

The Nature of Human Rights in Regional Regulations: Overview of the Transformation of Social Welfare Rights in Regional Regulations in West Sulawesi Province

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ABSTRACT

The purpose of this research is to analyze the nature of human rights in local regulations, the characteristics of local regulations based on the transformation of social welfare rights and the ideal form of human rights transformation in local regulations. The results of this study indicate that: Human rights and regulations are *regional elite series* (guiding stars) that function as external morality of the law, as well as become the evaluation rule (norm validity) in a regional regulation. The Regional Regulations in West Sulawesi Province have not yet fully transformed the rights of social welfare in their content material, thus giving birth to the characteristics of a Regional Regulation that is Responsive-progressive, and has a passive-conservative character. The form of transformation of social welfare rights in an ideal regulation can be done using the technique of regional *unenumerated* and the application of the principle of *addressing basic needs*.

KEYWORDS: Corruption Crime; Abuse; Authority

Date of Submission: 08-09-2021

Date of Acceptance: 23-09-2021

I. INTRODUCTION

Commitment as a state of law in providing guarantees for the principles and values of human rights is the responsibility of the government, this is in the 1945 Constitution of the Republic of Indonesia which has affirmed that the state through the government is responsible for respecting, protecting, fulfilling, upholding and promoting Human rights.

Furthermore, in the implementation of the constitutional mandate, the State through the government as an entity that is given the mandate to carry out state power is required to take effective implementation steps in all fields such as law, politics, economics, social, culture, state defense and security, and other fields.

In the field of law, the implementation of the government's commitment in carrying out its obligations on human rights is carried out by integrating human rights values in every legislation, both laws and regulations at the central level and legislation formed at the national level. areas throughout Indonesia.

The laws and regulations referred to here are in a broad sense or "*wet in materiele zin*" or commonly referred to as "*algemeenverbindendevoorschrift*" namely written legal regulations that are binding in general, including: "*de supra-nationalealgemeenverbindendevoorschriften, wet, AMVB, de ministerieleverordeningen, de gemeentelijkeraadverordeningen, de provincialestatenverordeningen*". In Indonesia, the forms of "*wet in materiele zin*" have been established based on Law no. 12 of 2011 concerning the Establishment of Legislation Article 7 Paragraph (1).

The existence of laws and regulations (*wet in materiele zin*) is one of the fundamental elements for the implementation of state government based on law (State of law), because laws and regulations are a means of the authorities in articulating attitudes and political perspectives to be realized. Thus, to measure the level of government commitment in respecting and protecting human rights, it can be seen that the content of the laws and regulations established by the regime of power can be seen.

Efforts to transform human rights values in every statutory regulation, especially regional regulations, are a manifestation of the government's commitment to providing guarantees for the protection and fulfillment of the human rights of every citizen, especially the right to social welfare. Human rights values for a local regulation can function as a guiding star (*letsrun*) to create good and quality local regulations, and be able to respond to the legal needs of the community that prioritize accommodation to accept social changes in order to achieve social justice and public emancipation. The transformation of human rights values in a regional

regulation is also expected to avoid the gap between expectations for the formulation of an ideal regional regulation and the reality, as stated by John Michael Otto who is known as the concept of *real legal certainty*, which in essence sees that between legislation with the fact that there is a wide chasm found. In other words, there is little "*real legal certainty*".

In West Sulawesi Province, since separating from South Sulawesi Province and becoming an autonomous region, a Regional Regulation has been stipulated which if based on the periodization of the term of office of the Regional People's Representative Council (DPRD) as the institution forming regional regulations, namely 33 (thirty three) regional regulations in 2004-2009 period, 45 (forty five) regional regulations in the 2009-2013 period, and 37 (thirty seven) regional regulations in the 2014-2018 period and 11 (eleven) regional regulations enacted in the 2019 to 2023 period.

From inventory data The West Sulawesi Provincial Regulations, in principle, all have implications for the implementation of the fulfillment and protection of human rights. However, among the local regulation there are local regulations that are directly related to the effort to fulfill human rights, especially human rights in the field Rights of Social Welfare, among others:

Table 1 Bylaw West Sulawesi Relating Directly to the Right to Social Welfare

Number	Title regulation	No. regulation
1	Amendment of regulation West sulawesi province number 3 of 2013 concerning the child protection system	Regional regulation number 1 of 2020
2	Gender mainstreaming	Regional regulation number 10 of 2020
3	Management and implementation of sports	Regional regulation number 11 of 2020
4	Respect, protection and fulfillment of the rights of persons with disabilities	Regional regulation number 2 of 2019
5	Non-smoking area	Regional Regulation Number 1 of 2017
6	Provision of exclusive breastfeeding	Regional Regulation Number 1 of 2016
7	Environmental protection and management	Regional Regulation Number 4 of 2014
8	Protection of women	Regional Regulation Number 6 of 2014
9	Child protection system	Regional Regulation Number 3 of 2013
10	Management system and implementation of education	Regional Regulation Number 6 of 2013
11	Environmental Management	Regional Regulation Number 11 of 2009

Source: JDIH of West Sulawesi Province

However, the Regional Regulation as referred to above is considered not to have fully transformed human rights values ideally, especially the right to social welfare in its content, there are even Regions that have not fully transformed Social Welfare Rights based on human rights principles. Furthermore, on the technical aspect, the ideal form of transformation of human rights values in regional regulations is inseparable from the concept that human rights are natural *rights inherent* in every human being, as stated by Paul Sieghart with outlines that the nature of human rights is in *humanity* (humanity or nature as a human being) which is inherent in humans in their function as a source of human rights, the implication is universal because all humans are the same (have humanity). This understanding implicitly explains the moral dimension of human rights which is closely related to the nature of humans as creatures that have physical and existential aspects. Based on this view, in principle, human rights do not need to be contained in the rule of law, while at the same time confirming that the existence of human rights does not depend on their use in positive law.

Taking into account the problem of the method of recognizing human rights in a statutory regulation, the integration of human rights values in a statutory regulation does not need to be done by *enumerating* the types of human rights, but it is enough with a human rights measure or parameter that can be used to ensure a regulation. legislation has transformed human rights values in its content.

II. RESEARCH METHODS

This type of research in the preparation of this dissertation is to use a *mix method* or a combination of normative legal research methods (doctrinal legal research) and sociological research methods (socio-juridical). Syahrudin Nawi stated that normative legal research is legal research that combines normative legal research and social law research. This research was conducted in West Sulawesi Province, with the consideration that the area is an autonomous region that is relatively young, so that there are still various problems in efforts to fulfill human rights, especially social welfare rights, both problems with the government system, as well as in the aspect of resources which are considered to have many shortcomings. These problems certainly require progressive steps from the local government to be able to find solutions to the problems faced as outlined in regional regulations.

III. DISCUSSION

The Ideal Form of Human Rights Transformation in Regional Regulations

The regional regulations views of several drafting generally assume that the regulation of human rights in the regional regulation is the same as the regulation of human rights in the law, namely by specifying the types of human rights rigidly or by specifying norms related to human rights that are still in nature. general-abstract. So often the draft local regulations produced are the same as the norms in the law or other higher legislation, or even just direct adaptations of higher laws and regulations.

This view has implications for conflict with the technique of drafting laws and regulations that prohibit the regulation of norms that have been regulated in higher laws and regulations, except for quoting using the method *loop*. In addition, the method of pouring out human rights norms that are the same as higher laws and regulations is not in accordance with the formal principles of the formation of good laws and regulations, such as the principle of "effective or efficient" which requires that the norms in the Regional Regulation can be implemented, either because The norms in the Regional Regulation are in accordance with the authority of the forming (Local Government) and because the formulation of the norms is clear and firm in both the enforcement process.

In addition, the imposition of human rights in regional regulations by adapting the types of human rights that have been stated in higher regulations is contrary to the principle of establishing other good laws and regulations, namely the principle of conformity of type and content.

The discussion regarding the ideal concept of human rights transformation in regional regulations is based on at least two arguments, *first* that human rights in the Indonesian legal system are based on the concept of natural law, namely that human rights are natural rights that are inherent and *inherent* in humans themselves and are not given from (power) the state. and the *second* is, that regional regulations have limited direction and scope of regulatory material, including not being able to regulate the existence of human rights let alone reduce or limit human rights themselves so that human rights formulations are *enumerated* not appropriate because there is no compatibility between the types of legislation (regional regulations).) and content material (human rights). The two arguments will then be described by researchers from theoretical, historical aspects and examine aspects of positive norms of legislation.

First, that human rights are natural rights that are inherent and *inherent* in humans themselves and are not gifts from the State (power).

Human rights are born from an in-depth study of the concept of natural rights from the thought of natural law. John Locke put forward a postulate of the idea that all individuals are gifted by nature is an inherent right to life, liberty and property which is one's own, cannot be revoked or stripped away by the state. Thus Locke explains in his phenomenal work "*the second treatise of civil government and a letter concerning tolerance*". Through a "social contract", the protection of rights that cannot be revoked and deprived is then handed over to the state. However, if at one time the rights handed over by individuals to the state are gradually ignored and the state violates these rights, then the people in that country are free to take down the ruler and replace him with a new government, namely a government that returns to the people's mandate. respect, fulfill and protect the human rights of the people).

Nurul Qamar also conveyed the affirmation of the concept of human rights as a natural right by linking it to the ideology of Pancasila. Nurul Qamar stated that Indonesia, as a nation that chose Pancasila as the state ideology, views human rights as natural and fundamental human rights, so that the concentration of human rights is focused on both individuals and human collectivities. This is reflected in the precepts of Pancasila.

On this basis, Indonesia is similar to the views of other countries which see the concept of human rights as a natural right. This can be understood by tracing the history of human rights thought in the Indonesian legal system as in MPR Decree No. XVII/MPR/1998 concerning Human Rights, namely:

1. The Indonesian people have views and attitudes regarding Human Rights that are sourced from religious teachings, universal moral values, and noble values of the nation's culture and are based on Pancasila and the 1945 Constitution.

2. The Indonesian nation as a member of the United Nations has a responsibility to respect the Universal Declaration of Human Rights and as other international instruments regarding Human Rights.

From the above understanding can be translated that, *first*, the basic rights inherent in *the inner workings* of the human self, not diada invent. *Second*, by nature, meaning the original nature that is natural because of the power of God Almighty, *Third*, universally, meaning that it is not limited by space, *fourth*, eternally, meaning that it is not limited by time, and *fifth*, the gift of God Almighty, is the basis of the essence of human existence as a creature created by God Almighty.

Indonesia's view that puts the concept of human rights as a natural right is also stated in Law Number 39 of 1999, Article 2 which stipulates that the Republic of Indonesia recognizes and upholds human rights and basic human freedoms as rights that are naturally attached to and inseparable from human beings, which must be protected, respected and upheld for the sake of increasing human dignity, welfare, happiness and intelligence and justice.

Views on the issue of human rights can also be seen from the dynamics and debates on the transformation of human rights in the amendment to the 1945 Constitution of the Republic of Indonesia, which by several factions also puts the issue of human rights in the context of natural rights. Some of them are the TNI/Polri faction through their deputy, TaufiqurrahmanRuki, who proposed the creation of human rights principles in the draft Amendment to the 1945 Constitution of the Republic of Indonesia. nature is inherent in and inseparable from humans, which must be protected, respected, and enforced for the sake of increasing human dignity, welfare, happiness and intelligence, and justice. The political views of the TNI/Polri faction are also supported by almost all other factions, all of whom view that the concept of human rights is a natural right inherent in human existence.

The consequence of the concept of human rights as natural rights, according to TitonSlametKurnia, is that the concept of human rights as natural rights is not identical with the demands for transformation into the constitution (regulatory regulations-researchers) to determine the existence of their protection obligations. So that when human rights are stated in a statutory regulation, it is feared that it will reduce the nature and universality of human rights themselves. Therefore, the transformation of human rights in laws and regulations should be carried out carefully and precisely so that there is no impression that these human rights exist because they are contained in laws and regulations, because in essence, human rights exist even though they are not stated *rigidly* in the legislation.

Regarding the view of the importance of human rights, it is regulated *rigidly* in positive law. Theoretically, there are two views of the position of human rights in the legal concept, namely in the formal concept of positioning the existence of human rights because they have a legal basis and are recognized in positive law, and the second is the substantive aspect, namely the view that sees the existence of human rights based on human nature itself. However, if one traces the substance of the thought that views the existence of human rights as acknowledging positive (formal) law, it is nothing more than making it easier to identify the rights inherent in every human being. According to Robert Alexy in Agustín J. Menéndez and Erik O. Eriksen "Without any doubt, formal concepts are useful, but they are not enough if one wants to understand the nature of fundamental rights. Therefore, in the context of the transformation of human rights in regional regulations, human rights are sufficiently regulated in the *grundnorm* (basic law/constitution) and *FormellGesetz* (law). The regulation on human rights in the constitution and laws then becomes a reference for the transformation of human rights values in lower laws and regulations as well as the goals that are aspired to and to be achieved in the imposition of lower laws and regulations, including regional regulations.

Then *the second*, is the suitability of the type and content of the content, namely that regional regulations are a type of implementing legislation, so they are not appropriate to be the basis for the existence of basic rights, but are types of regulations that regulate the implementation of the enforcement of these basic rights.

Hans Nawiasky classifies legal norms based on levels and also categorizes legal norms in a country into four major groups consisting of *staats fundamental norm* (State Fundamental Norms), *Staatgrundsetz* (basic rules/principles of the state), *FormellGesetz* (formal laws), *Verordnung* and *autonomesatzung* (executing rules and autonomous rules).

If based on the grouping of legal norms by Hans Nawiasky, regional regulations are grouped into the last group of legal norms, namely implementing regulations (*Verordnung*) and autonomous regulations (*autonomersatzung*) which are defined as regulations located under the law which function to carry out the provisions of the law. the law, where the implementing regulations are sourced from the delegated and autonomous authority or sourced from the attribution authority.

Taking into account the position of regional regulations which are *Verordnung*, regional regulations should be able to concretely articulate the general and abstract norms contained in these higher laws and regulations, including content material related to human rights.

In Article 14 of Law 12 of 2011 concerning the Establishment of Legislations, it is stated that the content of Provincial Regulations and Regency/City Regional Regulations contains material in the context of implementing regional autonomy and assistance tasks as well as accommodating special regional conditions and/or further elaboration of Legislative Regulations. -higher invitation.

In relation to regulatory material related to human rights, regional regulations are not the type of legislation that can be used as the basis for the existence of human rights recognition, let alone to reduce and limit the existence of these human rights. The 1945 Constitution of the Republic of Indonesia Article 28 I paragraph (5) affirms that "In order to uphold and protect human rights with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated, and set forth in laws and regulations" .

The purpose of the formulation of norms in Article 28I paragraph (5) of the 1945 Constitution of the Republic of Indonesia emphasizes that efforts to uphold and protect human rights are regulated in laws and regulations, including regional regulations. However, the formulation of the regulation on all types of laws and regulations, does not regulate the types of human rights recognized by positive law, but an explanation of their implementation. This needs to be emphasized because the rigid imposition of the types of human rights in all laws and regulations will have implications for the existence of the types of human rights themselves.

Furthermore, Article 28J paragraph (2) stipulates that "In exercising his rights and freedoms, everyone is obliged to comply with the restrictions established by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill fair demands, in accordance with considerations of morals, religious values, security and public order in a democratic society". The regulatory norms in Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia more explicitly state the type of legislation, namely "laws".

This is in line with the view expressed by RetnoKusniati who stated that the core understanding of human rights, one of which is that the limits of the implementation of human rights can only be set or revoked by law as part of the rule of law concept which means that rights must be protected by law. , and that when revoking or reducing individual rights, governments are obliged to comply with constitutional legal requirements.

The suitability of this type of legal product with its content material is important because it will have implications for its behavior and bonding power which Bagir Manan includes as a juridically valid basis. According to Bagir Manan, every legal product must have a legal basis, this juridical basis is very important in making laws and regulations (including regional regulations). One of the basic juridical forms is the necessity of conformity of the form or type of legal product with the regulated material, especially if it is ordered by legislation at a higher or equivalent level. Inconsistency in form or type can be a reason for canceling or canceling the legal product. Therefore, the inclusion of types of human rights in regional regulations cannot be used as the basis for the existence of these types of human rights, but only as a form or technique *loop* in formulating legal norms.

Departing from the above description, that the concept of human rights is a natural concept that is not a *derivative* of positive norms, but is *inherent* in the nature of humanity itself, as well as the principle of conformity of the types and materials of regional regulations which cannot contain norms for determining types, revoking/reducing human rights, then The researcher concludes that the ideal form of human rights transformation in regional regulations is the method *unenumerated*, namely the transformation of human rights is simply done by integrating human rights values through the operationalization of human rights parameters.

The pouring of types of human rights in a regional regulation is carried out as an *an-form, loop quoting* namely the technique of pouring norms into laws and regulations by in lower laws and regulations because they have been regulated in higher laws and regulations as an introduction, because these norms has been regulated in higher legislation.

The technique of pouring norms in a statutory regulation with the technique *loop has* been regulated in Appendix II of Law no. 12 of 2011 concerning the Formation of Legislation Number 216 which provides a direction that "in the implementing regulations do not re-quote the formulation of norms or provisions contained in higher legislation that delegates. Re-quoting can be done as long as the formulation of the norms or provisions is needed as an introduction (*eneloop*) to formulate further norms or provisions in the article or several articles or paragraphs or several subsequent paragraphs.

This can be seen in the formulation of the legal norms of the Regional Regulation Number West Sulawesi Province Number 1 of 2016 concerning the provision of exclusive breast milk. The formulation of norms in the Regional Regulation no longer repeats the types of human rights for children (2 years old/who are still breastfeeding), but directly describes how to implement the fulfillment of children's human rights through policies that provide legal guarantees for children to get exclusive breastfeeding for up to 2 (two) years.) year.

The same thing can be seen in the West Sulawesi Regional Regulation No. 2 of 2019 concerning Respect, Protection and Fulfillment of the Rights of Persons with Disabilities, namely in Article 5 to Article 7 which cites again the regulation regarding the Rights of Persons with Disabilities as regulated in Article 5 of

Law Number 8 of 2016 concerning Persons with Disabilities. The citation of the types of rights of persons with disabilities in Article 5 in the Regional Regulation is not categorized as a norm that regulates the existence of the types of rights of persons with disabilities, but as an *anservesloop* that leads to further regulation in subsequent articles.

However, this is different from the position of norms that regulate human rights in the Regional Regulation of the Province of West Sulawesi Number 6 of 2014 concerning the Protection of Women, Article 4 which stipulates that:

“Every woman has:

- a. right to live;
- b. the right to have a family and continue the lineage;
- c. the right to self-development;
- d. the right to obtain justice;
- e. the right to personal liberty;
- f. the right to security;
- g. right to welfare;
- h. right to participate in the government.”

If you look at the method of formulating the norms of article 4, it cannot be categorized as a loop, but it already contains regulatory material on types of human rights for women in regional regulations. This view is based on the reason that if Article 4 is a loop, then its use should be a quote from a higher regulation, such as a law. However, if we look at the laws that specifically regulate the types of human rights, there is no such norm, and there are seven types of women's human rights that are not included in the norms of Article 4. This implies that the regional regulation Number 6 of 2014 concerning the Protection of Women only recognizes that there are only 8 (eight) human rights as stated in Article 4, while there are still types of human rights that are specific to women in higher legislation. Therefore, the formulation of the norms of article 4 can be considered contrary to higher laws and regulations and it can be judged that the range of regulatory directions is *overloaded* or exceeds what should be the content of the material.

The West Sulawesi Regional Regulation Number 6 of 2014 concerning the Protection of Women, does not need to regulate the types of women's human rights as stated in Article 4, unless it is positioned as an *anloop*, contains the butformulation of norms which are further elaboration of higher legislation by directing the regulation is in the effort to realize the enforcement and protection of women's human rights as recognized in higher laws and regulations.

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