Leadership of Regional Representatives, and (d) Decisions of Honorary Bodies of Regional Representatives.

Departing from the phenomena described above, it is interesting to examine the nature of the formation of regional legal products in regulating and managing the implementation of regional autonomy based on the concept of the Republic of Indonesia as a state of law (*rechtsstaat*), so that through this research it can be clearly known and understood about the authority of regional autonomy in real Indonesia. Based on the description that has been explained above, it is sufficient to explain the background of the researcher’s thoughts and the direction in which this study will be carried out in working on a theme which is at the same time the title of the study, namely: “The Establishment of Regional Legal Products in the Indonesian Administrative System”.

II. STATEMENT OF THE PROBLEM

1. What is the nature of the formation of regional legal products in the Indonesian constitutional system?
2. To what extent is the importance of regional legal products in the implementation of regional autonomy?
3. How is the formation of ideal regional legal products in the state administration of Indonesia as a unitary state in the form of the Republic?

III. THEORETICAL FRAMEWORK

A. Rule of Law Theory

Before describing the Rule of Law Theory, the state understanding according to scholars will first be described. According to Socrates the state is not an organization that can be created by humans for its own sake, but is an objective arrangement based on human nature so that it is tasked with carrying out objective regulations, containing justice and general or common good, not only serving the needs of the authorities.²

According to Plato, the country arises because of the diverse needs and desires of humans, which causes them to have to work together to meet their needs, because everyone cannot meet their own needs, then according to their respective abilities, everyone has a duty each and work together to fulfill their common interests. This unity is then called society or the state.³

The rule of law basically aims primarily at providing legal protection for the people.⁴ Therefore according to Philip M. Hadjon⁵, that legal protection for the people against government action is based on two principles, namely the principle of human rights and the principle of the rule of law. Recognition and protection of human rights take first place and can be said to be the goal of the rule of law. In contrast, in a totalitarian state there is no place for human rights.

The concept of the rule of law is very much related to the legal system adopted by the country concerned.⁶ In the old literature basically the legal system in this world can be distinguished in two major groups, namely the continental legal system and the Anglo-Saxon legal system, so that both legal systems seem to divide our world into two camps.⁷ In the development of legal theories, then there were other legal systems, such as the Islamic legal system, the socialist legal system, etc., as well as including the Pancasila legal system.⁸

²Lubis, M. Solly. (1990). *Ilmu Negara*. Bandung: CV. Mandar Maju, p. 11.

³Soehino. (1988). *Ilmu Negara*. Yogyakarta: Liberty, p. 78.

⁴Harahap, Zairin. (2002). *Hukum Acara Peradilan Tata Usaha Negara*. Jakarta: PT. Raja Grafindo Persada, p. 2.

⁵*Ibid.*

⁶*Ibid.*

⁷Satjipto Rahardjo, in *Ibid.*

⁸Bagir Manan, in *Ibid.*

Ni'matul Huda states that the concept of the rule of law which believes in rechtsstaat has the following characteristics:⁹

1. The existence of a constitution or constitution containing written provisions concerning the relationship between the authorities and the people;
2. The distribution of state power;
3. The freedom of the people is recognized and protected.

While H. Abdul Latief¹⁰ revealed the elements of the rule of law that have relevance to the elements of the rule of law in the concept of rechtsstaat, namely:

1. Government is carried out based on the law (principle of legality) whereby the power and authority possessed by the government are solely determined by the Basic Law or the Law;
2. In that State basic human rights are recognized and respected by the authorities concerned;
3. Government power in the State is not centralized in one hand, but must be given to state institutions where one supervises the other so as to create a balance of power between the state institutions;
4. Government actions carried out by the government power apparatus are possible to be submitted to an impartial court who is authorized to judge whether the government's actions are illegal or not.

Based on the elements and characteristics of rechtsstaat stated above, it shows that the central idea of rechtsstaat is the recognition and protection of human rights which is based on the principles of freedom and equality. The existence of the Basic Law theoretically provides a constitutional guarantee of freedom and equality. The division of power is intended to prevent the accumulation of power in one hand. Excessive power possessed by a ruler tends to curb the freedom and equality that characterizes the rule of law. However, Padmo Wahyono, noted that in the development of government based on the law is considered "slow", and therefore replaced with a government based on the law or the principle of rechtmatigheid bestuur, thus the formal rule of law becomes a material state law with a characteristic rechmatig bestuur, then the concepts that are a variant of rechtsstaats were born, including welvaartsstaat and veerzorgsstaat as prosperity countries.¹¹

Whereas the concept of the rule of law The Rule of Law which was pioneered by A.V Dicey and developed in the Anglo-Saxon countries that adhered to the Common Law legal system,¹² has the core teachings that all aspects of the state uphold the rule of law which is built on the principles of justice and egalitarianism. Rule of law is a legal legalism that contains the idea that justice can be served through the creation of a system of rules and procedures that are objective, impartial, impersonal and autonomous.¹³ Therefore, the Rule of law can be interpreted as rule by the law not rule by the man. Rule of law was born to take over the domination of the church, the nobility (nobility) and the kingdom (kingdom), shift the kingdom (monarchy), and bring up the constitutional state.¹⁴

According to A.V Dicey, there are three important features or meanings in the rule of law concept, namely:¹⁵

1. The rule of law of the regular law to oppose the influence of arbitrary power and negate the wide range of arbitrary, prerogative or discretionary authority of the government.
2. Equality before the law of all classes of ordinary law of the land carried out by ordinary court. This means that no one is above the law, both officials and ordinary citizens are obliged to obey the same law.
3. The constitution is the result of the ordinary law of the land, that constitutional law is not a source but is a consequence of individual rights formulated and affirmed by the judiciary, in short, the principles of private law through judicial and parliamentary actions are so broadened that they limit the position of the Crown and its officials.

Starting from the two concepts of the rule of law as stated above (the concept of rechtsstaat and the rule of law), it can be stated that the rule of law is very much determined by the condition of a country which is influenced by the background and history of its formation. According to M. Scheltema, the characteristics of the state treasury provide protection to its citizens in different ways. The rule of law develops and manifests as a reaction to the past, therefore the element of the rule of law is rooted in different histories, so that the

⁹Huda, Ni'matul. (2005). *Negara Hukum, Demokrasi dan Judicial Review*. Yogyakarta: UII Press, p. 9.

¹⁰Latif, Abdul. (2005). *Hukum dan Peraturan Kebijaksanaan (Beleidsregel) pada Pemerintahan Daerah*. Yogyakarta: UII Press, p. 20.

¹¹Budiardjo, Miriam. (2010). *Dasar-Dasar Ilmu Politik* (Revisi ed.). Jakarta: PT. Gramedia Pustaka Utama, p. 89; See also Harahap, Zairin. (2002). *Op. Cit.*, p. 8.

¹²Budiardjo, Miriam. (2010). *Op. Cit.*, p. 113.

¹³Madiung, Baso. (2014). *Sosiologi Hukum: Suatu Pengantar*. Makassar: CV. Sah Media, p. 56.

¹⁴Budiardjo, Miriam. (2010). *Loc. Cit.*

¹⁵Dicey, Albert Venn. (1959). *Introduction to the Study of the Law of the Constitution*. London: Collier MacMillan Publisher, p. 117.

understanding of the rule of law in different countries is also different.¹⁶ According to A. Muin Fahmal, the difference shows that the state philosophy of a society is placed on its constitution. Because each of the nations of the world has a relatively different outlook on life, let's say the sharpest concept of the state is liberal and communal, religious, and that philosophy is reflected in their fundamental foundations in their constitution. So that state life is also relatively unequal, including the concept of the rule of law.¹⁷

In relation to the state of law in Indonesia, in the Explanation of the 1945 Constitution (before amended) and the body of the 1945 Constitution of the Republic of Indonesia (post-amendment), it has been affirmed that the State of Indonesia is a State of law,¹⁸ not a State of power. The ideals of the rule of law have become an inseparable part of the ideas of the founders of the Indonesian state who conceptualized that the Republic of Indonesia is a state based on law, a democratic state (people's sovereignty), based on the Godhead of the Almighty, which is socially just. Thus it can be said is a *theodemokratischesozialrechtstaat*.¹⁹ Thus it can be said is a *theodemokratischesozialrechtstaat*. Although this idea was not formulated in the articles of the 1945 Constitution at the time of its birth, it was explicitly formulated explicitly in the explanation of the 1945 Constitution that Indonesia adheres to the idea of *rechtsstaat*, not *matchtstaat*.

Jimly Asshiddiqie²⁰ argues that in order to reformulate the main ideas of the concept of the rule of law and its application in the current Indonesian situation, we can reformulate the existence of thirteen main principles of the rule of law (*Rechtsstaat*) that apply today. The thirteen main principles are the main pillars that support the standing of a modern state so that it can be called the rule of law or *rechtsstaat* in the real sense, namely:

1. Supremacy of Law
2. Equality in law (equality before the law)
3. Principle of legality (Due Process of Law)
4. Power Restrictions
5. Independent Mixed Organs
6. Free and impartial justice
7. State Administrative Court
8. Constitutional Court
9. Human Rights Protection
10. Democratic (*Demokratische Rechtsstaat*)
11. Functioning as a Means of Realizing the National Goal (*Welfare Rechtsstaat*).
12. Transparency and Social Control.
13. Godhead the Almighty.

The concept of the rule of law based on the Pancasila and the 1945 Constitution can be formulated both materially and formally juridical. The material formulation of the Pancasila law state is based on the perspective (paradigm) of the Indonesian nation in an integrally Indonesian state, namely the principle of kinship which means that what is prioritized is the common people, but dignity and dignity are still respected and the paradigm of the law that functions as an umbrella is to uphold that is upholding the principle democracy includes democracy in law, social justice and humanity.²¹

By looking at the description of the rule of law as stated above, Indonesia as a rule of law always makes Pancasila and living values and forms the characteristics of society and other elements of state, so that it becomes the identity of a nation, namely the Indonesian nation. living in society The formal juridical concept of the Indonesian law state must be manifested in the activities of law formation, application and service of law, law enforcement, and legal development in the country of Indonesia.

B. Form of State and Form of Government

The theories of the form of the state that developed in modern times, boils down to the most important form of state is the Unitary State (Unitarism) which can take the form of a centralized system and a decentralized system and the United State (federalism).²² Unitary State if power is not shared (central

¹⁶Scheltema, M. (1989). *De Rechtsstaat. In De Rechtsstaat Herdacht*. Zwolle: W.E.J. Tjeenk Willink, p. 16.

¹⁷Fahmal, A. Muin. (2008). *Peran Asas-Asas Umum Pemerintahan yang Layak dalam Mewujudkan Pemerintahan yang Bersih*. Yogyakarta: Kreasi Total Media, p. 107.

¹⁸See in Article 1 Section (3) of the 1945 Constitution.

¹⁹Fadjar, Abdul Mukthie. (2005). *Tipe Negara Hukum*. Malang: Bayumedia Publishing, p. 85.

²⁰Asshiddiqie, Jimly. (2014). *Konstitusi dan Konstitusionalisme Indonesia*. Jakarta: Sinar Grafika, p. 127 – 134.

²¹Azhary, Muhammad Tahir. (1995). *Negara Hukum Indonesia: Analisis Yuridis Normatif tentang Unsur-Unsurnya*. Jakarta: UI Press, pp. 85 – 86.

²²Attamimi, A. Hamid S. (1992, 25 April). Teori Perundang-Undangan Indonesia: Suatu Sisi Pengetahuan Perundang-Undangan Indonesia yang Menjelaskan dan Mencerminkan. Paper presented in *Inauguration Ceremony for Professor Position*, organized by Fakultas Hukum Universitas Indonesia, at Jakarta.

government power is not limited by regions),²³ United States if power is shared between the center and the states. Confederate States if power lies with states of association. The form of the state is related to the highest power that is in a country. Power is sovereignty as the most important essence in running the country and government. The theory of sovereignty that is famous until now, among others; God's Sovereignty Theory, People's Sovereignty Theory, State Sovereignty Theory, and The Law Sovereignty Theory.²⁴

A state in the form of a republic with a unitary structure is formulated in a moralist and integralistic mind in one unit and unity, which on the one hand puts forward the aspects of upholding justice and morality of society and universalistic state interests, and on the other the aspects of particularistic individual interests are removed.²⁵ In terms of the composition of the unitary state, the unitary state is not a state composed of several states but a single state. Correspondingly, Abu Daud Busroh²⁶ stated that a unitary state is a state that is not composed of several countries, as in a federation state, but that state is single, meaning that there is only one state, there is no state within the state. So thus, in the unitary state there is also only one government, namely the central government which has the highest power or authority in all fields of government. It is this central government which at the last and highest level can decide everything in the country.

Basically, the relationship between the central government and regional governments is highly dependent on the form and composition of the state, namely the unitary state holds the principle that the holder of the highest power is the central government, which is not disturbed by the delegation or transfer of authority to local government (local government). The authority that is in the regional government refers to the principle of division that does not leave a unity (eenheid) the highest authority in the administration of state government, which is still in the hands of the central government..²⁷

C. Form of government

If in a state the power of government is divided or separated there is a difference between government in the broad sense and government in the narrow sense. Government in the narrow sense only includes institutions that take care of the implementation of the wheels of government (called the executive), while government in a broad sense other than the executive includes institutions that make laws and regulations (called the legislature), and who carry out justice (called the judiciary).²⁸

As for the government in a broad sense according to Carl J. Friederich is all the affairs carried out by the state in carrying out the welfare of its people and the interests of the state itself. He further explained that governance simply does not merely carry out executive duties, but also other tasks including the legislative and judiciary.²⁹

D. Government system

According to S. Pamudji in his book Systems Theory and its Implementation in Management it is said that a system is a whole or a complex or organized whole; a set or combination of things or parts that make up a round or a complex whole or whole.³⁰ Which is then refined into a whole or whole, in which there are components, which in turn are separate systems, which have their respective functions, interconnected with each other according to certain patterns, systems or norms in order to achieve a aim..³¹

²³Strong, C. F. (1960). *Modern Political Constitution: An Introduction to the Comparative Study of Their History and Existing Form*. London: Sidgwick & Jackson, p. 80. See also, Wolhoff, G. J. (1960). *Pengantar Ilmu Hukum Tata Negara Republik Indonesia*. Jakarta: Timun Mas, p. 112.

²⁴Soehino. (1988). *Op. Cit.*, pp. 149 – 150.

²⁵Kranenburg, Roelof. (1950). *Inleiding in De Vergelijkende Staatsrechts – Wetenschap*. Zwolle: W.E.J. Tjeenk Willink, pp. 5 – 7. See, Martosoewignyo, Sri Soemantri. (1981). *Pengantar Perbandingan Antar Hukum Tata Negara*. Jakarta: Rajawali Pers, p. 14. See also, Saragih, Bintan Regen. (1985). *Sistem Pemerintahan dan Lembaga Perwakilan di Indonesia*. Jakarta: Perintis Press, p. 75.

²⁶Busroh, Abu Daud. (2011). *Ilmu Negara*. Jakarta: Bumi Aksara.

²⁷Strong, C. F. (1960). *Op. Cit.*, pp. 80 & 100. See, Samidjo. (1989). *Ilmu Negara*. Bandung: CV. Armico, p. 162; Martosoewignyo, Sri Soemantri. (1987). *Prosedur dan Sistem Perubahan Konstitusi dalam Batang Tubuh UUD 1945: Sebelum dan Sesudah Perubahan UUD 1945*. Bandung: PT. Alumni, p. 65; Soetomo. (1991). *Ilmu Negara*. Surabaya: Usaha Nasional, p. 132; Kartasapoetra, R. G. (1987). *Sistematika Hukum Tata Negara*. Jakarta: PT. Bina Aksara, p. 96. See also, Kusnardi, Moh. & Ibrahim, Harmaily. (1980). *Pengantar Hukum Tata Negara Indonesia*. Jakarta: CV. Sinar Bakti, p. 160; Soehino. (1988). *Op. Cit.*, p. 224.

²⁸*Ibid.*

²⁹Tutik, Titik Triwulan. (2005). *Pokok-Pokok Hukum Tata Negara Indonesia*. Jakarta: Prestasi Pustaka, p. 97.

³⁰Pamudji, S. (1981). *Teori Sistem dan Penerapannya dalam Manajemen*. Jakarta: PT. Ichtiar Baru Van Hoeve, pp. 4 – 7. See also, Syafiie, Inu Kencana & Azhari. (2005). *Sistem Politik Indonesia: Era Soekarno, Hatta, Syahrir, Aidit, Syafruddin; Era Soeharto, Moerdani, Wiranto, Harmoko, Habibie; Era Gus Dur, Megawati, Amin Rais, Hamzah Haz; Era SBY, Kalla, Baasyir*. Bandung: Refika Aditama, p. 3.

³¹*Ibid.*, pp. 9 – 10.

How about the existing government system in Indonesia? As is known, the 1945 Constitution applies in the period 18 August 1945 to 27 December 1949 and the period 5 July 1959 to the present. With the changes in the constitution used by Indonesia, it clearly influences the government system implemented in Indonesia. Indonesia has also tried to practice a parliamentary system of government because pluralism and its vast territory consisting of small islands requires a strong and stable government.

Then a presidential government system was implemented under the 1945 Constitution which tended to be executive heavy which had been resolved through an amendment to the 1945 Constitution. According to Sri Soemantri, the characteristics of presidential government in the post-amendment of the 1945 Constitution include, first, the president and vice president are elected in a pair directly by the people, secondly, the president is no longer accountable to the MPR, because this institution is no longer the exercise of popular sovereignty.³²

E. Theory of Authority

Authority is a very important part and becomes an initial part of administrative law because a new government can carry out its functions on the basis of the authority it obtains. That is, the validity of acting by the government on the basis of the authority stipulated in the legislation (*legaliteit beginselen*).³³

Law Number 32 of 2004 which states that regional autonomy is the right, authority and obligation of autonomous regions to regulate and manage their own government affairs and the interests of local communities in accordance with statutory regulations. Theoretically there are 3 (three) ways to obtain authority, namely attribution, delegation, and mandate. On the other hand, there are those who argue that in the administrative law library there are two main ways to obtain government authority, namely attribution and delegation, whereas mandates are sometimes therefore placed separately unless linked to a state administration lawsuit, mandates are united because recipients of the mandate cannot be sued in a manner separate

F. The Dynamics of Regional Autonomy Development in Indonesia

Citing Sarundajang's opinion, the paradigm of regional governance in Indonesia so far can be formulated as follows; The first paradigm between the period 1903-1922 was marked by the recognition of Regional Government in the Dutch East Indies government system. The Second Paradigm between the period 1922-1942 Colonial Version Decentralization. The Third Paradigm between the period 1942-1959, was the search for a form of decentralization towards democracy. The Fourth Paradigm between the period 1959-1974, was the period in which forced decentralization took place. Fifth Paradigm - ORBA - when the validity of Law No. 15 of 1974 concerning Limited Autonomy and Centralistic tendencies in its implementation. The Sixth Paradigm - the current Reformation Era - the enactment of Law no. 22 of 1999 which was later revised into Law No. 32 of 2004 which Sarundajancited as a backflow of central power to the regions.³⁴

G. Theories about Central and Regional Relations

The Relationship between the Center and the Regions in the unitary State, in general the holder of control and authority of the government is in the Center, in other words that power rests with the central government. The authority given by the Center to the Regions is very limited. In the implementation of power systems in government the pattern of unitary states is characterized by a centralistic and decentralized character. Centralistic, that is, power largely rests on the central government, whereas in decentralized systems, power and authority are partially granted to the government at the local or regional government known as regional autonomy.

The constitutional foundation of the relationship between the center and the regions is regulated in Article 18A section (1) and section (2) as follows:

- 1) The relationship of authority between the central government and provincial, district and city governments, or between provinces and districts and cities is regulated by law with due regard to regional power and diversity.
- 2) Financial relations, public services, utilization of natural resources and other resources between the central government and regional governments are regulated and carried out fairly and in accordance with the law.

From this arrangement it appears that the relationship between the Government (Central) and the Regions includes several aspects of financial relations, public services, utilization of natural resources and other resources that are carried out fairly and in harmony. This relationship must be carried out using the regulatory mechanism and be carried out fairly and in harmony.

³²*Ibid.*

³³Sadjijono. (2008). *Memahami Beberapa Bab Pokok Hukum Administrasi*. Yogyakarta: LaksBangPRESSindo.

³⁴Sarundajang, Sinyo Harry. (1999). *Arus Balik Kekuasaan Pusat ke Daerah*. Jakarta: PT. Pustaka Sinar Harapan, p. 4.

H. Legislative Theory

Legislation as written law that is given form from the beginning is expected that in its implementation it will provide legal certainty. It is realized that a written law contains many weaknesses, but also has advantages compared to an unwritten law. The role of legislation is increasingly important as a demand for the principle of legality as one of the characteristics of the rule of law. In a modern welfare state, when compiling a plan, legislation is increasingly important both as a framework for the plan itself, and as a guiding instrument in implementing a plan. According to Aan Seidman³⁵ that without the law, the changes that occur do not occur as proposed or predicted by the government, but occur accidentally and are only intuitive.

With the opinion of Seidman, it shows that how legislation as an instrument of the rule of law, has an important and strategic role in making changes and engineering society. According to Bagir Manan³⁶, the importance of these laws and regulations is due to:

- 1) Legislation is a legal method that is easily known (identified), easily rediscovered, and easily traced. As a written rule, the type and place are clear. Similarly, the maker.
- 2) Legislation provides clearer legal certainty because its methods are easily identified and easily rediscovered.
- 3) Structure and systematics of legislation is clearer so that it is possible to be reexamined and tested both in terms of the formal and material content.
- 4) Formation and development of legislation can be planned. This factor is very important for developing countries including building a new legal system that is in accordance with the needs and development of society.

Bagir Manan³⁷ explained the function of the laws and regulations, namely internal functions and external functions. Internal functions, including: (1) law creation function (*rechts chepping*); (2) the function of legal renewal; (3) Integration function; and (4) legal certainty function. Whereas the external function consists of (1) the Change function; (2) Stabilizing function; and (3) the convenience function.

To assess whether a lower statutory regulation does not conflict with a higher statutory regulation, it is necessary to examine the law. Both in literature and in practice there are 2 (two) types of testing rights, namely formal testing rights (*formele toetsingsrecht*) and material testing rights (*toetsingsrecht material*).³⁸ What is meant by formal testing rights is the authority to judge whether a legislative product such as a law, for example, is manifested through methods (procedures) as determined/regulated in the applicable laws and regulations or not.³⁹ While the right of material testing is an authority to investigate and then assess whether a statutory regulation is in accordance with or contradictory to a higher degree of regulation, and whether a certain authority (*verordenende macht*) has the right to issue a certain regulation.⁴⁰

The dynamics of the development of the formation of legislation both at the central and regional levels become something that is absolute. This will affect the development of national and regional legal systems, which will directly affect the development of the constitutional system of the Unitary Republic of Indonesia. Regional Level Legislation is defined as a statutory regulation established by the Regional Government or one of the elements of the Regional Government that has the authority to make regulations on regional laws.

I. Former of Regional Legal Products

In the context of exercising authority inherent in autonomous regions, regions have the right to form legal instruments as institutions in managing and managing their own households effectively and efficiently. The formation of legal instruments by regions is a right which is obtained attributively from the state constitution. In Article 18 section (6) of the 1945 Constitution it is expressly stated that the regional government has the right to stipulate regional regulations and other regulations to carry out autonomy and assistance tasks. In this provision, it is concluded that the legal instruments that can be made by regional governments in carrying out regional autonomy and assistance tasks, namely: regional regulations and other regulations. Regional Regulations consist of: First, Provincial Regulations, are statutory regulations established by the Provincial Regional House of Representatives with the joint agreement of the Governor.⁴¹ Second, Regency/City Regional

³⁵Seidman, Ann, Seidman, Robert B., & Abeyeskere, Nalin. (2001). *Penyusunan Rancangan Undang-Undang dalam Perubahan Masyarakat yang Demokratis: Sebuah Panduan untuk Pembuat Rancangan Undang-Undang*. Jakarta: ELIPS Project, p.117.

³⁶Manan, Bagir. (1993). *Dasar-Dasar Perundang-Undangan Indonesia*. Jakarta: Ind-Hill Co. p. 8.

³⁷Halim, Hamzah & Putera, Kemal RedindoSyahrul. (2009). *Cara Praktis Menyusun & Merancang Peraturan Daerah: (Suatu Kajian Teoritis & Praktis Disertai Manual) Konsepsi Teoritis Menuju Artikulasi Empiris*. Jakarta: Kencana Prenada Media Group, pp.60 – 65.

³⁸Martosowignyo, Sri Soemantri. (1997). *Hak Uji Material di Indonesia*. Bandung: PT. Alumni, p. 11.

³⁹*Ibid.*

⁴⁰*Ibid.*

⁴¹In Article 1 point 7 of Law No. 12 of 2011.

Regulations, are Legislation Regulations established by the Regency/City Regional People's Representative Council with mutual agreement from the Regent/Mayor.⁴²

While what is meant by other regulations, can be found in Article 8 section (1) of Law No. 12 of 2011,⁴³ that is, regulations determined by the Provincial Regional House of Representatives, Governors, Regency/City Regional House of Representatives, Regents/Mayors, Village Heads or equivalent. Furthermore, the form of the other regulations is concretized in the Minister of Domestic Affairs Regulation concerning the Establishment of regional legal products, which has been amended through several changes, namely: First, Regulation of the Minister of Home Affairs Number 16 of 2006; Secondly, Regulation of Minister of Internal Affairs No. 1 of 2014; and Third (last), Regulation of Minister of Internal Affairs No. 80 of 2015. From the regulations of the minister grouping regional legal products into 2 (two) groups according to their nature, namely: Regional legal products that are regulatory (regelung) and local legal products which is determinative (beschikking).⁴⁴

Both groups of regional legal products apply to the formation of provincial regional legal products and district/city regional legal products, of the following types:

- 1) Regulatory legal products, consisting of:
 - a. Regional Regulations (Province and Regency/City);
 - b. Regional Head Regulations (Province and Regency/City);
 - c. Joint Regulations of Regional Heads (Provincial and Regency/City); and
 - d. Regional House of Representatives (Province and District/City) Regulations.
- 2) Legal products that are stipulated (beschikking), consisting of:
 - a. Decree of the Head of Region (Province and Regency/City);
 - b. Decisions of Regional People's Representative Council (Province and Regency/City);
 - c. Decree of the Chairperson of Regional House of Representatives (Provincial and Regency/City); and
 - d. Decisions of the Honorary Board of the Regional Representatives Council (Province and Regency/City).

The process of formation and material content of the Regional Legal Products as stated above, are as follows:

1. Local Regulation

Regional Regulations consist of Provincial Regulations and Regency/City Regulations. These two levels of Regional Regulations are the hierarchy between them and form part of the national legislative hierarchy. Regional regulations are determined by the Regional Head with the approval of the DPRD at each regional level⁴⁵ in order to regulate the administration of government and household affairs in autonomous regions. Regional Regulations as befits the laws in the regions, have absolute binding power to all people, government and private institutions, as well as to migrants who interact in the regions. The implementation of regional regulations can be forced, therefore all parties must respect them, and law enforcement officials must wisely anticipate using regional regulations as a basis for law enforcement efforts both inside and outside the court.

2. Regional Head Regulation

Regional Head Regulations are also known as Regents Regulations in regency/city areas and Governor Regulations in provincial areas, are implementing regulations of regional regulations and other high regulations in the relevant regions.⁴⁶ Neither Regional Regulations nor Regional Head Regulations may conflict with higher regulations, public interest, and/or decency, because they will be canceled by the Minister.⁴⁷

3. Joint Regulations of Regional Heads

Joint Regional Head Regulation is a statutory regulation established by two Regional Heads in the framework of collaborating with the government in the two regions concerned. Although regional autonomy gives flexibility to the regions to regulate and manage their own households, but that autonomy must be placed on the frame of the Unitary State of the Republic of Indonesia. In order to improve the welfare of the community in the area so that there is no gap that is too far away, especially the community of two neighboring regions, it is possible to conduct cooperation between regions. These regional cooperation needs can be determined by Joint Regional Head Regulations.

⁴²In Article 1 point 8 of Law No. 12 of 2011.

⁴³In Article 8 section (1) of Law No. 12 of 2011.

⁴⁴In Article 2 of Regulation of Minister of Internal Affairs No. 80 of 2015.

⁴⁵In Article 1 point 7 and point 8 of Law No. 12 of 2011.

⁴⁶In Article 246 section (1) of Law No. 23 of 2014.

⁴⁷In Article 251 of Law No. 23 of 2014.

Thus the content of the Joint Regulation of the Regional Head is related to the need for cooperation on a particular goal or purpose between the two regions. The format and form are the same as the Regional Head Regulation, the difference is that it is signed by two Regional Heads.

4. Regional House of Representatives Regulations

Regulations of the Regional Representatives Council are made and determined by the Regional Representatives Council through the legislation process, in the context of carrying out the functions, duties and authorities as well as the rights and obligations of the Regional People's Representative Council which includes: 1) Regulations of the Regional People's Representative Council on procedures; 2) Regional House of Representatives' Regulations regarding codes of ethics; and 3) Regulations of the Regional House of Representatives regarding the procedure of honorary bodies.

5. Decree of the Regional Head

Decisions of the Regional Head, stipulated by the Regional Head based on a higher regulation or formed based on the authority to carry out regional autonomy. This decision is a determination that is a decision that is concrete, individual and final whose material content only determines certain things. When it comes to people, then a certain name and identity, and when it comes to matter, it has a certain type, location, and owner or the owner of it. Decisions of the Regional Head can be formed based on/to implement the Regional Regulation or Regional Head Regulation. Decisions like these can be made the object of a case in the State Administrative Court.

6. Decree of the Regional House of Representatives

Decisions of the Regional House of Representatives are determined by the leadership of the Regional House of Representatives in the Plenary Meeting of the Regional House of Representatives⁴⁸ based on the results of the Plenary Meeting.⁴⁹ The Results of the Meeting shall be in the form of the determination of the results of the plenary meeting which may take the form of granting approval, and other stipulations that are recommendations either to the Regional Government or other parties in the framework of governance and/or community management.

7. Decree of the Chairperson of the Regional House of Representatives

Decisions of the Chairperson of the Regional House of Representatives are determined by the Chairperson of the Regional House of Representatives based on the results of the Regional Leadership Meeting of the House of Representatives in the context of carrying out the technical functions of the Regional House of Representatives.⁵⁰ The drafting of the Decree of the Chairperson of the Regional People's Representative Council is prepared by the Secretariat of the Regional People's Representative Council and subsequently determined as the decision of the Chairperson of the Regional People's Representative Council in a meeting of the leadership of the Regional People's Representative Council.

8. Decree of the Honorary Board of the Regional House of Representatives

The Decree of the Honorary Board of the Regional Representative Council was determined by the Honorary Board in the Honorary Board Session for imposing sanctions on the members of the Regional People's Representative Council which was proven to have violated the Regional People's Representative Regulation regarding the Code of Ethics and the order of the Regional People's Representative Council

Regional legal products formed by mutual agreement are Regional Regulations, while others are only formed by the Regional Government (Regional Head). Although the Regional Head can establish and determine the regional legal products that are within his authority, in certain cases the Regional House of Representatives' approval must also be required or at least as "ethical" the government needs to notify and accept input or consideration from the Regional House of Representatives. On the other hand, the Regional House of Representatives as a control institution has the right to give advice or considerations and even to ask for a policy taken by the Regional Head.

Therefore, a regional legal product cannot be formed and determined without regard to the established procedures and techniques. On the one hand, legally it must be maintained so as not to conflict with the legislation above and the applicable law, on the other hand ethically and politically must also consider the

⁴⁸In Article 57 section (4) of Regulation of Minister of Internal Affairs No. 80 of 2015.

⁴⁹In Article 57 section (3) of Regulation of Minister of Internal Affairs No. 80 of 2015.

⁵⁰In Article 58 of Regulation of Minister of Internal Affairs No. 80 of 2015.

existence of the Regional Representative Council as a democratic institution that represents the will of the people.

IV. DISCUSSION

A. The Nature of the Formation of Regional Legal Products in the Indonesian State Administration System

The term essence is often interpreted with the essence which means the essence of the actual reality. Thus, the nature of the formation of regional legal products means the essence or basic understanding or actual reality regarding the regional legal products. The existence of constitutional regional legal products based on Article 18 of the 1945 Constitution.

Regional legal products as referred to in Regulation of Minister of Internal Affairs No. 80 of 2015, affirm that regional legal products are legal products in the form of regulations covering Regional Regulations or other names, Regional Head Regulations, PB KDH, Regional legal regulations as referred to in Regulation of Minister of Internal Affairs No. 80 of 2015, affirm that regional legal products are legal products in the form of regulations covering regional regulations or other names, Regional Head Regulations, PB KDH, DPRD regulations and in the form of decisions covering decisions the regional head, the decision of the Regional Rayat Representative Council, the decision of the leadership of the Regional Rayat Representative and the decision of the honorary body of the Regional Rayat Representative Council. This regional legal product can be in the form of regulations and stipulations. and in the form of decisions include the decision of the regional head, the decision of the Regional Rayat Representative Council, the decision of the leadership of the Regional Rayat Representative and the decision of the honorary body of the Regional Rayat Representative Council. This regional legal product can be in the form of regulations and stipulations.

Formation of local regulations is the making of local regulations that cover the stages of planning, drafting, discussion, ratification or enactment, and enactment. The regional regulation is part of the national legal subsystem as the basic policy of the regional government in choosing the way in which a Regional Regulation is made, its direction and contents are determined and the nature of its function is so that the Regional Regulation to be or has been formed is in accordance with the patterns and objectives of the community as well as the legal needs of the community. higher legislation in the national legal system.

Thus the nature of the formation of regional legal products is identical to the politics of law in the formation of regional regulations, namely the policy of regional governments in establishing applicable regional regulations, which are policies that are the basis of government actions in determining applicable regional regulations and how the government determines policies in establishing applicable regional regulations. Regional Regulations as a regional legal product can in fact be analyzed as follows:

1. Material of Regional Regulations as Legal Products

Regional regulations as legal provisions that apply in the material sense in the national legal system based on Article 7 of Law No. 12 of 2011, in their position as a source of law in the material sense, namely the source of law as a teaching on the measure used to determine whether a provision is legal provisions that apply or not. Furthermore, it is emphasized in the Regulation of Minister of Internal Affairs No. 80 of 2015.

This shows that the regional legal products in their various forms and their contents are in accordance with the contents of generally accepted/accepted principles in people's lives. The principle that measures the content of the legal provisions is the source of material law. For Indonesian law, the source of material law is the principle of self-determination and regional independence, the principle of the rule of law (legal certainty), the principle summarized in Pancasila.⁵¹

Regarding the issue of how regional regulations are made and their contents determined and the nature of their functions, they must be in accordance with the ideals of Indonesian law and general legal principles in the formation of laws and regulations that are implied in the ideals of Indonesian law itself. The ambition of Indonesian law gives the meaning of regional regulations as applicable legal provisions, limiting the scope of local regulations that can be formed, as a measure to assess the fair or unfair regulations governing the formation of regional regulations. Whereas the principle of law will function to guide the members of the Regional People's Representative Council and Regional Heads and their staff in the process of forming regional regulations, giving material legal strength to the regional regulation dictum that has been found by members of the Regional People's Representative Council and Regional Heads and their ranks.

⁵¹Latif, Abdul. (1997). *Peraturan Perundang-Undangan Indonesia*. Makassar: PT. Umitoha Ukhuwah Grafika, pp. 38 – 39.

2. Regional Regulations as Regional Legal Products

Regional regulations as applicable provisions in the formal sense must be made by an authorized state organ and in accordance with established procedures. If a regional regulation is not made by an authorized state organ and is not made according to a predetermined procedure, then such regional regulation is not a valid legal provision.

The mention of regional regulations as regional legal products has been affirmed in Regulation of Minister of Internal Affairs No. 80 of 2015. In the Regulation of Minister of Internal Affairs it is stated that the Provincial Regulations or other names and Regency/City Regional Regulations or other names, hereinafter referred to as Regional Regulations are laws and regulations established by the regional House of Representatives with the joint agreement of the regional head.

B. Regional Legal Products in Local Government Administration

The formation of regional regulations must be carried out by the competent state organs. Because if regional regulations are made by unauthorized state organs, the provisions of these regional regulations are not applicable legal provisions.

State organs obtain the authority to form laws and regulations through the incorporation in the 1945 Constitution or attributions in the law to state/government organs. Can also occur through the delegation of authority in the formation of legislation, namely the delegation of authority to form legislation by higher legislation to lower legislation, whether the delegation is expressly stated or not. There are three organs or institutions of the State that are usually involved in making law, namely the government, parliament and court and community institutions.⁵²

So basically the nature of regional regulations, **First**, as an ordinary legal provision must comply with legal principles in the highest basic law (the 1945 Constitution). **Secondly**, regional regulations are formed in the context of carrying out provincial/district/city regional autonomy and the task of assistance must pay attention to the aspirations of the people and the interests of the national government. **Third**, regional regulations are further elaboration of higher laws and regulations by paying attention to the characteristics of each region. This means that the formation of regional regulations must be a compromise between national interests and local wisdom as a characteristic of each region. The four regional regulations are prohibited from being in conflict with the public interest and/or higher statutory regulations. This fourth essence confirms the existence of national law as a unit and the position of regional regulations as a sub-system of national law. Local regulations are rules for implementing regional government laws.

C. Establishment of an Ideal Local Legal Product in the Indonesian State Administration as a Unitary State

As we know that the position of the regional legal product itself is determined by the prevailing statutory system. Historically the Indonesian state legislative system was first regulated in the state constitution. The statutory regulation system is then regulated further in MPRS Decree Number XX/MPRS/1966 which is then regulated in MPR Decree Number III/MPR/2000, then regulated in Law Number 10 of 2004 and finally regulated in Article 7 section (1) of Law No. 12 of 2011 concerning Formation of Regulations and Regulations, specifies that the type and hierarchy of legislation consists of:

- a) The 1945 Constitution of the Republic of Indonesia;
- b) Decree of the People's Consultative Assembly
- c) Government Act/Regulation in Lieu of Law;
- d) Government regulations
- e) Presidential decree
- f) Provincial Regulation
- g) Regency/City Regulations

Regarding the local regulation's position in the system of laws and regulations, the national legal order, theoretically can be explained by using his theory Hans Kelsen in his book "General Theory of Law and State" which he called the Stufen Theory (stufen = ladder) which is basically that the law positive which is an orderly rule (Normenordnung) has a pyramid structure. On each of the stairs of the pyramid there are the rules. At the top of the pyramid there is a basic rule or Grund Norm under which there is a constitutional rule, which is formed by an authorized body, if in Indonesia the MPR, the Act is formed by the House of Representatives with the President, Government Regulations are formed by the President and other written regulations are formed by the competent bodies form it as by a minister of a department, governor, regent/mayor. And in the lowest ladder there are provisions.

⁵² Asshiddiqie, Jimly. (2011). *Hukum Tata Negara & Pilar-Pilar Demokrasi*. Jakarta: Sinar Grafika, pp. 1 – 13.

In the perspective of a comparative study of the constitution that has been done, there is no country from the European Union that formulates the form of legal regulations such as the TAP MPR pattern No. XX/MPRS/1966, TAP MPR No.III/MPR/2000 on legal sources and the order of the laws and regulations and the pattern of Article 7 of Law No. 12 of 2011, the background of such formulation patterns is historically these countries are bottom-up and not top-down. Thus the constitution only constitutes what is known in the practice of constitutional matters and the other side enables the development of new forms of constitutional rule of law.

Analysis of the above issues can be said that the concept of legislation is unclear, ambiguous and vague, thus the constitution, legislation, and regulation are interpreted as statutory regulations. Establishment of the principle in the law is contrary to the position of the principle as a meta norm and open norm. The types of laws and regulations formulated in article 7 section (1) of Law No. 12 of 2011 indicate inconsistency of logic and cause various problems related to its application. The hierarchy of statutory regulations does not show a logical sequence such as the example of making a local regulation does not have to wait for the law or PP orders, considering that the regional regulation was formed in the context of decentralization and assistance tasks (*medebewind*).

V. CONCLUSION

1. The nature of regional legal products in the form of regulations includes Regional Regulations or other names, Regional Head Regulations, PB KDH, Regional People's Representative Council regulations and decisions including regional head decisions, decisions of the Regional People's Representative Council, decisions of the leadership of the Regional People's Representative Council and decisions of the honorary body of the Regional People's Representative Council. This regional legal product can be in the form of regulations and stipulations.
2. The formation of the regional regulation was related to two important institutions, namely the Regional House of Representatives and the Regional Head/Mayor. Legally both of them can take legislative initiatives in the effort to form a regional regulation. The procedures and mechanisms for establishing regional regulations can originate from executive initiatives or derive from the right of initiative of the Regional People's Representative Council. Therefore, the procedure for forming a Regional Regulation must be reviewed from several elements of the regional government, and the authority to establish a Regional Regulation is affirmed in Law No. 23 of 2014 that the Regional Regulation is determined by the Regional Head with mutual agreement with the Regional House of Representatives. The amendment to the approval of the Regional People's Representative Council has been agreed by the regional head and the Regional People's Representative Council. If there is a change later in the Center now, where the Regional House of Representatives is forming a regional regulation, then it is not the approval of the Regional House of Representatives but the decision of the Regional House of Representatives. In a statement with agreement, it must also mean "can disagree" or "reject the draft regulation" or "agree with changes.
3. An ideal regional regulation if the formation of Regional Regulation is the participation or participation of parties outside the Regional House of Representatives and the regional government in drafting and forming a regional regulation or regional regulation. There are two sources of the most essential, namely participation. Elements of government outside the Regional House of Representatives and Regional Government, such as the police, prosecutors, courts, universities and from the public, both individuals such as experts or who have experience or from groups such as institutions Non-Governmental Organization according to their expertise or experience.

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