REGIONAL REGULATIONS REVIEW IN REALIZING DEMOCRATIC REGIONAL GOVERNMENT: A CONCEPTUAL APPROACH

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Abstract

Quality local regulations mean that the legal product is subject to material and technical preparation in accordance with the provisions of the legislation, can solve problems and answer the needs of the community. Good regional regulation should reflect the philosophical aspects related to the principle of justice, sociological relating to the expectation that the regional regulation formed is the desire of the local community, and juridical is related to ensuring legal certainty. One of the controls on regional regulations is the testing of Regional Regulations conducted by judicial review or executive review, or legislative review. The problem is that there are many local regulations that are no longer relevant to current regulations and conditions, conflict with one another, and several other problems in the administration of local government. The research method used is the normative research method, with a conceptual approach. The absence of the concept of testing local regulations in the implementation of the democratic regional government to become a standard testing regional regulations, as a form of supervision of the formation of local regulations. Formers of Regional Regulations namely regional governments together with the Regional People's Representative Assembly (*Dewan Perwakilan Rakyat Daerah*/DPRD) pay less attention to regional conditions and the provisions of higher legislation in the process of forming Regional Regulations, in addition, the central government informing policies related to regional regulations testing does not stipulate provisions that explicitly regulate any subject/the institution authorized to test regional regulations in order to create good laws and regulations, so that if these conditions continue to occur, it will lead to the implementation of undemocratic local government, therefore it is necessary to conceptualize the ideal testing of regional regulations in the implementation of local government that is democratic.

Keywords: ***concept of testing, democratic, regional regulation.***

INTRODUCTION

Indonesia is a unitary state in the form of a Republic, as determined in Article 1 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Where a unitary state is a conception of the form of the state, and the Republic is a conception of the form of government chosen in the framework of the 1945 Constitution Affirmation of Indonesia as a state of law which has been regulated in the explanation of the 1945 Constitution of the Republic of Indonesia, in the third amendment to the 1945 Constitution of the Republic of Indonesia NRI Article 1 Paragraph (3), regulates that: “The State of Indonesia is the State of Law”. The consequence of this provision is that every attitude, policy, and behavior of the State and population must be based and in accordance with the law. At the same time, this provision prevents the arbitrariness and arrogance of power, whether carried out by the state or population.

The Unitary State of the Republic of Indonesia is a law-based country and not based on power only.[1] It is called a unitary state if the power of the central government and regional governments are not the same and not equal. According to C.F. Strong, there are two important characteristics of the unitary state, namely supremacy of the central parliament, and the absence of additional sovereign bodies.

The unitary state is divided into two forms: (1) the unitary state with a centralized system; (2) Unitary State with a decentralized system. In a unitary state with a centralized system, everything in the state is directly regulated and managed by the central government, and the regions only have to carry out everything that has been instructed by the central government. Whereas in a unitary state with a decentralized system, regions are given the opportunity and power to regulate and manage their own households (regional autonomy), which is called an autonomous region.

Indonesia as a unitary state can be categorized as a unitary state with a form of decentralization as can be seen in Article 18 paragraphs (1), (2), (3), (4) and paragraph (5) of the 1945 Constitution of the Republic of Indonesia which states that :

(1) TheUnitaryStateoftheRepublicofIndonesiaisdividedintoprovincesandtheprovinceis divided into regencies and cities, which each province, district, and the city has a regional government, which is regulated by law.
(2) Provincial, regency and city-regional governments regulate and manage their own governmental affairs according to the principle of autonomy and assistance tasks.
(3) Theprovincial,regencyandmunicipalgovernmentshaveRegionalRepresentativeHouses whose members are elected through general elections.
(4) Governors, Regents, and Mayors respectively as heads of provincial, district and city-regional governments shall be democratically elected.
(5) Regional governments carry out the broadest possible autonomy, except for governmental affairs determined by law as the affairs of the Central Government.

Based on the above provisions it appears that the statutory provisions require multilevel autonomy from the province to the Regency/City. With the words "divided up" it is clear that our country is a unitary state where sovereignty is in the hands of the center. In addition, the words divided above also mean the relationship between the center and the regions, as well as between provinces and districts/cities is hierarchical-vertical in nature.

In a unitary state, sovereignty is only in the state government or national government and there is no sovereignty in the Region. Therefore, no matter how much autonomy is given to the Region, the final responsibility for the administration of the Regional Government will remain in the hands of the Central Government. For this reason, the Regional Government in a unitary state is a unity with the National Government.

Basically, Regional Autonomy is given to the people as a legal community unit that is given the authority to regulate and manage their own Government Affairs given by the Central Government to the Regions and in its implementation carried out by the regional head and the Regional People's Representative Assembly (*Dewan Perwakilan Rakyat Daerah*/DPRD) with the assistance of the Regional Apparatus. In order for the implementation of Government Affairs submitted to the Regions to run in accordance with national policies, the President is obliged to conduct guidance and supervision of the implementation of the Regional Government. The President delegates authority to the Minister as coordinator of development and supervision carried out by ministries/non-ministerial government institutions for the implementation of the Regional Government.[2]

Local regulation is a regulatory instrument that must be integrated with the regional autonomy system. This is a consequence of the regional autonomy system itself which is based on independence (*zefstandigheid*) and is not a form of freedom of a fully independent government unit (*onafhankelijkheid*). Independence implies that the region has the right to regulate and manage the domestic affairs of its own government but remains within the corridor of the Unitary Republic of Indonesia. In a unitary system, a unitary state, a non-state regional government that has its own sovereignty as in the federal- state system.

Regional regulations have a strategic role in encouraging the implementation of regional autonomy so that each organizer of the regional government is required to understand the rule of law (*orderly laws and regulations*). Orderly regulation is a process of making a good legal product

[1] Andi Bau Inggit AR., *et.al*., Local Regulation Review in Realizes Legal Order of the Local Governance. *Journal of Law, Policy and Globalization*. Vol. 59, 2017, p. 214-219.
[2] Andi Bau Inggit AR., *Hakikat Pengujian Peraturan Daerah Dalam Mewujudkan Tertib Hukum Penyelenggaraan Pemerintahan Daerah*. Makassar: Doctoral Thesis at Hasanuddin University, 2017.

(Regional Regulation) in accordance with the laws and regulations and public interest consisting of elements of orderly authority, orderly procedure, orderly substance and orderly implementation so that the legal product (Regional Regulation) made can be effective and in the process the test does not end with a cancellation by the Minister of the Interior or a judicial review is not conducted at the Supreme Court. With a good understanding of orderly regulations, quality and effective local regulations can be made.

An understanding of the rules and regulations of laws and regulations is needed by the local legislators. This background is due to the emergence of many regulations that are not appropriate both in terms of authority, procedure, and substance with laws and regulations. Meuwissen's opinion states that law has validity if it is able to apply sociologically, juridically and morally. A good law should reflect philosophical aspects related to the principle that law will guarantee justice, sociology is related to the expectation that law is formed that is the desire of local communities, and juridical is related to the expectation that the law meets and guarantees legal certainty as well as the formation of laws.[3]

The law was created not only to regulate, but more than that to create prosperity and justice in society.[4] Regional regulations stipulated by the Regions must not conflict with the provisions of the laws and regulations which are of a higher level in accordance with the hierarchy of laws and regulations. Local regulation is a legal product to implement the rule of law above or the rule of law that is higher. Besides that, the Regional Regulation as part of the legislation system must also not conflict with the public interest/decency as regulated in Law No. 23 Year 2014 concerning Regional Government hereinafter referred to as Law No. 23 Year 2014 concerning Local Government.

The annulment of the regional regulation is the result of the regional regulation testing process which is the control or control of the central government over the regions through an instrument of supervision, as Bagir Manan believes that "control" is both a function and a right, so it is commonly referred to as the control or control function. Testing of Regional Regulations as a form of central government oversight of regional governments which among them is actualized in the form of cancellations of regional legal products (Regional Regulation), is an absolute result of a unitary state.

Thus, the test carried out by the central government administrators of the Regional Regulation is essentially an attempt by the government to match the content of the Law made according to or not with the content of the laws and regulations above it. Supervision of this regulation to achieve harmonization of content material related to regional autonomy.

This test was also carried out by the Government in the framework of coordination and integration of government administration because the administration of regional government is a subsystem of the national government administration system. In Law No. 23 Year 2014 concerning Local Government, the authority to examine the Regional Regulation is contrary to the provisions of higher legislation and public interest/decency is in the executive body in this case the President and the Minister. The provisions of the Law no longer regulate the authority of the Supreme Court to examine the Regional Regulation as regulated in the previous Law, namely Law No. 32 Year 2004 concerning Regional Government.

Previously, Law No. 32 Year 2004 concerning Regional Government contains a review of regional regulations by the Supreme Court as stipulated in Article 145 Paragraphs (5) and (6) as follows:

(5) If the province/regency/city cannot accept the decision to cancel the Regional Regulation as referred to in paragraph (3) with reasons that can be justified by the legislation, the regional head can submit an objection to the Supreme Court.
(6) If the objection referred to in paragraph (5) is granted; partially or wholly, the decision of the Supreme Court stated that the Presidential Regulation was null and void and had no legal force.

But the provisions mentioned above are no longer regulated in Law No. 23 Year 2014 concerning Local Government in lieu of Law No. 32 Year 2004 concerning Local Government.
The Supreme Court has the authority to adjudicate the statutory provisions under the law against the laws regulated in the 1945 Constitution of the Republic of Indonesia Article 24A Paragraph (1) as follows:

[3] Bagir Manan, Dasar-Dasar Perundang-undangan di Indonesia. Yogyakarta: Gajah Mada University Press, 1991, p. 14
[4] Julianto Jover Jotam Kalalo, *et.al*., Political Dichotomy of Indonesian Legislation Regulations with Local Law Customary Politics in the Border Area. *Advances in Social Science, Education and Humanities Research,* Vol. 226. 1st International Conference on Social Sciences (ICSS 2018): Atlantis Press. pp. 1377-1383

(1) The Supreme Court has the authority to adjudicate at the cassation level, examine the statutory provisions under the law against the law, and have other powers granted by law.***)

As for the statutory regulations under the law, we can see in the hierarchy of laws that are regulated in Law No. 12 Year 2011 concerning the formation of legislation Article 7 paragraph (1), namely:

1. The 1945 Constitution of the Republic of Indonesia;
2. Decree of the People's Consultative Assembly;
3. Laws/Government Regulations in lieu of laws;
4. Government Regulations;
5. Presidential Regulation;
6. Provincial Regulations; and
7. Regency/City Regional Regulations.

Based on the aforementioned provisions, the Provincial Regulations and Regencies/Cities Regulations are under the Law, so that the testing becomes the authority of the Supreme Court of the Republic of Indonesia, but at the same time the Local Government Law also regulates the testing of Regulations but is carried out by the Government in terms of this is the President and the Minister, thus there are two institutions that are authorized to examine local regulations.

In connection with the testing of the laws and regulations, the subject who is given the authority or the right to conduct the test (*toetsingsrecht*) may consist of judges or executive officers or legislative bodies. In the case of Regional Regulation testing regulated in the Regional Government Law, the authority to examine the Regional Regulation is carried out by the executive agency, namely the President and Minister, commonly referred to as “executive review”. As for what is regulated in the constitution (the 1945 Constitution of the Republic of Indonesia) in terms of testing regulations under the Law on the Law, it is carried out by the Supreme Court, where the regulations are included in the hierarchy of laws and regulations under the Law, so that they can be materially tested by the Supreme Court. Testing the regulations carried out by the Supreme Court as a judicial institution is called "judicial review". Based on the provisions as stated above, it is clear that one of the controls over the issuance of regional regulations is by examining regulations by a judicial review or executive review.

The authority of testing comes from the Dutch "*toetsingrecht*". The word “*toetsingrecht*” is defined as the right or authority to test or test rights. The word "test" can also be paired with the word review in English which means to look at, assess, or retest, which comes from the words "re" and "view". In general, we often hear the term Judicial Review Regional Regulation, which is an examination of a Regional Regulation conducted by the Supreme Court because it is alleged to be contrary to the Law. Whereas, testing of a Regional Regulation carried out by the Central Government for a Provincial Regulation and by the Governor as the representative of the Central Government for testing a Regency/City Regulation is referred to as the Executive Review.

Standards of Regional Regulation testing by the government differ from the standards for Regional Regulation testing conducted by the Supreme Court. The Supreme Court examines a regional regulation on the basis of whether there is a conflict with higher regulation and whether there is a discrepancy between the procedure of making a local regulation and a statute while the authority of the central government in conducting a regional regulation is carried out with broader standards. Said to be broader because it includes aspects of the public interest as one of the testing standards. This shows that the authority of the government in examining regulations is not only in order to resolve disputes between regulations with higher regulations, but also to test whether a regulation causes problems in the community because it is against public interest/decency or not.

But in reality, regional autonomy that is now being implemented in Indonesia is considered to be a new problem in investment activities in several regions. The local regulations that were formed turned out to still have shortcomings, this can be seen from the slowing down of the Indonesian economy marked by the weakening of the rupiah against the dollar, rising poverty, and unemployment, this is certainly inseparable from the role of local regulations in regulating it. At present, the Government is increasingly aggressively seeking to improve the investment climate. One of them is by publishing a Policy Package which until now has reached volume XII. Ironically, in the midst of the efforts made by the government, it is actually ‘inhibited’ by the many regional-level regulations that are suspected to hamper increased investment in the region.

Licensing bureaucracy is a very important factor in influencing investment because a long bureaucracy increases costs for investors, in addition to factors that can support the flow of investment into a country including security guarantees, political stability, and legal certainty, seems to

be a separate problem for Indonesia, of course this is related to regulation.

The leading daily economic data from the UK, The Economist, said for 2015 Indonesia was ranked second after China as a world investment destination. Data from the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal*/BKPM) show, the realization of Foreign Direct Investment (*Penanaman Modal Asing*/PMA) and Domestic Investment (*Penanaman Modal Dalam Negeri*/PMDN) in the first half of 2015 increased compared to the same period in the previous year. The number of workers absorbed was quite significant, around 685 thousand people. BKPM said the ease of investing in Indonesia rose from 120th to 109th in the world. Even though the ranking went up, he continued, Indonesia was still lagging behind neighboring countries, Singapore which was ranked 2nd in the world, Thailand ranked 46th, and Malaysia ranked 26th.

Local Governments should pay attention to a number of aspects when designing regional-level regulations, such as Regional Regulations. The local government must start to be aware of the investment issue that is now being pursued by the Central Government. And in the formation of regional regulations, they should not ignore economic principles, because policies should be considered that bring welfare. The negative phenomenon that occurs is that there is a discrepancy between regional regulations and higher statutory regulations and the public interest that is a history for the Indonesian state, much Regional Regulation has been canceled. President Joko Widodo announced the cancellation of 3143 Regional Regulations and Regulations of the Regional Head who were considered problematic. The President considered that as many as 3143 problematic Regional Regulation hampered the speed in facing competition to increase investment. In addition, Jokowi said the thousands of local regulations that were canceled hampered the spirit of diversity and unity in the nation and state.

Thousands of local regulations that are considered problematic are those that impede regional economic growth, regulations that extend the bureaucratic pathway, which hinder the licensing process, hinders the ease of doing business and contravene higher legislation. The foregoing is a result of ineffective draft legislation, and after promulgation has not received any attention from the government regarding the effectiveness of its effectiveness in the community and its benefits for the country. Thus there needs to be a regulation related to the testing of local regulations that can overcome the problems mentioned above, while one of the things that can be done in overcoming the problem is by applying the Concept of Testing Regional Democratic Regulations.

METHOD

This research method is normative legal research.[5] This study uses several approaches to obtain information about the issues raised, among others, the statute approach, the conceptual approach, the historical approach and the philosophical approach. The types of data that will be used in this study are primary data and secondary data. The data obtained from this study were analyzed qualitatively- descriptive using the theoretical and database in the discussion. Both data are sourced from primary data and secondary data. Qualitative-descriptive that is to explain, explain by referring to existing legal norms. In addition, it explains by describing the real conditions of regional regulation testing in the administration of regional government.

RESULTS AND DISCUSSION

Testing as it means namely the process of testing or checking the quality of something (assessing) in this case a local regulation. The test is carried out in order to check whether the Regional Regulation established by the DPRD together with the Regional Head related to the material content and its formation procedure is in accordance with the provisions of the legislation regulated in Law No. 12 Year 2011 concerning P3 and Law No. 23 Year 2014 concerning Local Government.

Testing, in this case, is the same as the right to test (*Toetsingsrecht*) where the right to test both in the literature and in practice is known as the existence of two kinds of testing rights (*toetsingsrecht*), namely: a. The right to formal testing (*formele toetsingsrecht*); and b. The right to test material (*materiele toetsingsrecht*). The right to formal testing is the authority to evaluate a legislative product such as a law, for example, incarnated through procedures as determined/regulated in the applicable laws and regulations or not. Formal testing is usually related to procedural questions and relates to the legality of the competencies of the institutions that make them. The right to test material is an authority to investigate or assess the contents of whether a statutory regulation is in accordance with or contradictory to a higher degree, and whether a certain authority (*verordenende macht*) has

[5] Kadarudin, *Penelitian di Bidang Ilmu Hukum (Sebuah Pemahaman Awal)*, Semarang: Formaci Press, 2021, p. 107

the right to issue a certain regulation. As for conducting Regional Regulation testing, what must be clear is as follows:

1. Authority of testing (test subject);
2. Legal Norms (test object);
3. Test Purpose;[6] and
4. Testing Procedure.

However, in the current statutory provisions based on the results of the author's research in 2016 to 2017, the regulation related to the authority of the Regional Regulation testing experiences a dualism that causes legal disorder and the length of time a legal certainty is obtained in the testing process, so it is necessary to synchronize and harmonize the legislation. legislation related to the authority of Regional Regulation testing, so that the provisions regarding the authority of Regional

Regulation testing only regulate that the Regional Regulation testing is the authority of the Supreme Court, in accordance with the provisions of the 1945 Constitution of the Republic of Indonesia, as is well known that Indonesia is a law state that adheres to the supremacy of the constitution, so that all statutory regulations must always be sourced and based on the Constitution. With the affirmation of the regulation governing the testing of regional regulations only by the Supreme Court, it is hoped that the rule of law will be realized in the administration of regional government.

As for the Legal Norms contained in the Regional Regulation that are the object of testing are General-Abstract Legal Norms. General Norms are related to the subject set and Abstract related to the object set. Formation of legislation including local regulations is based on the principle of establishing good legislation and material content as determined by Law No. 12 Year 2011 concerning Formation of Laws and Regulations (*Pembentukan Peraturan Perundang-Undangan*/P3).

Therefore, a Regional Regulation must be formed based on the principles of the Formation of a Regional Regulation and contains material content as stipulated in P3 Law, so that the regional regulations that are formed are always in accordance both original and material with the provisions of the legislation and in its implementation can be applied and implemented properly, so that if testing will not find any discrepancies with higher legislation and public interest/decency. As for the Testing Purposes related to Justice, expediency, legal certainty and current legal order, based on the author's research, this has not yet been realized, because the testing that is currently taking place creates legal uncertainty in the regions due to the cancellation of local regulations by the Ministry of Home Affairs, amounting to hundreds of Regional Regulation in each region in Indonesia.

Procedures for Regional Regulation Testing that are regulated in the Law on MA and Law on Regional Governments do not regulate well, clearly and in detail about the mechanism of Regional Regulation testing both by the MA and testing by the Ministry of Home Affairs, and the length of time for testing, as well as benchmarks in conducting testing are also not specified in the MA Law and the Regional Government Law, so that in the implementation of the Regional Regulation test based on the results of the author's research, several errors were found in the testing process and the negative impacts caused. The results of the study of the authors found several weaknesses in the process of cancellation of Regional Regulation as a result of tests conducted by the Ministry of Home Affairs including the following:

1. Regional regulations whose material content does not conflict with the provisions of the higher laws but was canceled,
2. The existence of an Article in a Regional Regulation in an area that is canceled but in a regional regulation on the same thing in another area should be canceled but not canceled, and
3. There are regulations that have been revoked by the regions concerned, but by the central government, in this case, the Ministry of Home Affairs is still canceling the regulations that have been revoked.

The weaknesses of the testing process carried out by the Supreme Court are as follows:

1. Long-time The testing process uses a relatively long time
2. The trial process which took place was closed
3. Without presenting both parties in the trial process

The results of the author's research as explained above, regarding all the deficiencies contained in the process of Regional Regulation testing by the Ministry of Home Affairs and the

[6] Andi Bau Inggit AR. (2017), *Loc.Cit.*, p. 197

Supreme Court that have occurred so far need to be improved, because of all the deficiencies that have a negative impact on the implementation of local government related to the number of local regulations canceled by the Ministry of Home Affairs causing many local regulations that are no longer enforced and implemented, resulting in a legal vacuum related to the article or the entire content of the canceled regulation, which naturally creates legal disorder in the administration of local government, therefore the writer offers the ideal concept of testing the Regional Regulation namely as following:

1. Synchronizing Regional Regulation
2. Local Regulation Harmonization
3. Supervision
4. Commfornitas

The discussion on the ideal concept of Regional Regulation testing is as follows:

Regional Regulation Synchronizing

Synchronization according to the Big Indonesian Dictionary is about synchronizing.[7] Synchronizing is equalizing, which comes from the word synchronous (that is, occurs or applies) at the same time.

Synchronization aims to reveal the reality to what extent a particular law is harmonious vertically or harmonious horizontally if these laws are equal and belong to the same field. If what is done is a study of the degree of vertical synchronization, then what is included in its scope is a variety of legislation with varying degrees governing the same field.[8]

The process of synchronizing regulations aims to see the harmony between one regulation and another. Synchronization is done both vertically with the rules above and horizontally with equivalent rules.[9] The purpose of the synchronization activity is so that the substances regulated in the legislation product are not overlapping, complementary, interrelated, and the lower the type of regulation, the more detailed and operational the contents of the material.[10]

The purpose of synchronization activities is to realize the basis for regulating a particular field that can provide adequate legal certainty for the efficient and effective operation of that field. Synchronizing legislation can be done in two ways, namely:

a. Vertical Synchronization

Done by seeing whether a statutory regulation that applies in a certain field in the same does not conflict with each other. According to Law Number 12 Year 2011 concerning the Formation of Laws and Regulations Article 7 stipulates that the types and hierarchies of laws and regulations are as follows:

a) The 1945 Constitution of the Republic of Indonesia;
b) Decree of the People's Consultative Assembly;
c) Laws/Regulation in Lieu of Law;
d) Government Regulations;
e) Presidential Regulation;
f) Provincial Regulations; and
g) District/City Regional Regulations.

In addition to paying attention to the hierarchy of the aforementioned laws and regulations, in vertical synchronization, the chronological year and number of stipulations of the relevant regulations must also be considered.

Vertical synchronization aims to see whether a statutory regulation that applies to a particular area of life does not conflict with one another when viewed from a vertical angle or a hierarchy of existing laws and regulations.[11]

Vertical synchronization is an effort to synchronize laws and regulations from the side of the same substance that is regulated in-laws and regulations, where the lower the type of regulation, the more detailed and operational the contents of the material, this is an effort to avoid overlapping, but complementary (supplementary), and are related to one another between higher financial regulations and lower laws.

[7] See http://kbbi.web.id/sinkronisasi accessed on December 8, 2019
[8] Ronny Hanitijo Soemitro, *Metode Penelitian Hukum dan Jumetri*. Jakarta: Ghalia, 1988, p. 26-27
[9] See http://www.penataanruang.net/ta/Lapan04/P2/SinkronisasiUU/Bab4.pdf accessed on December 8, 2019
[10] *Ibid*.
[11] Bambang Sunggono, *Metodologi Penelitian Hukum*, Jakarta: PT Raja Grafindo Persada, 1997, p. 97

b. Horizontal synchronization

Horizontal synchronization is done by looking at various laws and regulations that are equal and set the same field. Horizontal synchronization must also be carried out chronologically, in accordance with the timeline of the stipulation of the relevant laws and regulations.

Horizontal synchronization aims to uncover the reality of the extent to which certain laws are aligned horizontally, that is, they are harmonious between equal legislation regarding the same field.[12] Vertical and horizontal synchronization examines the extent to which the positive written laws that apply to a common plane are synchronous.[13]

Horizontal synchronization is carried out on the same regulation and have the same material. As per the provisions of the regulations that have been described above, namely the Bulukumba regency regulation regarding the Ganguan License Levy with the Bulukumba District Regulation regarding the Fishery Business License Levy which has the same material, namely regarding Certain Licensing Levies. This is when seen from the position that both are regional legal products in the form of local regulations and about the same material, but different objects must be guaranteed the compatibility of each other in terms of material so that there is no conflict with each other related to the matter regulated.

In the Bulukumba District Regulation regarding Disturbance Permit Fees, it is stated that the Fishery Business is included in businesses that can cause danger, loss and/or disturbance so that it is required to have a nuisance permit. According to the author, this provision is out of sync, because the regulation on disturbance permits includes a Fishery Business Permit that has been self-determined. 28 of 2009 concerning Regional Taxes and Regional Levies, so that, according to the author, the provisions in the Disturbance Permit Levy Law do not need to mention Fisheries Businesses in terms of the type of business that is required to have a disturbances permit, because it is regulated in the Regional Regulation on Fisheries Business Permit Levy. Thus it can only be said that bringing synchronization between the Regional Regulation on Disturbance Permit Levy and the Regional Regulation on Fishery Business Permit has been realized.

Regional Regulation Harmonization

In the Big Indonesian Dictionary,[14] Harmony is defined as having to do with (regarding) harmony; agreed. whereas harmonizing means to make harmony, Harmony is a process, method, act of harmonizing and harmony are meant as a matter (state) of harmony; harmony; harmony.

Kusnu Geosniadhie argues that harmonization is an effort or process to realize harmony, conformity, harmony, compatibility, and balance between various factors in such a way that these factors produce or form a whole of the law as part of a system.[15]

In music, there is harmony between tones and in the arts, there is harmonization of colors, words, phrases and so on.[16] The colors or tones as they are known are of different types. The example of red is different from yellow, so is the tone but when combined can create harmony. Regulatory synchronization,[17] namely uniting or aligning a subject and object of study of legal regulations to make legal entities integrated with one another

The author tries to relate the notion of harmonization according to the Big Indonesian Dictionary, Kusnu, and Yuliandri, as explained above that harmonization, is an effort or process to obtain harmony or harmony in particular legislation both vertically and horizontally related to different material.

The National Law Development Agency of the Ministry of Law and Human Rights provides an understanding of the harmonization of law as a scientific activity towards the harmonization process (alignment/conformity/balance) of written law that refers to philosophical, sociological, economic and juridical values.

The above definition can be interpreted that the harmonization of laws and regulations is the process of harmonizing and harmonizing between laws and regulations as an integral part or sub-system of the legal system in order to achieve legal objectives. Harmonization of laws and regulations has an important meaning in terms of legislation is an integral part or sub-system in a country's legal

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[12] Soerjono Soekanto, *Pengantar Penelitian Hukum,* Jakarta: UI Press, 1984, p. 74

[13] Kusnu Goesniadhie, *Harmonisasi Hukum Dalam Persfektif Perundang- Undangan; Lex Specialis Suatu Masalah*, Surabaya: JP Books, 2006, p. 23-24

[14] See http://kbbi.web.id/harmonis accessed on December 8, 2019

[15] Kusnu Goesniandhie, *Loc.Cit.*

[16] Yuliandri, *Asas-asas Pembentukan Peraturan Perundang-undangan yang Baik (Gagasan Pembentukan Undang-undang Berkelanjutan).* Jakarta: Rajawali Press*,* 2011, p. 214-215.

[17] Julianto Jover Jotam Kalalo, *Politik Hukum Perlindungan Hak Ulayat Masyarakat Hukum Adat di Daerah Perbatasan*, Makassar: Doctoral Thesis at Hasanuddin University, 2018, p. 193

system so that these laws and regulations can be interrelated and dependent and can form a complete roundness.

In practice all this time harmonization is carried out when a legislation is in its final stages, so that the Ministry of Law and Human Rights, the State Secretariat, the Ministry of Finance and the Technical Department sit together in a harmonization meeting, this was revealed by Andi Pangerang Moenta (the former Legal Head Division of the Ministry of National Education). The same thing was also expressed by Roberia (the Head of the Harmonization Section of the Law and Human Rights Law Regulations) that harmonization is carried out at the final stage of drafting the laws and regulations in order to avoid disharmony between certain laws and regulations and other laws and regulations.

Thus, in the practice of state administration, harmonization both at the design stage and at the cancellation stage of the Regional Regulation is practiced and exists to date. As for the Harmonization of Regional Regulation both Vertical and Horizontal are as follows: In the provisions contained in Minister of Internal Affairs regulations Number 27 Year 2009 concerning the validity period of permits, looks vertically not harmonious with the aforementioned Regional Regulation , this is because the Minister of Internal Affairs regulations provisions determine that Disturbance Licenses are valid as long as the company conducts its business, while local regulations determine that while the Retribution Period is the period of validity of a disturbance permit as long as the business is still running and must be re-registered every 3 (three) years. This according to the author is still in line or harmonious.

Because the Minister of Internal Affairs regulations stipulate that permits are only given once, except for making changes that have an impact on increasing the disruption from before. However, if not, there is no need to change the permit. Thus, the phrase which says that re-registration must be done every 3 years has no basis and changes should be made to the regulation immediately. In addition to reasons of inconsistency with Minister of Internal Affairs regulations which is a higher ranking, the local regulation material also contradicts the public interest related to investment impediment, which is currently trying to be addressed by the Central Government in relation to the President's goal of raising Indonesia's rank from 109th to 40th. in the world in 2017.

Thus, harmonization and synchronization activities are important things to be considered and implemented, because from this activity, the government can supervise the legal norms that are contained in legislation, is there a discrepancy between the lower laws and regulations higher changes and specific changes to general laws and regulations.

Regional Regulation Supervision

The relationship between the central government and regional governments in the Unitary Republic of Indonesia is a consequence of the implementation of the principle of decentralization. This means that the regions have freedom and independence in regulating government affairs. They must remain in the union of the unitary state as the basis of the mechanism of government in the state to ensure that freedom does not escape from the union of the unitary state, supervision as a media is needed to coordinate between the central government and the government regional and as control of the regional government.

Supervision is carried out as a preventive effort, or also to fix it in the event of a mistake, as a repressive measure. In connection with the implementation of the regional government basically, that supervision is any effort or activity to find out and assess the actual reality regarding the implementation of a task or activity, whether appropriate or not.

Thus the manifestation of the performance of supervision is an activity to assess a de facto task implementation, whereas the purpose of supervision is essential as a limited medium to carry out a kind of cross-check or matching whether the activities carried out are in accordance with predetermined benchmarks or not. Likewise, the follow-up.

Central Government Oversight in the administration of Regional Government can be seen in Law No. 23 Year 2014 concerning Local Government, there is supervision that is preventive or preventive and there is supervision that is repressive or coercive. Preventive supervision is as follows:

Revocation of Regional Regulation as a form of repressive supervision conducted by the Central Government, in this case, the Minister of the Interior. This cancellation was carried out on a Regional Regulation that was considered to be in conflict with higher legislation and public interest. Based on the author's research results, there were three thousand more local regulations that were canceled by the Minister of Home Affairs in 2016. This indicates that, the implementation of preventive supervision by the Central Government has not been implemented properly, so it still needs sharpening related to arrangements in preventive supervision conducted by the Central Government so that in the future there will be no more many bylaws that will be revoked, so that the orderly legal implementation of the regional government can be realized.

The rule of law has two periods namely classical and modern, classical rule of law aims only at order while modern rule of law aims not only to bring order but also to realize public welfare. The decision as a product of state law, is a tool of state power that is the decision produced by the legislative function in the form of regulation or regulation, the decision produced by the judicial function in the form of Decision/Vonnis, while the decision produced by the administrative function is in the form of State Administration Decree (*Keputusan Tata Usaha Negara*/KTUN). The KTUN regarding the Decree of the Minister of Home Affairs concerning the Cancellation of By laws is the result of tests conducted by the Central Government, in this case, the Minister of the Interior, as stipulated in a Decree issued by Fungi legislation in the form of legislation namely Law No. 23 Year 2014 concerning Regional Government. The Local Government Law stipulates that if the provisions of the Regional Regulation contradict the higher laws and regulations and the public interest/morality, the Minister of the Interior issues a Decree on the Cancellation of the Regional Regulation. KTUN in the form of the Minister of Home Affairs regarding Cancellation of Regional Regulations containing the authority, Legal Substance/Norms, and Testing Procedures. Authority in the form of KTUN concerning the cancellation of Regional Regulation, a substance in the form of norms in canceled regulations, and procedures in the form of testing mechanisms and matters that should be in the testing process.

From the results of the author's research, obtained data from the informant that in testing 6000 regulations, 3000 of them were canceled by the Minister of Home Affairs due to the finding of the provisions in these regulations that contradict higher laws and regulations and public interest/decency.

As for the testing procedure, the test is carried out by the cancellation team, but without experts related to the fields that are the object of testing, other than that in the testing process carried out by the cancellation team, it does not involve the regional government which is the object of testing, so the central government, in this case, the team cancellation do unilateral cancellation without hearing the reasons from the local government related to the canceled norm, in addition to that the cancellation team does not get adequate facilities, one of which is the local regulation to be canceled, most regions do not upload the regulations so the regulations do not found on the internet so that the cancellation team must go down to the regions looking for local regulations to be canceled, besides related to funds, the cancellation team is not given a special budget in conducting the testing so that this can have an impact on the quality of the test, besides that there is political pressure by the president en to support its policy related to investment to the cancellation team to immediately cancel the local regulations related to permits and levies and others that if it impedes investment in a short period of time can result in a test that does not accommodate matters related to justice, usefulness and legal certainty, and orderly law in the administration of regional government.

Testing Conformity

A test or testing activity is checking to find out the quality of something. In this case, testing the Regional Regulations is known in advance what will be tested and which becomes the test stone. In testing conformity or measuring instruments in conducting testing it is very necessary to know. As for conformity in conducting an examination of a Regional Regulation in a Law that has been determined, that is, if it is contrary to higher legislation and is against the public interest/decency. But in this case, it is still abstract when testing the Regional Regulation only using these 2 points.

From the results of the author's research, there are still some shortcomings in testing that have been carried out by the Government, namely one of them, the existence of the revoked Regional Regulation material based on a higher Law but not the same type of activities as the revoked Regional Regulation. In addition, there are some articles that were canceled by the Minister, but in other regions in certain regional regulations that govern the same thing are not canceled. There are also local regulations that have been revoked by the local government but are still being canceled again by the Minister so that cancellations made by the Minister are in vain. This has encouraged the author to try to think of a formulation that is suitable to be used as a benchmark in testing the law. The benchmarks the Regional Regulation are as follows:

1. Authority
   The authority meant here is the authority regulated in the contents of the content of the Regional Regulation in accordance with the source of regulatory authority that is owned and for example, a Regional Regulation regulating permits and then regulating levies must have a basis of authority. In this case, the authority to collect fees for a permit is governed by higher provisions that form the basis of its formation and in accordance with the regional authority determined by the Law.
2. Conformity of Material Content (substance)
   What is meant by the suitability of the material content (substance) is the suitability between the substance governed by the Regional Regulation tested with the regulations

used as a touchstone.

3. Accuracy
   Accuracy in question is accuracy in conducting tests by looking closely at each article in the Regional Regulation that is tested for compliance with the Regulations that become the test stones.
4. Legal Enforcement
   The validity of the law in question is that a Regional Regulation based on its content is seen as valuable and in reality, is actually obeyed by the community members and by the authorized officials are actually implemented and enforced.

CONCLUSION

The concept of Regional Regulation Testing is Testing as it means the process of testing or checking the quality of something (assessing) in this case the Regional Regulation is carried out in order to check whether the Regional Regulation established by the DPRD together with the Regional Government of the charge material and its formation procedure is in accordance with the provisions of the legislation. Testing, in this case, is the same as testing rights (*Toetsingsrecht*) where the right to test both in the literature and in practice is known as the existence of two kinds of test rights (*toetsingsrecht*), namely: a. The right to formal testing (*formele toetsingsrecht*); and b. The right to test material (*materiele toetsingsrecht*). The right to formal testing is the authority to evaluate a legislative product such as a law, for example, incarnated through procedures as determined/regulated in the applicable laws and regulations or not. Formal testing is usually related to procedural questions and relates to the legality of the competencies of the institutions that make them. The right to test material is an authority to investigate or assess the contents of 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. clear are as follows: a. Authority of testing (test subject); b. Legal Norms (test object); c. Test Purpose; and d. Testing Procedure. The results of the author's research as explained above, regarding all the deficiencies contained in the process of Regional Regulation testing by the Ministry of Home Affairs and the Supreme Court that have occurred so far need to be improved, because of all the deficiencies that have a negative impact on the implementation of local government related to the number of local regulations canceled by the Ministry of Home Affairs causing many local regulations that are no longer enforced and implemented, resulting in a legal vacuum related to the article or the entire content of the canceled regulation, which naturally creates legal disorder in the administration of local government, therefore the writer offers the ideal concept of testing the Regional Regulation namely as following: 1. Synchronizing Regional Regulation 2. Local Regulation Harmonization 3. Supervision 4. Commfornity with this testing concept, it is hoped that local regulations can be formed that are in line with higher legislative requirements, public interests, and in accordance with community development so that democratic laws and regulations can be formed.

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