

REGULATION ANALYSIS ON OPERATIONAL LICENSES OF BECAK MOTOR IN TIDORE KEPULAUAN: PERSPECTIVE OF LAW NO. 12 YEAR 2011

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Abstract

The purpose of paper is to analyze the control costs for becak motor transportation operational permits in accordance with the authorities owned and the suitability of the contents of the Tidore Islands Mayor Regulation Number 3 Year 2016 concerning v Operational Permits with Types and Hierarchy in the Formation of Legislative Regulations. The type of research used is socio-juridical research, which is research that is focused on examining the application of the rules or norms in positive law. This research uses a statutory approach and a case approach. The data collected is then analyzed qualitatively, namely data obtained from both library research is grouped and selected then combined with the problems to be studied according to quality and truth so that they will answer the existing problems. The Regional Government of Tidore City does not have the authority to collect fees for controlling the operational license for becak motor vehicles because these charges are against the provisions of Article 2 paragraph (3) and Article 150 of Law Number 28 Year 2009 concerning Regional Taxes and Regional Levies and Article 286 paragraph 2) Law Number 23 Year 2014 concerning Regional Government, in which the authority to determine other types of levies other than those regulated in law is centralized through non-decentralized Government Regulations through regional legal products. So that the regional head regulation that regulates the collection of costs for controlling the operational license for becak motor does not have a legal standing. The type of becak motor vehicle is not classified into the type of vehicle that can function as public transportation as stipulated in Article 47 paragraph (3) of Law Number 22 Year 2009 concerning Traffic and Road Transportation so that the regulation of the becak motor Operational Permit contained in the Mayor of Tidore Islands Regulation Number 3 Year 2016 concerning the becak motor Operational Permit is disharmonious with the regulations in Law Number 22 Year 2009 Traffic and Road Transportation There is a discrepancy between the types and the content contained in the Mayor of Tidore Islands Regulation Number 3 Year 2016 concerning this becak motor Operational Permit where it is not there is an order from a higher level statutory law or regional law or not established based on authority. So that its existence should not be recognized as stipulated in Article 8 paragraph (2) of Law Number 12 Year 2011 concerning the Formation of Shrimp Legislation.

Keywords: *becak motor, regulation analysis, Tidore Kepulauan.*

INTRODUCTION

"The formation of positive law carried out by the authorized institution must go through a filtering mechanism, namely normative filtering and idiosyncratic screening. Normative screening includes legal ideals (*Pancasila*), basic or constitutional laws, legal values and legal principles. This normative screening procedure is important so that the product of the law is higher and does not conflict with the spirit of the nation (*volkgeist*)."¹ So that this normative screening mechanism needs to be carried out in every formation of legal products as positive laws that will have binding legal force to the community.

In the stipulation of the Mayor of Tidore Islands Regulation Number 3 of 2016 concerning the becak motor Operational Permit as one of the positive legal products in the regions, it should be necessary to go through a normative filtering mechanism both in terms of government authority and the substance of the regulations to be regulated. The Mayor of Tidore Islands Regulation Number 3 of 2016 concerning becak motor Operational Permits according to the assumption of the author is contrary to the principle of establishing good laws and regulations specifically the principle of conformity between types, hierarchy and cargo material, because in the mayor regulation regulates the operating permit for becak motor transportation. the validity of its authority needs to be re-examined, besides that there is also a material containing charges for monitoring the operational license for becak motor transportation as a source of deposits for the regional treasury. Becak motor transportation as carried out by the Regional Government of the City of Tidore Islands.

Based on the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is determined that the State of Indonesia is a constitutional state.² In general, a rule of law can be interpreted that state power is limited by law in the sense that all attitudes, behavior and actions whether carried out by the ruler or state apparatus or carried out by citizens must be based on law.³ To realize Indonesia as a rule of law, the state is obliged to carry out the development of national law in a planned, integrated and sustainable manner in a national legal system that guarantees the protection of the rights and obligations of all Indonesian people based on the 1945 Constitution of the Republic of Indonesia.

The formation of laws and regulations is very important for the Republic of Indonesia. Based on the provisions of Article 22A of the 1945 Constitution of the Republic of Indonesia which stipulates that "Further provisions regarding the procedure for the formation of laws shall be further regulated by law". This provision then became the basis for delegation from the birth of the Law on the Formation of the Prevailing Laws, namely Law Number 10 Year 2004 which was later replaced by Law Number 12 of 2011 concerning the Formation of Legislative Regulations which in the development of legal requirements had also underwent changes, namely by Law Number 15 Year 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations.

Formation of Legislation is the making of Legislation which includes the stages of planning, preparation, discussion, ratification or stipulation, and enactment.⁴ In the book *Constitution and the Spirit of the Indonesian Nation*, it is explained that "The establishment of statutory regulations as positive law carried out by the competent institution must go through a filtering mechanism, namely normative filtering and ideal filtering. Normative screening includes legal ideals (*Pancasila*), basic or constitutional laws, legal values and legal principles. This normative screening procedure is important so that the law product is higher and does not conflict with the spirit of the nation (*volkgeist*). Ideal filtering, namely the law to be formed must meet philosophical requirements, including: (i) a view of life; (ii) religious beliefs; (iii) philosophy of law; (iv) legal awareness; (v) the national and state insight that live in the community concerned. This ideal filtering process is important in order to provide a basis for the validity of philosophy."⁵

In line with this thought, in the formation of a statutory regulation there are three types of relevant principles, namely:⁶ (1) substantive principles related to the contents of the Laws and Regulations; (2) formal principles, namely, principles relating to the form of statutory regulations; and (3) procedural principles, related to the institutions and processes that are followed for the formation of laws and regulations.

The relevance of these three principles greatly determines the quality in the preparation of laws and regulations. According to Maria Farida Indrati, the principles for the formation of Legislation are a

¹ Irham Rosyidi, *Konstitusi dan Jiwa Bangsa Indonesia*, Nusantara, Malang, 2016, p. 45

² Pasal 1 ayat (3) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

³ Abdul Aziz Hakim, *Negara Hukum dan Demokrasi di Indonesia*, Pustaka Belajar, Yogyakarta, 2015, p. 169

⁴ Pasal 1 butir 1 Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peranturan Perundang-Undangan.

⁵ Irham Rosyidi, *Op.Cit.*, p. 45

⁶ Richard W. Bauman And Tsvi Kahana (ed), *The Least Examined Branch, The Role of Legislatures in The Constitutional State*, Cambridge: Cambridge University Press, 2006, p. 17-18

guideline or a signpost in the formation of good Legislation.⁷ These principles are in line with the principles of forming good laws and regulations, which include:⁸ a. clarity of purpose; b. appropriate forming institutions or officials; c. suitability between types, hierarchy and content; d. can be implemented; e. efficiency and efficiency; f. clarity of formulation; and g. openness.

One of the principles for forming a good statutory regulation above is the suitability between types, hierarchy, and content. What is meant by "the principle of conformity between types, hierarchy, and content of content" is that in the Formation of Legislations, it is necessary to pay close attention to the correct content material in accordance with the type and hierarchy of the Legislation.⁹ The types and hierarchy of the Legislation are regulated in the provisions of Article 7 of Law Number 12 Year 2011 concerning the Establishment of Prevailing Legislation which stipulates that:¹⁰ "(1) Types and hierarchy of Legislation consist of: a. The 1945 Constitution of the Republic of Indonesia; b. Decree of the People's Consultative Assembly; c. Laws/Government Regulations in Lieu of Laws; d. Government regulations; e. Presidential decree; f. Provincial Regulation; and g. Regency/City Regional Regulations. (2) The legal force of Legislation in accordance with the hierarchy as referred to in paragraph (1).

Meanwhile, types of statutory regulations other than those listed in the hierarchy are contained in the provisions of Article 8 of Law Number 12 Year 2011 concerning the Establishment of Prevailing Legislation which stipulates that: "(1). Types of Laws and Regulations other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Financial Audit Board, the Judicial Commission, Bank Indonesia, the Minister, agencies, institutions, or commissions that are at the same level as established by law or the government at the behest of the law, the Provincial People's Representative Council, the Governor, the Regency/City Regional People's Representative Council, the Regent/Mayor, the Village Head or equivalent. (2). (2) The laws and regulations as referred to in paragraph (1) are recognized for their existence and have binding legal force as long as they are ordered by the higher laws and regulations or are formed based on authority. "

Based on these regulations, there are two classifications of statutory regulations, namely statutory regulations that are explicitly arranged in a hierarchy and statutory regulations that are not explicitly arranged in a hierarchy. Where the legal strength of laws and regulations that are explicitly arranged in a hierarchy is determined based on the high and low level of the hierarchy of the type of legislation in question while statutory regulations that are not explicitly arranged in a hierarchy are recognized for their existence and have binding legal force as long as they meet 2 (two) criteria. namely 1). Ordered by the higher Legislation; or 2). Formed based on authority.

The Mayor of Tidore Islands Regulation Number 3 Year 2016 concerning becak motor Transportation Operations Permit is one type of legislation that is not explicitly arranged in a hierarchy. So that the existence of this Regulation can be recognized and has binding legal force if it meets one of the above criteria.

The preamble to the Mayor's Regulation of Tidore Islands Number 3 Year 2016 concerning the becak motor Transportation Operation Permit explains that this Regulation is established based on the following considerations:¹¹ "A. that the public's need for transportation, especially city transportation and certain areas within the Tidore Islands City area, is increasing but until now it has not been maximally served by public transport cars; b. that the development of the business world in providing transportation facilities on the road, especially in the field of becak motor transportation in the Tidore Islands City Region, is the fulfillment of the increasing demands of the community for more adequate road transportation facilities; c. that based on the considerations as referred to in letters a and b, it is necessary to stipulate a Mayor Regulation concerning the Operation Permit for Motorized Becak Transportation. "

Departing from the above thought, the Regional Government of the City of Tidore Islands seeks to meet the demands of the community for a more adequate means of transportation on the road, namely by granting a becak motor transportation operation permit with a route that has been determined in the area of Tidore Islands City. The increase in population from year to year will be directly proportional to the need for transportation. Where the increasing number of population, the

⁷ Maria Farida Indrati S, *Ilmu Perundang-undangan, Jenis, Fungsi dan Materi Muatan*, Yogyakarta: Kanisius, 2007, p. 252

⁸ Pasal 5 Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peranturan Perundang-Undang.

⁹ Penjelasan Pasal 5 Huruf c Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peranturan Perundang-Undang.

¹⁰ Pasal 7 Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peranturan Perundang-Undang.

¹¹ Konsideran Peraturan Walikota Tidore Kepulauan Nomor 3 Tahun 2016 tentang Izin Operasi Angkutan Becak Motor, p. 1

increasing demands of the community needs for more adequate means of transportation on the road, one of which is public motorized vehicles. Public Motorized Vehicle is any Vehicle used to transport goods and/or people for a fee.¹²

Based on the provisions of Article 47 of Law Number 22 Year 2009 concerning Road Traffic and Transportation, it is determined that:¹³ (1) Vehicles consist of: a. Motor vehicle; and b. Non-Motorized Vehicles. (2) Motorized Vehicles as referred to in paragraph (1) letter a are grouped by type: a. motorcycle; b. passenger car; c. bus car; d. freight cars; and e. special vehicle. (3) Motorized Vehicles as referred to in paragraph (2) letter b, letter c, and letter d are grouped by function: a. Individual motorized vehicles; and b. Public Motorized Vehicles. (4). Non-Motorized Vehicles as referred to in paragraph (1) letter b are grouped into: a. Vehicles driven by human power; and b. Vehicles driven by animal power." Based on the description of the types of vehicles above, there are no types of becak motor vehicles, either grouped by function for individual motorized vehicles or for general motorized vehicles.

becak motor is an alternative transportation which is a modification of a rickshaw combined with a motorbike either at the front, rear or side that serves transportation from one place to another in the area of Tidore Islands City which is temporary or temporary.¹⁴ Based on this definition, the Regional Government then classifies becak motor vehicles in the category of public motorized vehicles. Meanwhile, Article 47 of Law Number 22 Year 2009 concerning Road Traffic and Transportation does not recognize the existence of becak motor vehicles as public motorized vehicles.

This makes the becak motor vehicle illegal in its operation as public transportation, especially in most parts of Indonesia. Meanwhile, in several regions, the existence of becak motor as public motorized vehicles has mushroomed so that the Regional Government has attempted to regulate legality by granting operational permits for becak motor. For example, Makassar City Regional Regulation Number 14 of 2002 concerning Road Transportation and Transportation Licensing Levies in Makassar City, Tebing Tinggi City Regional Regulation Number 3 of 2007 concerning Retribution for Company Establishment Permits and Motorized Rickshaw Operations, Langkat Regency Regional Regulation Number 3 of 2007 concerning Permit Retribution Transportation Business, Banda Aceh City Qanun Number 8 of 2007 Concerning Amendments to Regional Regulations of Banda Aceh Level I Regional Municipality Number 6 of 1999 concerning Routing Permit Retribution, Langsa City Qanun Number 13 Year 2008 concerning Operating Permits for becak motor in Langsa City, Regional Regulations of Kotamobagu City 07 of 2012 concerning Motor Vehicle Testing Levies, and Medan City Regional Regulation Number 2 of 2014 concerning Regional Charges in the Transportation Sector.

The entire arrangement is contained in the legal instrument of Regional Regulation not Mayor Regulation. This is different from the City of Tidore Islands, which provides a similar arrangement in the legal instrument of Mayor Regulation. In addition to differences in the use of types of legal instruments, the Mayor of Tidore Islands Regulation Number 3 of 2016 concerning becak motor Operational Permits also contains material in the form of fees, namely the administrative costs of this supervision as stipulated in Article 9 paragraph (2) of Tidore Islands Mayor Regulation Number 3 of 2016 concerning Permits Motor Becak Operations which determine that "(2) The supervision as referred to in paragraph (1) shall be subject to an administration fee of Rp. 75,000. (seventy five thousand rupiah). so that the authors are interested in examining the problems as described above with the title "A Juridical Review of the Mayor's Regulation of Tidore Islands Number 3 Year 2016 concerning becak motor Operational Permits (Law Perspective Number 12 of 2011 concerning the Formation of Legislative Regulations)". The problem that will be discussed in this paper is whether the control costs for becak motor transportation operational permits are in accordance with their respective authorities? and how is the suitability of the content of the Tidore Islands Mayor Regulation Number 3 of 2016 concerning Motorized Becak Operational Permits with Types and Hierarchies in the Formation of Legislative Regulations?

METHOD

The type of research used is socio-juridical research, which is research that is focused on examining the application of the rules or norms in positive law. This research uses a statutory approach and a case approach.¹⁵ The data collected is then analyzed qualitatively, namely data obtained from both library research is grouped and selected then combined with the problems to be

¹² Pasal 1 Butir 10 Undang-Undang Nomor 22 Tahun 2009 tentang Lalu Lintas dan Angkutan Jalan.

¹³ Pasal 47 Undang-Undang Nomor 22 Tahun 2009 tentang Lalulintas dan Angkutan Jalan

¹⁴ Pasal 1 butir 7 Peraturan Walikota Tidore Kepulauan Nomor 3 Tahun 2016 tentang Izin Operasi Angkutan Becak Motor.

¹⁵ Kadarudin, *Riset Sederhana di Bidang Ilmu Hukum*, Ponorogo: Uwais Inspirasi Indonesia, 2020, p. 63

studied according to quality and truth so that they will answer the existing problems.

RESULTS AND DISCUSSION

Supervision Fees for Becak Motor Transportation Operational Permits

Analysis of Supervision Fee Collection Authority

The concept of rule of law that was put forward by Plato in his work entitled "Politeia" is a state based on law and justice for its citizens in the sense that all powers and actions of the state's apparatus or rulers, are solely based on law. This will reflect justice for the social life of its citizens.¹⁶

In the opinion of a rule of law state that if a ruler wants to place his obligations on the citizens (society), then that authority must be found in a law.¹⁷

The granting of the widest possible autonomy to the regions is directed at accelerating the realization of community welfare through improved services, empowerment and community participation. In addition, through broad autonomy, in a strategic globalization environment, regions are expected to be able to increase competitiveness by taking into account the principles of democracy, equity, justice, privileges and specialties as well as the potential and diversity of Regions in the system of the Unitary State of the Republic of Indonesia. In essence, Regional Autonomy is given to the people as a legal community unit which is given the authority to regulate and manage the Government Affairs given by the Central Government to the Regions and in its implementation it is carried out by the regional head and DPRD assisted by Regional Apparatus.¹⁸

The delegation of local taxes and levies to be regulated in Regional Regulations as the above provision reflects the affirmation of the principle of "No taxation without representation".¹⁹ Because of this, any levies that burden the community must be agreed upon by the parliament as the people's representatives, including levies made to the people at the regional level.

One of the content contained in the Mayor of Tidore Islands Regulation Number 3 of 2016 concerning becak motor Operational Permits contains regulations regarding the determination of fees for controlling administrative costs for becak motor operational permits, this is as confirmed in the provisions of Article 9 of the Tidore Islands Mayor Regulation Number 3 of 2016 regarding the Becak Motor Operational Permit which determines that:

- (1) Supervision and control are carried out by the Department of Transportation, Communication and Information Technology of the City of Tidore Islands.
- (2) The supervision as referred to in paragraph (1) shall be subject to an administration fee of Rp. 75,000. (seventy-five thousand rupiah).
- (3) Receipts from supervision fees are paid on a gross basis to the regional treasury.
- (4) In the context of controlling and supervising, transportation supervision card holders are required to report to the Transportation, Communication and Information Service Office of the City of Tidore Islands every 6 (six) months for re-registration.

Based on the provisions of Article 9 paragraph (2) of the Regulation of the Mayor of Tidore Islands Number 3 of 2016 concerning the becak motor Operational Permit above, it is clear that there is a collection of administrative fees for supervising becak motor operational permits in the amount of IDR 75,000 (seventy five thousand rupiah for each. person transportation surveillance card holder.

Based on the description in the surveillance card, it can be seen that there is a card validity period, which can only be valid for 6 months, this is as stipulated in the provisions of Article 9 paragraph (4) of the Mayor of Tidore Islands Regulation Number 3 of 2016 concerning becak motor Operational Permits which require Transportation supervision card holders report to the Tidore Islands City Transportation, Communication and Information Service every 6 (six) months for re-registration. Thus the administration fee for supervision in 1 year for each becak motor vehicle is Rp. 150,000, - thousand rupiah (within 2 registration periods).

Admittedly, in the provisions of Article 9 paragraph (4) of the Mayor of Tidore Islands Regulation Number 3 of 2016 concerning becak motor Operational Permits stipulates that "Supervision fees are paid grossly to the regional treasury", but this provision is not in accordance with the provisions of Article 285 of the Law. 23/2014 concerning Regional Government which regulates regional revenue sources where there are no other levies as a source of regional revenue that can be made by local

¹⁶ Abdul Aziz Hakim, *Op.Cit.*, p. 118

¹⁷ Philipus M. Hadjon, dkk., 2005, *Pengantar Hukum Administrasi Indonesia*, Gaja Mada University Press, Yogyakarta, p. 130

¹⁸ Penjelasan Undang-Undang 23 Tahun 2014 tentang Pemerintahan Daerah

¹⁹ A. Ahsin Thohari, *Epistemologi Pajak, Perspektif Hukum Tata Negara, Jurnal Legislasi Indonesia*, Vol. 8 No.1-April 2011, Direktorat Jenderal Peraturan Perundang-Undangan Kementerian Hukum dan HAM RI, Jakarta, 2011.

governments other than local taxes and regional levies. Meanwhile, in Law Number 28 of 2009 concerning Regional Taxes and Regional Charges, there is not a single provision in the article that provides space for the authority of local governments to collect administrative fees for the supervision of becak motor vehicle operational permits. Thus, the collection of administrative fees for becak motor vehicle supervision that is carried out does not have the legitimacy of the authority of higher legislation. Therefore, the authors conclude that the provisions governing administrative fees for controlling becak motor are contrary to Article 2 paragraph (3) and Article 150 of Law Number 28 Year 2009 concerning Regional Taxes and Regional Levies as well as the provisions of Article 286 paragraph (2). Law 23 Year 2014 concerning Regional Government.

Thus the collection of administrative costs for the supervision of the becak motor transportation operational permit has exceeded the limit of authority given to the region in terms of fulfilling regional revenue sources, so that if it is based on the theory of authority as described above, the local government should not have the authority to collect fees or as In this case, there is not a single delegation provision from the Law which authorizes local governments to collect fees for supervising becak motor transportation operational permits as a source of regional revenue.

Suitability of the Content of Mayor Regulations with Types and Hierarchy.

Motorized becak is an alternative transportation which is a modification of a rickshaw combined with a motorbike either at the front, rear or side that serves transportation from one place to another in the area of Tidore Islands City which is temporary or temporary.²⁰ Based on this understanding, the Regional Government then classifies becak motor vehicles in the category of public motorized vehicles as stipulated by the Mayor of Tidore Islands Regulation Number 3 Year 2016 concerning becak motor Operational Permits.

Although in the regulation, becak motor are categorized into temporary or temporary types of vehicles, there is no single regulation regarding the expiry period limitation so that this type of vehicle from 2002 to 2020 has continued to operate and has become one of the types of public transportation in the Tidore City area, Kepulauan. Even with the stipulation of an operational permit for becak motor vehicles as regulated in the Regulation of the Mayor of Tidore Islands Number 15 Year 2010 concerning the Motorized Becak Transport Operation Permit which was later revoked based on the provisions of Article 11 of the Mayor of Tidore Islands Regulation Number 3 Year 2016 concerning becak motor Operational Permits.

The reasons for the stipulation of the Tidore Islands Mayor Regulation Number 3 of 2016 concerning the becak motor Operational Permit as contained in the preamble to the Tidore Islands Mayor Regulation Number 3 Year 2016 concerning the becak motor Transportation Operation Permit explains that this Regulation is established based on the following considerations:²¹ "A. that the public's need for transportation, especially city transportation and certain areas within the Tidore Islands City area, is increasing but until now it has not been maximally served by public transport cars; b. that the development of the business world in providing transportation facilities on the road, especially in the field of becak motor transportation in the Tidore Islands City Region, is the fulfillment of the increasing demands of the community for more adequate road transportation facilities; c. that based on the considerations as referred to in letters a and b, it is necessary to stipulate a Mayor Regulation concerning the Operation Permit for Motorized Becak Transportation. "

The reasons for the above considerations are in line with the results of the author's interview with the Head of the Law and Human Rights Section of the City of Tidore Islands (Ms. Bonita Manggis), which states that the Regional Government has established the Mayor Regulation on the one hand to meet the needs of the community for transportation facilities and on the other hand. to provide space for becak motor drivers to continue to support their families.²²

With the existence of the Mayor's Regulation regarding the becak motor Operational Permit, the operation of becak motor vehicles as public transportation in the city of Tidore Islands continues to flourish until now.

This is contrary to Article 47 of Law Number 22 Year 2009 concerning Road Traffic and Transportation which does not recognize the existence of becak motor vehicles as public motorized vehicles. Whereas when referring to the theory of hierarchical norms (*stufenbouw* theory) by "Hans Kelsen, namely a theory that states positive law (rules) is constructed in stages and layers, low

²⁰ Pasal 1 butir 7 Peraturan Walikota Tidore Kepulauan Nomor 3 Tahun 2016 tentang Izin Operasi Angkutan Becak Motor

²¹ Consideration Peraturan Walikota Tidore Kepulauan Nomor 3 Tahun 2016 tentang Izin Operasi Angkutan Becak Motor

²² Hasil Wawancara Penulis dengan Kepala Bagian Hukum dan HAM Pemerintah Daerah Kota Tidore Kepulauan Tanggal 1 Juli 2020.

regulations originate from and cannot conflict with higher regulations. This theory is then accommodated in the principle of hierarchy (*lex superiori derogat legi inferiori*), which is a theory that requires lower laws and regulations not to conflict with higher laws and regulations.

With the disharmony arrangement between the Mayor of Tidore Islands Regulation Number 3 of 2016 concerning becak motor Operational Permits and Law Number 22 Year 2009 concerning Road Traffic and Transportation, this has created legal uncertainty towards law enforcement, especially in the field of road traffic and transportation. This is because the Mayor's Regulation of Tidore Islands Number 3 of 2016 concerning the becak motor Operational Permit, which the note is below, is no longer based on the provisions of Article 47 of Law Number 22 Year 2009 concerning Road Traffic and Transportation which does not recognize the existence of becak motor vehicles as motorized vehicles. general. This will have an impact on law enforcement in the field of traffic, one of which is related to the enforcement of the ownership of a driving license according to the type of motorized vehicle he is driving where the provisions of Article 77 of Law Number 22 Year 2009 concerning Road Traffic and Transportation determine that:

- (1) "Every person driving a motorized vehicle on the road is required to have a driving license according to the type of motor vehicle being driven".
- (2) Driving license as referred to in paragraph (1) consists of 2 (two) types:
 - a. Individual Motor Vehicle Driving License; and
 - b. General Motor Vehicle Driving License.

Based on the above provisions, there is a determination of the obligation for motorists to have a driving license according to the type of motorized vehicle being driven. Meanwhile, the regulation of the becak motor transportation operating permit contained in the Mayor of Tidore Islands Regulation Number 3 of 2016 concerning the Motorized Becak Operational Permit does not contain a single arrangement regarding the status of a becak motor vehicle driving license as public transportation. So that all this time the driving license used by becak motor drivers is a two-wheeled vehicle driving license, which is a type of vehicle only intended for individual types of vehicles whose driving license is also classified in the temporary individual motorized vehicle driving license in fact through the Tidore Islands Mayor Regulation. Number 3 of 2016 concerning the Operational Permit for becak motor, the Regional Government of Tidore City allows the operation of becak motor as public vehicles. This has juridical consequences for criminal sanctions as contained in the provisions of Article 281 of Law Number 22 Year 2009 concerning Road Traffic and Transportation which determines that:

"Every person driving a motorized vehicle on the road who does not have a driver's license as referred to in Article 77 paragraph (1) shall be subject to imprisonment for a maximum of 4 (four) months or a maximum fine of Rp1,000,000.00 (one million rupiah)".

The criminal sanctions as referred to in this provision are aimed at any person driving a motorized vehicle on the road that does not have a driving license in accordance with the type of motor vehicle being driven, so that the suitability of the driving license with the type of vehicle being driven is also an aspect of the violation. Thus, the operation of this type of becak motor vehicle which is designated for public transportation using an individual vehicle driving license is a violation of the provisions of Article 281 of Law Number 22 Year 2009 concerning Traffic and Transportation. Therefore, an evaluation of the Mayor of Tidore Islands Regulation Number 3 of 2016 concerning becak motor Operational Permits must be carried out as part of the regulatory structuring program launched by the local government, so that the laws and regulations can be in harmony and synergy hierarchically as the norm hierarchy theory (*stufenhouw* theory) and the principle of "*lex superiori derogat legi inferiori*".

Legal analysis of the authority of the Regional Government in Stipulating the Mayor of Tidore Islands Regulation Number 3 Year 2016 concerning the becak motor Operational Permit

The concept of rule of law that was put forward by Plato in his work entitled "*Politeia*" is a state based on law and justice for its citizens in the sense that all the powers and actions of the state apparatus or rulers, are solely based on law. This will reflect justice for the social life of its citizens.²³

In the opinion of a rule of law state that if a ruler wants to place his obligations on the citizens (society), then that authority must be found in a law.²⁴ Legal analysis on the suitability of the content of mayor regulations with higher statutory regulations.

The legal ideals of the Indonesian nation are contained in Pancasila as a basis for thinking in

²³ Abdul Aziz Hakim, *Op.Cit.*, p. 118

²⁴ Philipus M. Hadjon, dkk., 2005, *Pengantar Hukum Administrasi Indonesia*, Gaja Mada University Press, Yogyakarta, p. 130

structuring the basic framework and structure of the state organization as formulated in the Preamble and Body of the 1945 Constitution of the Republic of Indonesia. The principles of a rule of law based on Pancasila must at least fulfill the following: 1). Maintain the ideological and territorial integrity of the nation and state; 2) Realizing people's justice, democracy and a rule of law (nomocracy); 3) Realizing general welfare and social justice; 4). Creating tolerance on the basis of humanity and civilization. Pancasila as the source of all sources of state law is re-established in Article 2 of Law Number 12 Year 2011 concerning the Formation of Legislation as amended by Law Number 15 Year 2019 concerning Amendments to Law Number 12 Year 2011 concerning the Formation of Laws and Regulations. invitation (hereinafter referred to as the Law on the Establishment of Legislation). This places Pancasila and the 1945 Constitution of the Republic of Indonesia as "test stones" in any formation of laws and regulations. Therefore, in the process of forming laws and regulations that are carried out in a planned, integrated and sustainable manner, it is hoped that the results of laws and regulations that: a) conform to the values of Pancasila as the source of all sources of law; b) carry out the mandate of the 1945 Constitution of the Republic of Indonesia as the basic law in statutory regulations; c) contains material principles for the content of statutory regulations as referred to in Article 6 paragraph (1) of the Law on the Establishment of Legislation; and d) support the implementation of the development of national laws and national legal systems.²⁵

However, in its development, the existing laws and regulations often cause several problems so that a national legal system that reflects the values of Pancasila and the 1945 Constitution of the Republic of Indonesia cannot be realized. These problems include: a) laws and regulations often do not meet the needs and developments society, so that the law is left behind and cannot support national development; and b) laws and regulations are often unable to function effectively and efficiently, resulting in the following impacts: (1) the law is left behind by the community; (2) the law does not work well; (3) the effectiveness and effectiveness of statutory regulations is still low; and (4) laws and regulations do not provide legal certainty. The current condition is that there is a tendency that too many laws and regulations are made without considering and adjusted to the direction of national development priorities and the concrete needs of the community. This has resulted in an increasing number of regulations. This symptom of hyper-regulation is compounded by the low quality of most of the regulations, which is shown, among others, the mismatch between the choice of the type of legislation and the content it regulates, multiple interpretations, overlaps, inconsistency, disharmony between laws and regulations, both horizontally and vertically, ineffective and high cost.²⁶

Tidore Islands Mayor Regulation Number 3 Year 2016 concerning becak motor Operational Permits is one type of legislation as stipulated in Article 8 paragraph (1) of Law Number 12 Year 2011 concerning the Formation of Shrimp Legislation which determines that:

"Types of Laws and Regulations other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, the Minister, agencies, institutions, or commissions that are the same level as established by law or the government at the behest of the law, the Provincial People's Representative Council, the Governor, the Regency/City Regional People's Representative Council, the Regent/Mayor, the Village Head or the equivalent".

Although as a type of statutory regulation other than those referred to in the hierarchy contained in Article 7 paragraph (1) of Law Number 12 Year 2011 concerning the Establishment of Legislation, Mayor of Tidore Islands Regulation Number 3 Year 2016 concerning becak motor Operational Permits must meet 2 (two) requirements/criteria in order to be recognized as a statutory regulation, namely: 1) constituting an order of a higher legislation; 2) formed based on authority. This is in accordance with the provisions of Article 8 paragraph (2) of Law Number 12 Year 2011 concerning the Formation of Shrimp Legislation which stipulates that:

"(2) The laws and regulations as intended in paragraph (1) are recognized for their existence and have binding legal force as long as they are ordered by the higher laws and regulations or are formed based on the authority".

Based on the description in the previous sub-discussion, there is not a single provision in the article, either ordering or giving authority to the Regional Government of the City of Tidore Islands to be

²⁵ Pedoman Evaluasi Peraturan Perundang-Undangan Nomor PHN-HN.01.03-07, Badan Pembinaan Hukum Nasional, Kementerian Hukum dan HAM RI.

²⁶ *Ibid.*

able to stipulate operational permits for becak motor vehicles as public transportation vehicles in the form of a Mayor Regulation for the City of Tidore Islands. This actually creates a mismatch between the choice of the type of legislation and the material content it regulates, multiple interpretations, overlaps, inconsistency, disharmony between laws and regulations, both horizontally and vertically. Therefore, the existence of the Tidore Islands Mayor Regulation Number 3 of 2016 concerning the becak motor Operational Permit, which in fact is a lower law, should not be in conflict with higher laws and regulations. This is like the application of the principle of "*Lex Superior Derogat Legi Inferiori*", which is a principle of legal interpretation which states that the high law (*lex superior*) overrides the lower law (*lex inferior*).

When viewed in terms of the content of the Tidore Islands Mayor Regulation Number 3 Year 2016 concerning the becak motor Operational Permit, it is actually the content of the type of regional regulation not the regional head regulation, this is as stipulated in Article 14 of the Shrimp Law Number 12 Year 2011 concerning the Formation of Legislation An invitation specifying that "the contents of the Provincial Regulations and Regency/City Regulations contain material in the framework of implementing regional autonomy and co-administration as well as accommodating special regional conditions and/or further elaboration of higher laws and regulations".

Meanwhile, the content of the Regional Head Regulation/Mayor Regulation itself is only in the framework of implementing regional regulations or at the power of statutory regulations. This is in accordance with the provisions of Article 246 paragraph (1) of Law Number 23 Year 2014 concerning Regional Government which stipulates that "To implement Regional Regulations or at the power of statutory regulations, the regional head determines a Perkada." Islands Number 3 Year 2016 concerning the becak motor Operational Permit is incompatible with the type of content contained where there are no orders from higher laws and regulations, both laws and regional regulations or not formed based on authority. So that its existence should not be recognized as stipulated in Article 8 paragraph (2) of Law Number 12 Year 2011 concerning the Formation of Legislation.

CONCLUSION

The Regional Government of Tidore City does not have the authority to collect fees for controlling the operational license for becak motor vehicles because these charges are against the provisions of Article 2 paragraph (3) and Article 150 of Law Number 28 Year 2009 concerning Regional Taxes and Regional Levies and Article 286 paragraph 2) Law Number 23 Year 2014 concerning Regional Government, in which the authority to determine other types of levies other than those regulated in law is centralized through non-decentralized Government Regulations through regional legal products. So that the regional head regulation that regulates the collection of costs for controlling the operational license for becak motor does not have a legal standing.

The type of becak motor vehicle is not classified into the type of vehicle that can function as public transportation as stipulated in Article 47 paragraph (3) of Law Number 22 Year 2009 concerning Traffic and Road Transportation so that the regulation of the becak motor Operational Permit contained in the Mayor of Tidore Islands Regulation Number 3 Year 2016 concerning the becak motor Operational Permit is disharmonious with the regulations in Law Number 22 Year 2009 Traffic and Road Transportation There is a discrepancy between the types and the content contained in the Mayor of Tidore Islands Regulation Number 3 Year 2016 concerning this becak motor Operational Permit where it is not there is an order from a higher level statutory law or regional law or not established based on authority. So that its existence should not be recognized as stipulated in Article 8 paragraph (2) of Law Number 12 Year 2011 concerning the Formation of Shrimp Legislation.

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