

**THE POSITION AND FUNCTIONS OF LOCAL REGULATIONS  
(DISTRICT REGULATION) DISTRICT/MUNICIPALITY AS AN  
INSTRUMENT OF REGIONAL AUTONOMY WITHIN A SYSTEM OF  
LEGISLATION IN INDONESIA**

*Jumadi*

Islamic University of Makassar, Indonesia

*Email: jumadiuim@gmail.com*

**ABSTRACT**

General understanding of the law indicates that the product areas that are made by the local government, in no way can be separated from the system perundang-undangan nationally. Local regulations made by independent government units (autonomous) and Environment Authority an independent anyway. Therefore, done against higher level legislation should not be solely based on pertimbangan, but rather on the environment authority. in Indonesia is beside as further the elaboration of legislation on it which produces district regulation delegasian, as well as the special conditions in passenger areas that generate self-contained district regulation.

*Keywords: the position and function of applicable local, regional, autonomous instrument system legislation.*

**Introduction**

The existence of Regional Regulations (abbreviated: district regulation) in implementing local governance, is part an integral part of decentralization, known as the autonomous region. Inside it has two essentials of the authority, namely the "set up" and "take care of". The authority "set up" This means that the region has the right to make a legal decision in the form of legislation which then (among others) were named the Regional Regulations.

Decentralized pour principles autonomy areas, namely extensive, real and responsible. Juridical consequences of decentralized authority areas, one of which is decentralized in law and legislation. Present participle of authority occurs (spreiding van machten) in shaping legislation to the autonomous region, here's what one of them produces a district regulation.

Local regulations meant not merely the rules of implementation of the legislation on it, but more than that it must be able to absorb and accommodate special conditions for self-sufficiency of region (zelfstandingheid) and the aspirations of local communities.

Independence of the autonomous region, shaped to form the authority therefore supercede autonomous regions as units of self-government have the authority the attributive, all the more as a subject of law (publiek rechtsperson, public legal entity), hereinafter authorized to make regulations to organise his household. The authority is set up in local government (Administrative Officer) and DPRD as holder of the legislative function in the region. Local regulations can be seen as a form of legislation that is local, as a product of the legislature (legislative acts), the difference is only on the territorial scope of the enactment. "

In argumentative district regulation cannot be equated with legislation under other legislation, such as Regulation, regulation of the President. Both as a product of mere Regulation (executive acts). In addition, the authority of local government formed a district regulation able to absorb the aspirations of the Community area according special conditions of the region. It became the main characteristic (as the identifier) of the existence of an autonomous governmental unit that has the right to set up and take care of his household independently (zelfstandingheid).

General understanding of the law indicates that the product areas that are made by the local government, in no way can be separated from the system perundang-undangan nationally. An important concern in the manufacture of the product, area of law that the law is not just seeing the limits of formal competence or interest area is concerned, but it is also possible to see its impact on other areas or national interests.

The regulation of this area as well as further the elaboration of legislation, is also a legal instrument (and as wettelijke regelingen) made by the Government in the region in order to realize its autonomy.

The nature of change as as a means of discussion or konkritisasi law over national legislation that is, just as a regulator of each instrument contains a pelimpahan task (plichten) based on task pembantuan (medebewind) for the area in ask for help. Means the district/city no longer has any relationship with the units of Government dekonsentrasi higher, then District regulation District/City as translation of laws-the higher, the invitation is only possible in the "task Maid".

When the existence of these glasses as seen from the District regulation science legislation (the science of legislation, *gesetzgebungslehre*), then you can find some of the main studies, among others about the analysis of the process (*verfahren*) determination of district regulation to *pengawasannya* (*gesetzgebungs-varfahren*). In addition analysis of material charge (*het onderwerp*) district regulation (*gesetzbungsmethode*) and the analysis on the form of the outside (*kenvorm*) district regulation (*gesetzbungstechnik*).

To get the product quality law supercede should not ignore the procedural aspect, because it concerns the Ordinances and regulations establishment of regional procedures that have been set up in the normative Conduct of Parliament respectively. Ignoring this aspect could cause disability law Regulation daaerah

No less important is the substantial aspects, pertaining to the subject matter set forth in Rule region (background, aim and object of establishing local regulations). Ignoring this aspect means not interwoven with aspiration through harmonization of the will maker.

The technical aspect is also very urgent question, concerns the issue of form and technical drafting local regulations as already arranged in terms of Drafting Legislation and draft legislation, Draft Legislation and draft Presidential Decree).

Keep in mind, the local regulations made by independent government units (autonomous) and Environment Authority an independent anyway. Therefore, done against higher level legislation should not be solely based on *pertingkatan*, but rather on the environment authority. A Change which conflicts with the laws and regulations of the higher grades (except Constitution) is not necessarily wrong, if it turns out the higher level legislation thus violates the rights and powers of the regions that is guaranteed to the Constitution or a statute of Government of the region.

In dokmatik law, occur in setting normative obscurity, hence set in legislation the establishment of Regulations and laws of local governance. The issue is a Village in terms of its Regulatory function, the charge material and forming, as well as public entities are very different with *Supercede*. Yet *difungsikannya* agency examiners district regulation (judicial review) in practice when the substance of district regulation is contrary to the laws and regulations on it, in fact, district regulation likened to a human that can *dikriminsiasi* in criminal cases. In the sense that when government rules conflict with district regulation (PP) for example, then that is done is by asking members of parliament as one of the founding institutions of Criminal Justice Council to *supercede*, rather than *supercede* that should be tested through judicial review.

### **Problem Identification**

Based on the background that has been expressed above, then found some important issue, formulated into the shape of questions problem (problem questions) as follows:

1. Based on the background that has been expressed above, then found some important issue, formulated into the shape of questions problem (problem questions) as follows (*ultra vires*)?
2. How does the function of local regulations District/City as implement autonomous region and simultaneously as part of a statutory system in Indonesia?

## Theory Framework

Assessment against the position and function of District Regulation in system of legislation, then use the theory of State law as the main theory (grand theory) next to the main theories to support decentralization theory as theory used intermediate (middle range theory), and the theory of legislation as applied theory.

The third frame of mind it gives immediacy of understanding (as blade analysis). First, the theory of legal State (*rechtsstaat*) will give an emphasis toward legality in all forms. In the sense that the Government of the State in the exercise of its duties should be based on the legislation. In addition, in the concept of the rule of law also known as the supremacy of rules of law (the absolute supremacy or predominance of regular law).

Another argument (normative in nature) is the Constitution of Indonesia asserted, that Indonesia is a country of laws (*rechstaat*), which can be given a meaning that all the actions of the Government should be based on the law and legislation and ensure the fairness of its citizens. The idea of State law is actually already coveted since Plato looks his "*Nomoi*" (the law), Immanuel Kant as well with his philosophy "is an independent legal state of mind and pure (*zuivere rechtstaat*)." Even Friedrich Julius Stahl portrays the "State of legal material" Albert Venn Dicey, and proposed the concept of the rule of law. He explained that all the activities of the State are based, are limited and determined by the laws, tools equipment must be rooted in law. A source of law of the State in the sense of formal.

Second, the theory of the intermediate (middle range theory) used is the theory of decentralization. That is, the "The granting of Government power from the Centre to the regions to take care of his household itself". Decentralization is a principle which gives the authority of State Governments to local governments to arrange and take care of its own bylaws and will enlarge the possibilities of fulfillment of the people's interests are local. "

In the attempt, "decentralization" was seen as "fundamental" in the Organization of the autonomous region. Decentralization's attempt (*staatskundige decentralisatie*) or the so called political decentralization (*politieke decentralisatie*) stated purpose also divided into two kinds, namely the territorial decentralization (*territoriale decentralisatie*), i.e. the power to manage and take care of household of each region (autonomous); and functional decentralization (*functionale decentralisatie*), the extend the power to manage and take care of something or some specific interests in the area.

Decentralized territorial above, found two kinds of organizing, namely autonomy (autonomic) and helper (*medebewind* or *zelfbestuur*). Furthermore, certain tasks by the Central Government handed over fully or not fully into the Affairs of his household areas. Born did the initiative and participation of the people of the region to take care of themselves appropriate democratic value. Initiative and

this initiative is the embodiment of power Act becomes independent (vrije beweging) provided by the Government (the Center) to the region to govern his territory alone.

The power of independent acts, among others, with the authorities of the region to organize or establish regulations level areas, such as supercede formed between the head of the regional district/municipality with Sub-Provincial Parliaments. The bottom line, unitary State that decentralist contains the principle of maintaining harmony, the harmony and balance of authority between the Center with the area, so that each Policy Center may be run in the area are consistent. The aspirations of the community in areas that are special and characteristic can also be accommodation in policies among other things through the establishment of district regulations.

Third, the applied theory (applied theory) deals with this writing is the theory of legislation. Interpret the word "theory" in the term "legislation" Theory refers to a branch, section, establishments, or the side of the science in the field of legislation, which is a cognitive or give understanding, especially regarding a series of understanding-understanding Foundation. The theory of legislation (gesetzgebungstheorie) is part of the science of legislation (gesetzgebungswissenschaft). The theory of legislation substantially is cognitive and more oriented to seek clarity and lucidity of meaning or understanding-understanding. Called cognitive in nature, because it is based on the ratio or reason "was made deliberately by an authorized agency produces a substance that no doubt the gaffe ipso jure.

In tiered there are statutory norms as "Stufenbau Theory" (stufenbau des rechts theory) the results of the idea by Hans Kelsen. Theory above comes from Hans Kelsen is then developed by Hans Nawiasky. Legal norms in the country always tiered content can be found the fundamental norm of the State is the norm which is the basis for the formation of the Constitution or the Constitution of a country (staatsverfassung), including norm modification. Under the fundamental norm of the State (staatsfundamentalnorn) there are cardinal rules state (staatsgrund-gesetz), which is usually poured into the torso of a Constitution. Below there is a norm more staatsgrundgesetz concrete, namely formellegesetz (formal legislation), while the norm in his subordinates again is the autonomous regulations verordnung & (autonomie satzung).

The third construction theory expressed in the above interrelated to each other, particularly towards the study of the regulation of the regional district/municipality as the lowest rule according to laws of the formation of legislation.

## **Applicable Local County/City**

### **1. The nature of applicable local District/City in the system of national legislation.**

In black's law dictionary, the term District Regulation received equivalent words, variety, such as the local law, local act or local statute that is described as "a statute that relates to or operates in a particular locality rather than the entire state" (a rule that relates to or is applicable throughout the country in a particular State). There's also the term "rocal rule" (local rules), i.e. as "a rule based on the physical condition of a state and the character, costum, and beliefs of its people" (regulations based on fact physic or condition, character, and habits of the community or people in an area). In the above sense is associated with a system of legislation, then the roundness or whole intact it is legislation. Meanwhile, its components are: (1) the type and shape of the legislation itself, among other things: (a) the Constitution; (b) law; (c) Government Regulation; (d) the regulation of the President; and (e). Local Regulations. (2) Existence of legislation externally, which category: (a) regeling Wettelijke; (b) Beleidsregel; and (c). Beschikking. (3) the internal elements of the legislation, namely: (a) process of formation (verfahren); (b) the material charge (het onderwerp); and (c) the form of the outside (kenvorm)."The legislation as part of the written law and was part of the legal system then the notion of Indonesia legislation system is a set of written legal elements are interlinked, the influence of affect, and integrated that cannot be separated from each other, consisting of: principles; Shaper and constituent; types; the hierarchy; function; charge-material; enactment; dissemination; enforcement; and testing, all of which are grounded by the philosophy of pancasila and the Constitution of the Republic of Indonesia in 1945. " When noticing the above legislation system, then the author can provide some of the details or elements regarding the understanding of the system of Regulation legislation, i.e. as follows: first, a set of elements of a written law; Second, the elements of the written law were interlinked; Third, the elements of the written law that affect influence each other; Fourth, the elements of the written law was integrated with each other; Fifth, the elements of the written law it cannot be separated from each other; Sixth, the contents or the substance of the elements of the written law that is: (a) statutory principles; (b) establishment of regulations and forming; (c) the type or form of legislation; (d) the hierarchy or order of layout/order and regulations; (e) the function of legislation; (f) the material charge-laws-an invitation; (g) Enactment and Dissemination; (h) the enforcement of laws and regulations; (i) Testing legislation; Seventh, based on Pancasila and the 1945 Constitution. If used is the term "system of legislation", then the statutory system of elements is a set of written laws of interrelation and mutual influences of the influencing, the contents of the elements that can be squeezed into 3 elements, i.e.:

1. Elements of the process of legislation (*varfahren*), which includes the establishment of principles and regulations, shaper and constituent and enactment, dissemination and at once done (*judicial review, toetzingrecht*);
2. Material elements of statutory charges (*het onderwerp*), containing the material principles-payload, hierarchy, functions and other;
3. Form elements outside of the legislation (*kenvorm*), which includes the type or form and others.

The nature of Change in the system of national legislation is justification against the existence of a district regulation is inseparable from the hierarchy of legislation, in which the position was placing district regulation under the Constitution, the legislation/Regulation Substitute law, government regulation and the regulation of the President. So it can be said that the nature of district regulation District/City as part of a system of national legislation means placing further elucidation, as a change from a higher legislation. System of national legislation, as has been described previously as an integral unity of legislation can only be measured on the basis of levelitas or the hierarchy gives the rank to each form and the type of legislation that qualification according to the weight of the norm. The system of national legislation provides the following level:

1. The laws of the State Constitution of the Republic of Indonesia, 1945
2. The Ordinance of the People's Consultative Assembly
3. Legislation/Regulation Substitute Act
4. Government Regulations
5. Presidential Regulation
6. Applicable Local Province
7. Applicable Local County/City<sup>1</sup>

Applicable local County town as a subsystem of legislation related to self-sufficiency in autonomy, but it does not mean the area can make statutory regulations or decisions regardless of system militate-legislation nationally. Local level legislation is part and parcel of the unity of the system of national legislation. Therefore, there should be no local level legislation that is contrary to a higher level as regulatory or public interest. Linkages with the laws and regulations of higher class and the public interest as a whole, inevitably set the local level legislation as a subsystem that national legislation national legal system in General (overall). On the contrary, it should be realized in this position (as the subsystem) how important change in statutory order or even national life legal subsystems of the State and the nation as a whole. As the embodiment of decentralization (especially autonomy), the local level legislation, one of which is a district regulation District/City is the embodiment of some joint attempt i.e. a) countries based on the law and the country's constitutional process; b) led by populist wisdom in

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<sup>1</sup> Pasal 7 ayat (1) UU. No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan

consultative/representative; and c) the general welfare and social justice for all the people based on Pancasila and the 1945 Constitution. In addition to the above joint third, district regulation District/City and/or other areas of law is the product of the connections determine the success of a variety of national discretion. Not infrequently a national discretion bogged down because the area does not implement or interpret appropriately. A concrete implementation of a national legislation (such as laws) depend on further arrangements on a regional level.

## **2. The position of District Regulation District/City in the system of national legislation**

The author of its own to discuss the position of district regulation district/city, with the consideration that in normative position of district regulation Regency/city is the lowest in the system of national legislation. In Act No. 12 of 2011 had put norm District regulation District/City as norm low most of the entire legislation.

Measure hierarchy of norms, i.e. between the autonomous region and autonomous province of District/City is hierarchical, so that the form or type of the promulgation of the legislation is different. It was seen in teoritik, especially on the side of truth theory of coherence. In this viewpoint indeed for the region whilst the norm or the environment the power of place (ruimtegebied, territorial, sphere), obviously the higher its position in the area of norms compared the enactment of more narrow. The theoretical reasons above, then it is clear that the position of the provincial enactment of district regulation of district regulation District/City must higher degrees of district regulation District/City in the province concerned. Although between the autonomous region of the province and the autonomous region of District/City are not hierarchical administratively, but normologis (normologis hierarchy) are embodied in norms District regulation should be hierarchical (multi-level).

The district level regulation province against district regulation District/City must also be given restrictions (restrictions) on transmission between district regulation District/City with provinces that material charge (het onderwerp) exactly the same or related to the Affairs of the provincial authority as provided for in article 13 of Act No. 23 of 2014, as follows :

- (1) The obligatory affair that became the authority of local Government Affairs in the province is the province that includes scale :
  - a. Planning and development control;
  - b. Planning, pemanfaatan, and space surveillance;
  - c. The Organization of the public order and harmony society;
  - d. Provision of public facilities and infrastructure;



- e. The handling of the health field;
  - f. Organization of education and the allocation of human resources potential;
  - g. Tackling the problem of social cross-district/city;
  - h. The Ministry of employment areas cross county/city;
  - i. Facilities development cooperatives, small businesses, medium and include cross-district/city;
  - j. Environmental control;
  - k. The Ministry of defence include cross-district/city;
  - l. Ministry of occupation and civil records;
  - m. General Government services and fees;
  - n. Investment administration services include cross-district/city;
  - o. Organization of other basic services have yet to be implemented ole district/city; and
  - p. Other mandatory Affairs mandated by legislation.
- (2) The provincial Government Affairs are Affairs of Government includes the option for real there and potentially to improve the welfare of the community in accordance with the conditions, the specificity and potential flagship areas concerned.

An example is spatial planning district/cities arranged by district regulation district/city, then it must be presented on spatial change province whose territory bolt (overlap). If not so, then by itself will bring up a legal conflict of interest between the autonomous areas of the sewilayah, which will consequently boils down to egocentric each autonomous region to realize those powers. Province for example specify a region became the site of nature conservation, on the other hand District/City determine as residential. Analytic argumentation concerning the Spatial Plan of the region of District regulation (RTRW) above, must be part of the system of national legislation, in the sense that the establishment of district regulation RTRW must see levelitas or higher degrees of legislation in accordance with the doctrine of the orderly law, because "the room" is a system of the symbiotes.<sup>149</sup>

### **3. The function of District Regulation District/City as a means of Shelter special conditions in the region**

The nature of change as a means of holding the special conditions in the region is a characteristic change that is not owned by any other legislation that simply positioning legislation referred to as the tool of the written law to purely national interests. The nature of change as a means of holding the special conditions

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<sup>149</sup>I Gde Pantja Astawa, *Peraturan Daerah Tentang Rencana Tata Raung Wilayah (RTRW)*, makalah disajikan dalam Diskusi Terbatas dengan tema "Hukum Tata Ruang & Otonomi Daerah" yang diselenggarakan oleh Fakultas Hukum Universitas Padjajaran di Kampus Fakultas Hukum Unpad Jalan Dipati Ukur Pada Tanggal 11 Januari 2006, hlm. 9-11

in the region is a function of the change not just as a further elaboration of national legislation, but also as a means of law in regard for the characteristics of each region.

The characteristic of each region or special conditions in the region, it turns out that the legislation does not provide an explanation. According to the author, to give normative clarity about the specific conditions in the region or the characteristic of each region, it is the normative reference is a description of a City District regulation is contrary to the public interest. Called contrary to the public interest (among others) if it results in disruption of harmony between the citizens of the community. In addition, it can also be referenced explanation of article 6 paragraph (1) letter f of ACT. No. 12 in 2011 regarding the "basic bhineka tunggal ika", namely: "is with" basic bhineka tunggal ika "is that material charge legislation should pay attention to the diversity of the population, religion, tribe, and the specific conditions of the region, culture and especially concerning sensitive issues in the life of the community, nation and State". (author's italics)

From the above description it can be affirmed that the special conditions in the area are as follows: (a) the condition that reflects the harmony between the citizens of the communities in the region; (b) the diversity of the community in the area of economic stratifikasi; (c) the diversity of religions in the region; (d) the diversity of tribes in the area; (e) the diversity in the region; (f) cultural diversity in the region; (g) the existence of sensitivity in public life in the region.

Diversity-diversity of the plurality of society Indonesia spread over various regions must be appreciated in the form of autonomy in the formation of legislation, in particular the autonomy in the formation of district regulation District/City. If not drafted-actual that way, then by itself will not impact the local community aspirations of capacity, because it is not national legislation might be able to accommodate special conditions that exist in the entire territory of Indonesia. In addition to the breadth of the region exists, too many various Nations in it. Basic thinking of the existence of the function containing the special condition of district regulation areas based on local characteristic of each is compound social, culture, beliefs, and differences in the geographical condition, even the difference boils down to the economic needs of each region. Differences in urination or life needs in question will be served when district regulation to formed is able to absorb or pay attention to the specific conditions in each area. The existence of this kind of change is a logical consequence of decentralized power in the State in the form of Unity (unitary state, eenheidsstaat).

Through the authority of the autonomous region in shaping change, then all the aspirations of the community as a local can be accommodated by a change in the area in question, in this case the positioning function district regulation as holding areas or in specific conditions characteristic of each area. This normative indicator that can then be included by theory with "legal pluralism", in the sense that in the

formation of district regulation should be based on legal pluralism, i.e. that not only a rule is superceded by orders and regulations on it, but have to see specific conditions in the region, especially the facts customary law still applies in each region as the law living in community (living law). Bias also said that the change is not only based on laws and regulations on it, but rather must be based on customary law in each region. The customary law in question is the *volksgeist* (the soul of the nation) or also known as folk wisdom (folkwisdom) should also be used as a foothold in the establishment of legal norms (*rechtsnorm*) contained in district regulation.

The importance of the function of district regulation as a means of holding the special conditions of the area as typical of each region, then it can be stated, that obedience to the rules of the area depends on the primacy of the inhabitants of the region. Local regulations should be more convincing than the rule. Including in District Regulation District/City as one of the regulations, must be more convincing residents of the area rather than as a tool to govern. Among other things it should do so more convincingly than population Change only as a tool to govern is to give space on function and substance Change to accommodate special conditions of areas based on expectations (expectations) community in the area, so that in turn Supercede can be more convincing as a community legal instrument that can protect the rights and the interests.

## Conclusion

1. The position of district regulation District/City in the system of legislation in Indonesia is the lowest in the order of the national legislation, resulting in the establishment of norms of the law should be based on legal norms and regulations on it, in particular on legal norms and regulations which expressly ordered to firmly set with district regulation (*delegasian*). Different case with district regulation District/City *delegasian* in the hierarchy of legislation (statutory ranks lower than the Center), may not necessarily be followed Government regulations or the regulations of the President beyond those powers (*ultra vires*), in conflicts with the laws governing the autonomous region and district regulation itself.
2. The functions in the system of statutory change in Indonesia is beside as further the elaboration of legislation on it which produces district regulation *delegasian*, as well as the special conditions in passenger areas that generate self-contained district regulation. It had a self-contained power District regulation autonomy from authorities of the attributive.

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