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# IMPLEMENTATION OF THE REGIONAL GOVERNMENT AND ADMINISTRATIVE SANCTIONS IN INDONESIAN REGIONAL REGULATIONS

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***Abstract***

**Purpose of the study:** This article aimed to analyze the implementation of the regional government and administrative sanctions in Indonesian regional regulations.

**Methodology:** The research method used is normative legal research. The data were analyzed using a qualitative descriptive technique.

**Main Findings:** The final results showed that the type of relationship between the central and the local governments does not reduce the right of the local people to participate (freely) in the implementation of the regional government. The relationship between the central government and the regions did not diminish the rights of the people.

**Applications of this study:** Local government sanctions and administration in Indonesian regional regulations.

**Novelty/Originality of this study:** The task of the government is to realize the state's objectives as formulated in the unveiling of the Constitution 1945 of the Republic of Indonesia, and this duty is a comprehensive task. This requires the regulations to direct the implementation of governance that is more in line with the expectations and needs of the community (citizen-friendly).

***Keywords*****:** *Regional Government, Administrative Sanctions, Regional Regulations, Government Official, Indonesia.*

## INTRODUCTION

In the provisions of Article 1 section (2) of the Constitution of 1945 of the Republic of Indonesia, sovereignty is placed in the hands of the people and implemented by the Constitution. Furthermore, according to the provisions of Article 1 section (3) of the Constitution of 1945 of the Republic of Indonesia, Indonesia is a state of law (U.-U. D. N. R. Indonesia, 1945) This means that the implementation system for governing the Republic of Indonesia is based on the principles of the people's sovereignty and the rule of law. Based on these principles, any decision and government administration action is founded on the sovereignty of the people and the law, which is a reflection of Pancasila, i.e., the state ideology. Thus, it is not based on the powers attached to the position of the administration itself(Octarina & Wajdi, 2017).

The use of state dominion over the community is not without requirements. The community cannot be treated arbitrarily as an object. Decisions and/or actions against a community are appropriately conditioned on legislation and the general principles of good government. The supervision of decisions and/or actions is a test of whether the treatment of the affected community appropriately conforms with the law and observes whether the principles of legal protection have been effectively carried out by state institutions by free and independent administrative courts. Therefore, the systems and procedures for the implementation of the government and development tasks are regulated by law (Koentjoro, 2004).

The task of the government is to realize the state's objectives as formulated in the unveiling of the Constitution of 1945 of the Republic of Indonesia, and this duty is a comprehensive task. This requires the regulations to direct the implementation of governance that is more in line with the expectations and needs of the community (citizen-friendly). The aim is that when the regional regulations are implemented, they are not disadvantageous or burdensome to society.

To assure protection to every community, it is possible for a community to file an objection and appeal against a decision and/or action of the board and/or the government official or an officer of the respective official. The community also can file a lawsuit to object to a decision and/or an action of an agency and/or a government official in the state administrative court, as this is a material law of the state administrative court system.

Regional regulation is an important instrument of a democratic constitutional state, whether decisions and/or measures are established and/or performed by an agency and/or a government official or through the implementation of regional government officials. Allowing an implementation of the regional government that carries out the functions of the government to be tested by a court is necessary to assure the original community, as it is no longer an object but a subject under the state law, which is part of the realization of the people's sovereignty. The sovereignty of a community in a country is neither entirely nor partially realized by itself (Rohayati Suherdi, 2019).

Communities, as the implementers of the regulations, expect to be included more in the making of the regional regulations. This is the aim so that when the regional regulation is implemented, it will not be disadvantageous or burdensome to society. It is expected that in the making of the regional regulation, (that to make of the regional

 

regulation) the regional government will be more conscientious and more synchronized with the academic papers on which it is based

The adoption of a decentralized government in a unitary state was an attempt to form a democratic government, where regional governance is efficiently implemented to enhance the people's welfare. Therefore, a study of the implementation of the regional government is required. The purpose of this study is to understand the implementation of the regulations by the regional government, especially those related to the administrative sanctions in the regional regulation.

This article aimed to analyze the implementation of the regional government and administrative sanctions in Indonesian regional regulations.

## LITERATURE REVIEW

### Normative Legal Research: An Overview

Normative legal research or library research involves the study of documents, namely using various secondary data such as legislation, court decisions, and legal theory, and it can include the opinions of scholars. This type of normative research applies a qualitative analysis, explaining the existing data using words or statements rather than numbers. Wignjosoebroto (2014) stated that the normative legal research described in legal research doctrine is on the law that has been drafted and developed by the doctrine adopted by the developers.

Moreover, it also mentions dogmatic methods, which rely on rules that allow compliance to be enforced by state power (normative). Therefore, the object of legal research is the norm itself. The study of the dogmatic aspect of the law should be aimed at describing, analyzing, systemizing, reading, and assessing the law itself, so that the object of the normative or doctrinal legal research is the rule of law itself.

Associated with normative legal studies, this study was conducted with the intention of obtaining secondary data with the help of written regulations, compulsory books and reference books, magazines, newspapers, and internet sources related to the issues to be discussed to obtain theoretical knowledge about those issues (Soekanto, 1990). This normative juridical method intends to explain the various implementations of the regional governments and the administrative sanctions in the Indonesian regional regulations.

### The Implementation of the Regional Government

The sovereignty contained within the unitary state is not indivisible; the adoption of a decentralized government in a unitary state was an attempt to form a democratic government whereby local governance is efficiently implemented to enhance the people's welfare.

The authority to be carried out by the regional government includes the authority to make regulations (*zelfwetgeving*) and to implement the government (*zelfbestuur*), which must be carried out democratically. The principle of a unitary state is that the supreme authority over all state affairs is in the central government, without any interference by the delegation of powers to the regional government. The regulatory implementation of the power of the state has two forms, that is, central or transmitted. When the dominion of the state is central, centralization occurs, but when the dominion of the state is dispersed, decentralization takes place. In various developments of the government, there has been a steady backlash against the centralistic form caused by specific factors (Gadjong, 2007).

The power of the centralized government is not disturbed by the autonomous region's authority, which was given broad and meaningless autonomy to diminish the power of the central government (Agussalim, 2007). Some authority (power) was given to the regions based on their autonomy rights (a unitary state with a decentralized system), but in the final stage, the highest power remains in the hands of the central government. Thus, the inherent authority of the region does not mean that the local government is sovereign because its supervision and the highest power is still in the hands of the central government. The central government's relationship with the regions when a unitary state is decentralized is that the central government establishes the regions and surrenders some of its authority to the regions (Nasution, 2001).

### Application of Decentralization Principles

The meaning of the principle of decentralization has been debated among the experts reviewed, who see the hope provided by this principle for the implementation of the local government. The debate that has arisen was caused by the perspectives articulating the way that decentralization is positioned in the implementation of the local government. The meaning of the principle of decentralization has been classified in several ways, including: (1) decentralization as the handing over of power and authority; (2) decentralization as a delegation of power and authority; (3) decentralization as a division, distribution, dispersal, and granting of power and authority; and (4) decentralization as a means of dividing and establishing the regional government (Huda, 2009b, 2009a).

First, the view of experts who consider decentralization to be a transfer of power and authority is considered. In the sense of constitutionalization, this means that decentralization is the handing over of government affairs from the government or the uppermost area to the regional leaders, whereby they become household affairs.

 

The means of decentralization are distinguished in four ways: (1) the authority took a decision that was submitted by one administrative official or government to another; (2) the official that submitted it has a work environment that is broader than that of the official assigned the authority; (3) the official that submitted the authority does not give orders to the assigned official regarding the decision-making or the content of that decision; and (4) the official who submitted the authority did not make his own decision to replace a decision which had been taken, and was not free to choose to substitute a decision which was authorized by another person, and did not exclude the officer who gave the authority from his place (Oetomo, Prasnowo, & Wajdi, 2019).

The delegation of authority flowing from decentralization is the right to create rules and other implementation decisions within the limits of the affairs that were submitted to the autonomous bodies. Thus, a delegation of authority stemming from the decentralization took place between the central institutions and the regional autonomous institutions. Meanwhile, a delegation through deconcentration took place between the individual officers who were the center of the central government to the individual officers who were the center of the region.

**Application of the Deconcentration Principle**

The delegation of authority through deconcentration was only for the execution or implementation of non-regulatory central rules and decisions, and it was not initiated to create rules or make other forms of decisions that would be carried out on their own. Delegation through deconcentration took place between the individual officers who were the center of the central government to the individual officers who were the center of the regional government (Muraoka, Nasution, Urai, Takahashi, & Takashima, 2000; Nasution, 2000).

The concept of decentralization was administrative and political. The administrative nature was called deconcentration, which is the delegation of the exercise of implementation authority to the regional level. The nature of politics was devolution, meaning that specific decision-making and control authority over resources were given to regional and local officials. In essence, these central government tools perform the functions of the central government in the regions (Syafrudin & Na'a, 2010). The transfer of the power of the central government to tools in the region occurred because the increased progress of the people in deconcentration areas was one type of decentralization. However, decentralization does not necessarily mean that deconcentration is taken; the official who delegated the authority (rightly) may substitute a decision taken/made by the official and authorized by his or her consent, and the officer who delegated the authority (rightly) may substitute an official assigned to the other by his / her free choice (Holtzappel & Ramstedt, 2009; Hossain, 2004; Tirtosuharto & Adiwilaga, 2013).

In the study of constitutional law, the government based on the principle of deconcentration involves the delegation of authority from the state apparatus in the center to subordinate agencies to carry out particular work in the implementation of the government. The central government does not lose its authority because the subordinate agencies perform tasks of importance to the central government (Kansil, 2008).

**Application of the Principal of the Task of Assistance (Medebewind)**

Although the nature of the task of assistance is only "helpful" and is not included in the concept of "superior-subordinate" relations, in its implementation, the regional government has no right to refuse. This relationship arises by or under the conditions of legal or statutory regulations. The task of assistance is the task of the implementation of higher-level legislation. Regions are bound to implement legislation, including those governed or requested based on the concept of the task of assistance.

Based on the Law Number 32 Year 2004 on the Regional Government confirms Chapter 1, Article 1 clause 9, the task of assistance is an assignment from the government to the regions and/or villages, from the provincial government to the districts/cities and/or villages, and from the district/city governments to the villages, to perform specific tasks (R. Indonesia, 2004).

The task of assistance was created as the terminal point for the "full surrender" of the affairs to the region, or the task of assistance was an early stage in preparation for the full surrender.

The link between the task of assistance and decentralization, considering the relations between the central government and the regional government stems, from the following: (1) the task of assistance was part of the decentralization. Thus, the accountability concerning the implementation of the task of assistance was the responsibility of the region concerned; (2) there was no principal difference between autonomy and the assistance task because, in the assistance, the task contained autonomous elements, and the regions had their ways of carrying out the assistance tasks; and (3) the assistance tasks, as well as autonomy, contain elements of submission, not assignment. It was fundamentally differentiated that if autonomy was a full surrender, then the assistance task was an incomplete surrender.

**Development, Superintendence and Administrative Sanctions**

The guidance on the carrying out of the regional government was provided by the central government. Coordination was implemented periodically at the national, regional or provincial levels (Solekhan, 2012). The provision of guidelines and standards covers aspects of planning, implementation, governance, funding, quality, control, and superintendence. The

 

appropriation of guidance, supervision, and consultation is conducted periodically or at any time, either extensively for all regions or for specific regions as required. The superintendence over the implementation of the regional government is implemented by the government. The superintendence implemented by the government is internal superintendence by the laws and regulations.

The government gives awards for the implementation of the regional government. Sanctions are imposed by the government based on the concept of the supervision of the regional government. Sanctions can be imposed on regional governments, regional leaders or deputy regional heads, members of the regional parliament of the regional apparatuses, regional civil servants, and village heads. The results of the guidance and supervision are used as subsequent guidance by the government and as checking material by the State Audit Board (Attamimi, 1990).

The guidance and superintendence of the implementation of the regional government are coordinated by the Minister of Home Affairs. The guidance and superintendence of the implementation of the regional government for the districts/municipalities are coordinated by the governor. The guidance and superintendence of the implementation of village governance are coordinated by the regents/mayors. The regents and mayors delegate the guidance and superintendence to the subdistrict head. Guidance on such guidance and superintendence, including standards, norms, procedures, rewards, and sanctions is governed by government regulations.

The guidance and the superintendence of the guidance carried out by the regional government were an effort made by the government, and the governor as the representative of the government in the region, to realize the achievement of the purpose of regional autonomy. In the framework development by the government, the ministers and heads of the non-departmental government agencies conduct guidance that is appropriate for their respective functions and authorities which is coordinated by the Minister of Home Affairs for the development and superintendence of the province, as well as by the governor for the guidance and superintendence of the districts/municipalities (Carpenter & Krause, 2012; Pugh et al., 1963).

The superintendence over the implementation of the regional government is a process of activities aimed at ensuring that the regional government runs appropriately as planned and by the provisions of the applicable legislation. The superintendence implemented by the government is related to the implementation of the government affairs of the principal to the regional regulations and the regulations of the regional leader. Regarding the supervision of the local regulations, the government utilizes two methods as follows.

a. The superintendence of the drafting of local regulations (draft regional regulations): The drafting of the regional regulations governing local taxes, regional charges, the regional budget, and general spatial plans is approved by the regional leader, but they are first evaluated by the Minister of Home Affairs for the provincial Raperda and by the governor for the district/municipal Raperda. This mechanism was implemented so that the regulation of those areas will achieve optimal usability and results.

b. The superintendence of all regional regulations outside those included in point 1, which is every regional regulation, is submitted to the Minister of Home Affairs for the province and the governor for the district/city to obtain clarification. Regional regulations that are contrary to the public interest and higher regulations are revoked as appropriate using the applicable mechanisms.

c. For the optimization of the function of guidance and superintendence, the government applies sanctions based on the implementation of the regional government when any irregularities and violations by the regional government officials are found.

With respect to administrative sanctions against the regional regulations, for violations of the conditions of the applicable legislation that is subject to minor administrative sanctions, government officials who violate the provisions for changes in the budget allocation who obtained the approval of superiors based on the conditions of legislation are subject to administrative sanctions. However, officials who violate the provisions prohibiting the abuse of authority are subject to severe administrative sanctions, as are those who violate provisions causing harm to the state finances, the national economy and the environment (Asshiddiqie, 2011).

The implementation of administrative sanctions for the infringement of the regional regulations is usually applied to regional regulations concerning taxes or perda levies. This is seen in the phases of the violations, for example, in the levies; in the first stage of the bill payable (warning/letter/warning), the amount of retribution, which is determined by the regional retribution bill, which hereinafter is described as regarding the definition of regional retribution, is a letter that applies the retribution bill and/or administrative sanction in the form of interest and a fine.

## CONCLUSION

The sovereignty contained within the unitary state is not indivisible; the establishment of a decentralized government in a unitary state was an attempt to form a democratic government, wherein regional governance is efficiently implemented to enhance the people's welfare.

1. Administrative sanctions take the form of forced payment and/or compensation; temporary discharge by obtaining occupational rights; or temporary dismissal without obtaining the right of office. Severe administrative sanctions such as permanent stoppage by obtaining financial rights and other facilities; permanent stoppage by obtaining financial rights and other facilities and published in the mass media; or permanent stoppage without obtaining financial rights and other facilities and published in the mass media. Other sanctions that are appropriate based on the conditions of legislation include the imposition of sanctions as provided by: a superior official who determines the decision, the regional leader if the decision was made by a regional official; the minister/head of the institution if the decision was stipulated by an official in his/her neighborhood; and the president if the decision was determined by the ministers/head of the institution.
2. Light administrative sanctions are intended to consist of:

   a. A verbal reprimand;
   b. A written reprimand; or
   c. A postponement of a promotion, a class, and/or occupation rights.

   Administrative sanctions consist of:

   a. Forced payment and/or compensation;
   b. Temporary discharge of obtained occupational rights; or
   c. Temporary dismissal without obtaining the right of office.

   Severe administrative sanctions such as:

   a. A permanent stoppage of obtained financial rights and other facilities;
   b. A permanent stoppage of obtained financial rights and other facilities that are published in the mass media; or
   c. Permanent stoppage without obtained financial rights and other facilities and published in the mass media.

   Other sanctions as appropriate based on the conditions of legislation:

   (1) The imposition of sanctions as provided by:

   a. The superior official who determines the decision;
   b. the regional leader if the decision was made by a regional official;
   c. The minister/head of the institution if the decision was stipulated by an official in his / her neighborhood; and
   d. The president if the decision was determined by the ministers/head of the institution.

   (2) The penalty of sanction as done by:

   a. The governor if the decision was stipulated by the regent/mayor; and
   b. The minister who implemented the affairs of the domestic government if the decree was stipulated by the governor.

   (3) Mild, moderate or severe administrative sanctions are imposed based on proportional and equitable elements.

   (4) Mild administrative sanctions are imposed directly, whereas moderate or severe administrative sanctions are imposed only after an internal inspection process.

**SUGGESTION**

It was expected that in the establishment of regional regulation, the regional governments would be more conscientious and more synchronized with the academic papers on which the making of the regional regulations are based:

The communities are the implementers of the regulations. The area expects that more will be included in the making of the regional regulations. The aim is that when the regional regulation is implemented, it will not be disadvantageous or burdensome to society.

**LIMITATIONS AND STUDY FORWARD**

This research is limited to Local government sanctions and administration in Indonesian regional regulations. The adoption of a decentralized government in a unitary state was an attempt to form a democratic government, where regional governance is efficiently implemented to enhance the people's welfare. Therefore, a study of the implementation of the regional government is required. The purpose of this study is to understand the implementation of the regulations by the regional government, especially those related to the administrative sanctions in the regional regulation.

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