



Withdrawal Of Draft Regional Regulations By Regional Heads Before The Process Of Discussing The Draft Regional Regulations

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ABSTRACT

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The problem of withdrawing the draft local regulations before the discussion process by the Regional Head occurs in the process of forming local regulations. The research method used is normative juridical. The purpose of this research is to answer the problem of withdrawing the draft local regulations before the discussion process by the Regional Head occurs in the process of forming local regulations in aspects of legislation. The results showed that there were still many draft local regulations that were withdrawn before the process of discussing the Local regulation Draft conducted by the Regional Head. Supposedly, the process of its formation applies *mutatis mutandis* with the formation of legislation, if it has entered the discussion process then it cannot be retracted, as is the practice in the Philippines, there must be parameters if the draft local regulation must be withdrawn before discussion and also its legitimacy must be contained in the Local Government Law.

1. Introduction

The study of laws and regulations or the study of an arrangement concerns the methods, techniques and processes of its formation, namely the incarnation of content materials and formation procedures. The draft can come

from the Regional Head or from the Regional People's Representative Council.¹

For this reason, cooperation with the House of Representatives to produce a quality Regulation is crucial. Furthermore, Article 18 paragraph (2) of the 1945 Constitution states that provincial, district, and city governments regulate and take care of government affairs themselves according to the principle of autonomy and assistance duties. Meanwhile, Article 18 paragraph (6) states that local governments have the right to establish local regulations and other regulations to carry out autonomy and assistance duties. Guidelines for the establishment of Local regulations must be based on Law No. 12 of 2011 concerning the Establishment of Laws and Regulations Jo. Law of the Republic of Indonesia Number 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, Article 5 formulates that in forming laws and regulations must be carried out based on the principle of establishing good laws and regulations, which include: clarity of purpose, proper institutional or forming officials, the conformity between types, hierarchies, and content materials, can be implemented, usefulness and efficacy, clarity of formulation and openness.²

The proposed Draft Local regulation must enter the local regulation formation program. However, there is an urgent Draft Local regulation. Can be discussed even if it does not enter the Local regulation Formation Program.³ For example, the first example, the Local regulation Draft in West Sumatra, was not completed at the End of the First Session, Four Local regulation Drafts Discussed Outside the 2022 Local regulation formation program, the Draft Local regulation for Public Information Disclosure (KIP) along with several other Local regulation Drafts were not included in the Local regulation Formation Program (Local regulation formation program) in 2022. However, the Draft Local regulation can still be continued because it has been discussed during the first session in 2021/ 2022. The four Local regulation Drafts that became arrears during the first session of 2021/2022 were the Draft KIP Local regulation, the West Sumatra Mars Local regulation Draft, the Draft Local regulation on Sustainable Infrastructure Development and the Local

¹ Naskah Akademis et al., "Laporan Penelitian" (2016).

² Rizki Jayuska and Ismail Marzuki, "Problematika Pembentukan Peraturan Daerah Oleh Pemerintah Daerah Provinsi Kalimantan Tengah Periode 2016-2021," *PAGARUYUANG Law Journal* 4, no. 2 (2021): 157.

³ Manado Post, <https://manadopost.jawapos.com/berita-utama/05/10/2021/dipimpin-walukouw-Rancangan Peraturan Daerah-soal-pembentukan-perda-digenjot/>

regulation Draft for Regional Financial Management.⁴ Related with this paper, so, there are some of withdrawal of draft regional regulations by regional heads before the process of discussing the draft regional regulations that can be analyze from the drafting knowledge perspective.

The second example, the Local regulation Draft in Trenggalek, was withdrawn from discussions at the end of last year, the Draft Local regulation of RTRW Trenggalek Regency can be proposed and discussed again in 2019. The withdrawal of the discussion was carried out by the Regent of Trenggalek together with 6 other Local regulation Drafts that have not been completed in 2018. Based on the information of the Trenggalek Regency Regional People's Representative Council Regional regulatory formation agency, at the end of 2018, a number of Local regulation Drafts that have not been completed were deliberately withdrawn by the Regent, one of which was the spatial planning and territory Local regulation Draft which had been under discussion for two years but had not been completed. Furthermore, Chairman of the Trenggalek Regency Regional People's Representative Council Regional regulatory formation agency, Alwi Burhanudin explained, his party did not know exactly what the reason for the Regent withdrew several Local regulation Drafts at the end of 2018. However, a number of Draft Local regulations can be proposed again in 2019 to be discussed again. Previously it was known that, in 2018, the Regional regulatory formation agency regional people's representative council trenggalek regency received a proposal for discussion of 25 draft local regulations, but 7 draft local regulations proposed by the executive were actually withdrawn by the regent, so that there were 18 Draft Local regulations, while the remaining 18 Draft Local regulations were left only 1 Draft Local regulation. which has not been completed and the discussion will continue in 2019.⁵ So, this is the example, there is a draft regional regulations by regional heads before the process of discussing the draft regional regulations.

Difference with the Draft Law, if it has received mutual approval to be discussed then it cannot be withdrawn. In practice, many Draft Local regulations have entered the discussion process but are withdrawn. What's more, the withdrawal of the Local regulation Draft was carried out by the Regional Head which became the basis for the withdrawal of the Local regulation Draft from the discussion process.

⁴ DPRD Sumbar, Tidak Rampung di Akhir Sidang Pertama, Empat Rancangan Peraturan Daerah Dibahas di Luar Local regulation formation program 2022, <https://regional.people's-representative-council.sumbarprov.go.id/home/berita/1/1535>

⁵ Bioz Tv.id, Sempat Ditarik Dari Pembahasan, Rancangan Peraturan Daerah RTRW Bisa Dibahas Lagi Tahun 2019, <https://www.bioztv.id/news/parlemen/2019/01/11/sempat-ditarik-dari-pembahasan-Rancangan-Peraturan-Daerah-rtrw-bisa-dibahas-lagi-tahun-ini/>

2. Method

The research method used is the normative juridical law research method.⁶ The approach used with the statutory approach, the search system used with the *library research* method.⁷ With the approach of legislation, it will find an answer that the formation of local regulations must still refer to the principles of formil and materil in the formation of laws and regulations.⁸

3. Result & Analysis

3.1 Withdrawal of Local regulation Draft by Regional Head Before Discussion Process of Local regulation Draft

The formation of the regulation is an important part of establishing laws in the region and is the essence of the "legal formulation" that must be arranged by the local government in planning the development of the region. In planning the detailed spatial and regional planning of an effective and efficient area requires legal arrangements outlined in the legal aspect in order to have a juridical-normative and juridical-sociological nature. In essence, the making of perda is actually a form of rational problem solving. The first step is to lay out the problem to be addressed, and explain how the proposed regulation will be able to solve the problem. The concept or draft of the draft regulation must be a proposal for solving specific problems that have been identified and formulated. The draft regulation should also be studied empirically through public consultation and inter-agency discussions.⁹

The administration of a State will run well if the state institutions in it have a relationship that supports each other as a unit and runs in accordance with their respective positions, roles, authorities and responsibilities. Indonesia is a country whose territory is divided into provincial areas. The province was then further divided into districts and cities. Each region has a local government that is regulated by law. The division of state power is aimed at so that power is not piled on one body only, namely the central government. The majority of perda problems related to technical issues, such as titles that

⁶ Jonaedi Efendi Dan Johnny Ibrahim, *Lantas Penelitian Hukum Normatif Dan Empiris* (Depok: Prenada Media, 2016), PP. 42.

⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2011), PP. 15.

⁸ Eka NAM Sihombing, Cynthia Hadita, *Penelitian Hukum*, (Malang: Intrans Publishing, 2022), PP. 48.

⁹ Tomy M Saragih, "Konsep Partisipasi Masyarakat Dalam Pembentukan Peraturan Daerah Rencana Detail Tata Ruang Dan Kawasan," *Sasi* 17, no. 3 (2011): 11.

are not in accordance with the substance or material of the Perda. There are four indicators that cause perda problems, namely:¹⁰

1. The establishment of the Perda is not based on a priority scale in accordance with the development of the legal needs of the community;
2. The existence of Perda disharmoni vertically and horizontally with other laws and regulations;
3. The establishment of an uncoordinated, directed, systematic, and integrated Regulation prepared by the Regional People's Representative Council and Local Government, and
4. The existence of the perda that was drafted was not preceded by the inclusion of academic manuscripts.

The formation of a Perda, which in its substance does not reflect the needs and conditions of the people in the area, has a great opportunity to cause turmoil and rejection. It can also lead to a decrease in public trust in authority holders and regulatory designers in the area because they do not feel they have the existing regulations. In addition, if a Perda from the District and City Regional Government which in its substance is contrary to higher laws and regulations and on its application is contrary to the public interest, it may also result in the restriction of the Perda.¹¹

The draft regulation can come from the Regional People's Representative Council (initiative rights) can also come from the Governor, Regent / Mayor. If in a trial period, the Regional People's Representative Council and the Governor or Regent / Mayor submit a draft regulation on the same material, which is discussed is the draft submitted by the Regional People's Representative Council, while the draft submitted by the Governor, Regent / Mayor is used as material to be compared. Regarding the procedures for preparing the draft regulation derived from the Governor, Regent / Mayor, regulated by presidential regulations. The draft regulation derived from the Regional People's Representative Council is submitted by members of the commission, a combination of commissions or regional people's representative council fittings that specifically handle the field of legislation. Regarding the procedure for preparing the draft regulation, which comes from the Regional People's Representative Council is regulated in the regional people's representative council rules of conduct. in the framework of

¹⁰ M Fahmi Hazdan and Adi Sulistiyono, "Pendayagunaan Naskah Akademik Dalam Pembentukan Peraturan Daerah Kabupaten/Kota (Suatu Kajian Terhadap Kebijakan Pemerintah Daerah Dan DPRD Kabupaten Mempawah, Kabupaten Kubu Raya Dan Kota Pontianak Provinsi Kalimantan Barat).," *Jurnal Hukum dan Pembangunan Ekonomi* 5, no. 1 (2018): 147-159.

¹¹ *Ibid.*

socialization or publication of the draft regulation derived from the Regional People's Representative Council, its dissemination is carried out by the Secretariat of the Regional People's Representative Council, while the dissemination of the regional draft derived from the Governor or Regent / Mayor is carried out by the Regional Secretariat. The process of determining a regulation is carried out with the following conditions:¹²

1. The draft regulation that has been jointly approved by the regional people's representative council and the governor or regent / mayor is submitted by the leadership of the regional people's representative council to the Governor or Regent / Mayor, to be determined as a regulation
2. Submission of the draft regulation by the leadership of the regional people's representative council to the governor or Regent / Mayor, carried out within a period of 7 days at most, starting from the date of mutual approval given.
3. The draft regulation in question is determined by the Governor or Regent / Mayor, no later than thirty days since the draft gets mutual approval.
4. If the draft is not determined by the Governor or Regent of walikota within the grace period of thirty days above the draft of the regulation is legal to be a regulation and must be invited by loading it in the regional gazette.
5. If a regulation is not stipulated by the Governor or Regent / Mayor within the thirty-day grace period, the regulation is declared valid by including the sentence of its endorsement on the last page of the transportation regulation, which reads "This regulation is declared valid" and promulgated by containing it in the regional gazette. Addressing certain other circumstances that ensure the urgency of a draft regulation that can be approved jointly by regional people's representative council equipment that specifically handles the field of formation of perda and units that handle the field of law in local government. The preparation of the Perda draft is carried out based on the perda formation program. The draft regulation that has been jointly approved by the regional people's representative council and the regional head is submitted by the leadership of the regional people's representative council to the Regional Head to be designated as a Local regulation. The cycle of forming local regulations starts from the planning, preparation, discussion, endorsement or determination stage, withdrawal, to dissemination. In this context, the possibility of

¹² Eka N.A.M. Sihombing, Srinings Widati, Cynthia Hadita, "Penerapan Omnibus Law Dalam Pembentukan Peraturan Daerah (The Implementation of Omnibus Law in The Establishment of Local Legislation)," *Jurnal Ilmiah Penegakan Hukum* 7, no. 2 (n.d.).

the implementation of omnibus law methods in local regulations starts from the initial to the end, collectively collegial to minimize the local regulations that apply in an area.

Regional authority in the implementation of this autonomy has been delegated by Law No. 23 of 2014 on Regional Government in a general explanation mentioned that the region as a unit of legal society that has autonomy has the authority to organize and manage its territory in accordance with the aspirations and interests of its people as long as it does not conflict with the national legal order and the public interest. In order to provide more space to the Region to organize and take care of the lives of its citizens. In the framework of regional autonomy, the Regional Government is given the authority to form local regulations.¹³

The existence of Local regulations (Perda) is a prerequisite undoubtedly (*conditio sine qua non*) in implementing regional autonomy. With the amendment to Article 18 of the Constitution of the Republic of Indonesia of 1945 then significantly the implementation of regional autonomy has gained a strong constitutional foundation. Even in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (Law No. 12 of 2011), Perda is recognized as one form of legislation in Indonesia. The Perda is intended to implement a higher rule of law and accommodate the special conditions of the area concerned. The study of the formation of this Regulation is basically the study of law in the realm of law, but nevertheless it cannot be separated from the study of politics and sociology. Reviewing the formation of the Perda in the field of legislation must undoubtedly accept the fact that although guided by the law, the formation of the Perda is basically a reflection of socio-political processes. This is because the organ authorized to form the Perda is a political institution. Therefore, this paper tends to choose the assumption that every formation of the Perda is always influenced by certain political interactions that are taking place in the country concerned. Based on this assumption, it can be emphasized that a country whose political configuration is democratic, will also be democratic in the process of forming the Constitution. The formation of laws follows the socio-political structure of each state. For a country that adheres to an authoritarian political configuration, the formation of its laws will show authoritarian characteristics. If the process of forming laws is placed in the context of the socio-political structure of a democratic state, there will

¹³ Fauzi Iswari, Yohanes Alri, Mira. (2020). "Partisipasi Masyarakat Melalui Konsultasi Publik Dalam Proses Pembentukan Peraturan Daerah Di Kota Solok Tahun 2018". Pagaruyuang Law Journal. Volume 3, Nomor 2, PP. 214

undoubtedly be a compromise of conflicts of values and interests that differ in society.¹⁴

To organize regional autonomy, the local government and the Regional People's Representative Council are given the right by the central government to form local regulations (Perda). This right is a constitutional right explicitly stated in Article 18 paragraph (6) of the Constitution of the Republic of Indonesia of 1945. The General Explanation of Law No. 23 of 2014 concerning Regional Government Implementation confirms that local government is carried out by the regional head together with The Regional People's Representative Council. As the organizer of the local government, the position of the Regional People's Representative Council and the regional head is an equal partner that has different functions. The functions, duties and authorities of the Regional People's Representative Council have been explicitly regulated in Law No. 23 of 2014 concerning Regional Government Article 96 paragraph (1) jo. Article 149 paragraph (1) "Regional People's Representative Council has the function of forming a Regulation, budget, and supervision". The three functions are representations of the people, which are carried out by discussing the draft of the Perda with the regional head, agreeing or disapproving of the draft Perda, proposing the draft Of The Perda, and drafting the Local regulation formation program. Delegation of the formation of the Perda on the planning procedures for the preparation of Local regulation formation program is a justification for the hypothesis that the regulations formed by the central government have not been adequately used as guidelines for local governments and regional people's representative council in preparing local regulation formation program. The mechanism for preparing Local regulation formation program in the Regional People's Representative Council environment is different from that of the local government. In the local government environment is coordinated by regional devices in charge of law (bureau / legal section), while in the Regional People's Representative Council environment coordinated by Regional regulatory formation agency.¹⁵

The formation of perda is a very complex process. The process is not just an activity in formulating norms into legal texts carried out by the Regional People's Representative Council and regional heads who have the authority for it, but in the democratic era its reach extends to the struggle and interaction of socio-political forces that surround and reside in their regions. Steven Vago

¹⁴ Sugeng Santoso, "Pembentukan Peraturan Daerah Dalam Era Demokrasi," *Refleksi Hukum: Jurnal Ilmu Hukum* 8, no. 1 (2014): 1-18.

¹⁵ Asri Lasatu, "Urgensi Peraturan Daerah Tentang Program Pembentukan Peraturan Daerah Terhadap Kinerja REGIONAL PEOPLE'S REPRESENTATIVE COUNCIL," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 2 (2020): 201.

stated: "Lawmaking is a complex and continuous process, and it exists as response to a number of social influences that operate in society. The forces that influence lawmaking cannot always be precisely determined, measured, or evaluated." According to him, there are at least three things that affect the process of forming law, namely: interest groups, public opinion, and social science.¹⁶

The enactment of the principle of autonomy in the Indonesian state that divides authority between the center and the region is expected that all matters both mandatory and optional can be carried out in accordance with their respective authorities given by Law No. 23 of 2014 on Regional Government. Regional authority in the implementation of this autonomy has been required by Law No. 23 of 2014 concerning Regional Government in a general explanation mentioned that the region as a unit of legal society that has autonomy, authorized to organize and manage its territory in accordance with the aspirations and interests of its people as long as it does not conflict with the national legal order and public interest. Furthermore, the harmonization, rounding, and stabilization of the conception of the provincial regulation draft derived from the governor is coordinated by the law bureau and can include vertical agencies from the ministry that organizes government affairs in the field of law, while those from the provincial regional people's representative council are coordinated by provincial regional people's representative council equipment that specifically handles the field of legislation.¹⁷

The category of Perda that is considered problematic is a regulation that hinders regional economic growth and extends bureaucratic pathways. Perda which is considered to hinder the licensing and investment process and hinder ease of effort. In fact, there is a Regulation that the government claims has been contrary to higher laws and regulations and does not reflect tolerance between fellow residents in the region, will also be revoked by the government through the Minister of Home Affairs. Thus, harmonization in laws and regulations at the central and regional levels, as one of the agendas that are the priority of the Central Government.¹⁸

¹⁶ Ann Seidman, Robert B. Seidman dan Nalin Abeyserkeve, *Penyusunan Rancangan Undang-Undang dalam Perubahan Masyarakat yang Demokratis: Sebuah Panduan untuk Pembuat Rancangan Undang-Undang (Proyek ELIPS 2001)* 26-30.

¹⁷ Esti Nuriani. (2019). "Evaluasi Rancangan Peraturan Daerah Oleh Gubernur Sebagai Wakil Pemerintah Pusat Di Daerah". *Tadulako Master Law Journal*, Volume 3, No. 2, PP. 184-201.

¹⁸ Andryan, *Pencabutan Perda*, *Harian Waspada*, Senin 27 Juni 2016.

This is a state obligation that has been mandated in the Constitution of the Republic of Indonesia.¹⁹ Local people does not rule out the possibility of being exploited by irresponsible individuals to launch provocative actions on the local community.²⁰

The handling of all matters is entirely organized on the basis of its own initiative or discretion. This is related to the implementation of affairs that are the authority of the local government. Where in carrying out regional autonomy, local governments have the right to set local regulations and other regulations. Related in this context, according to Ali Marwan Hsb and Evlyn Martha Julianthy, the implementation or manifestation of regional autonomy must be made with rules as a reference in the implementation of local government authority. To carry out this based on existing provisions must be made in the form of local regulations. This can be seen from the material of the content of local regulations, one of which is in the framework of the implementation of regional autonomy.²¹

Based on the process of preparing local regulations in accordance with the local regulation formation program, in the implementation there are several obstacles found, especially in the implementation of techniques for drafting laws and regulations. These obstacles include:²²

- a. Limitations of human resources who have expertise in designing local regulations;
- b. Understanding the technique of drafting local regulations that are still weak;
- c. There are local regulations that are not equipped with academic manuscripts.

A. Hamid Attamimi stated: "That the understanding of the state based on the law, based on understanding substantively based on several principles. One of them is a country whose implementation is carried out by paying attention to the laws and regulations that take place by paying attention to the legal ideals of the Indonesian nation, and arranged with a level of definite

¹⁹ Imam Haryanto, Regulation of Foreign Investments in the Development of New Renewable Energy (EBT) in Indonesia, *Veteran Law Review*, Vol. 3, No. 1, 2020.

²⁰ Dewa Gede Sudika Mangku, Legal Implementation On Land Border Management Between Indonesia And Papua New Guinea Accroding To Stephen B. Jones Theory, *Veteran Law Review*, Vol. 1, No. 1, 2018.

²¹ Ali Marwan Hsb dan Evlyn Martha Julianthy, "Pelaksanaan Kewenangan Atribusi Pemerintahan Daerah berdasarkan Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah", *Jurnal Legislasi Indonesia*, Vol. 15 No. 2 - Juli 2018, PP. 8.

²² Nanang Al Hidayat, "Implementasi Legal Drafting dalam Proses Penyusunan Peraturan Daerah Kabupaten/Kota", *Jurnal Serambi Hukum*, Vol. 11, No.1, Februari - Juli 2017, PP. 81 - 86.

hierarchy." Thus it can be concluded that in a country the position of laws and regulations occupies a very strategic role, because the laws and regulations are used as guidelines in every action of the government and society.²³

The draft local regulation can be withdrawn before being jointly amended by the Regional People's Representative Council and the Regional Head. The withdrawal of the draft local regulation by the Regional Head, submitted by letter of the Regional Head accompanied by the reason for the withdrawal. The withdrawal of the draft local regulations by the regional people's representative council, carried out by the decision of the regional people's representative council leadership with the reason for withdrawal. The draft local regulations under discussion can only be withdrawn based on the joint agreement of the regional people's representative council and the regional head. the withdrawal of the draft local regulations can only be done in a plenary meeting of the regional people's representative council attended by the Regional Head. The recalled draft local regulations cannot be submitted again during the same session.²⁴

This is a record, because in Law No. 12 of 2011 concerning the Establishment of Laws and Regulations as amended by Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Establishment of Laws and Regulations does not contain a clear reason, in what case a draft of local regulations that have been submitted can be withdrawn. For this reason, it is necessary to formulate a norm that outlines the reasons for the withdrawal of the local regulation draft, so that the regional head cannot withdraw the draft local regulations that have been submitted without a clear and reasonable reason.²⁵

3.2 Practice in the Philippines

Before analyze the draft regional regulations by regional heads before the process of discussing the draft regional regulations in the Philippines, Let we discuss about the local government in The Philippines, so that we can get the point of view about the regional heads authority for the discussing the draft regional regulations. The implementation of regional autonomy in the Philippines is a mandate of the 1987 Constitution. Furthermore, the Philippines enacted The Local Government Code of 1991 which ceded power and function to local government units and strengthened mechanisms of community participation in government.³⁴⁶ Article 10 of the 1987

²³ Nasrullah Muhammadong, Implementasi Prinsip Negara Hukum dan Demokrasi Dalam Pembentukan Peraturan Daerah, PPU Oleo Law Review, Vol. 1 No. 2 (2017), 167-179

²⁴ *Ibid.*

²⁵ *Ibid.*

Constitution specifies that the territorial and political subsections of the Republic of the Philippines are provinces, cities, townships, and barangays, and the existence of autonomous regions for Mindanao and Cordilleras Muslims established by law. Related to the framework for regional autonomy enacted by The Local Government Code of 1991 which consists of:²⁶

1. Transferring responsibility for the delivery of basic services (previously part of the central government) to local authorities;
2. Transferring certain regulations and licensing powers previously returned to the central government to be part of the local government;
3. Increase internal revenue of local governments;
4. Expanding the power of local taxation;
5. Expanding the structure of LGU through the creation of preferred positions and mandates in local bureaucracies with the aim of making it more sensitive to local conditions at the local level;
6. Improving the relationship between national and local governments from a protection to a partnership; and
7. Expand the idea of government through formal government ideas and processes by encouraging the participation of nongovernmental organizations and people's organizations in various specialized agencies, supporting the implementation of joint CO-NGO collaboration and promoting local accountability capabilities in local government through recall mechanisms and initiatives.

In the Philippines, the power of the establishment of local regulations is in the hands of sangguniang or the local legislature. The interesting thing related to the legislature is that the Deputy Regional Head is ex officio is an official who leads the regional legislature. In addition, the regional legislature can be said not to be a pure legislative body, but as a tool of local government that carries out authority, duties, and responsibilities both in the field of government and regulation.²⁷

In the process of forming local regulations in the Philippines is carried out with an open mechanism. Because it requires technical knowledge, Sangguniang at all levels of local government can include civil society groups in local

²⁶ Husni Jalil, Eksistensi Pemerintah Aceh dalam Negara Kesatuan Republik Indonesia berdasarkan UUD 1945, (Banda Aceh: Syiah Kuala University Press, 2015), PP. 169 – 170

²⁷ This provision can be seen in The Local Government Code 1991 Section 48: Local legislative power sPPI be exercised by the Sangguniang Panlalawigan for the province, the Sangguniang Panlungsod for the city, the Sangguniang bayan for the municipality, and the Sangguniang barangay for the barangay

governments to go through people's legislative initiatives to gather research-based information and to prepare draft local regulations.²⁸

There are parameters of local regulation drafts that can be drawn by regional heads in the Philippines, namely if the draft local regulations are made without careful planning, threaten the State, potentially rejected because they do not meet the principles of formil and materil, and also the legitimacy of its implementation must be stated in the Local Government Law. We recommend that the parameters be accommodated in the process of forming perda and perda content materials in Indonesia.

3.3 Practices in Indonesia

Examples of withdrawal of the Local regulation Draft carried out by the Regional Head through the Regent's Letter, one of which is in Sumbawa, previously the local government had submitted 6 (six) draft regulations to be discussed at the discussion meeting of the draft regulation today, but guided by the provisions of Pasal 76 regulation of the Minister of Home Affairs Nomor 80 of 2015 concerning the Formation of Regional Legal Products. As Amended By Permendagri Number 120 of 2018. So, the local government withdrew the draft regulation on construction services business licenses and individual business registration marks through the Sumbawa regent's letter number 188.34/495/law/2021 dated August 27, 2021 Explained, constitutionally, the authority for the formation of the regional government owned by the local government is regulated in article 18 paragraph (6) of the constitution of the Republic of Indonesia in 1945. This provision is reaffirmed in article 65 paragraph (2) a of law number 23 of 2014 concerning local government. The regional head is authorized to submit a draft regulation to be discussed and approved with the regional people's representative council.²⁹

Practice in Indonesia, for example, The withdrawal of the discussion was carried out by the Regent of Trenggalek together with 6 other Local regulation Drafts that have not been completed in 2018. Based on the information of the Trenggalek Regency Regional People's Representative Council Regional regulatory formation agency, at the end of 2018.

Furthermore, there was also Maluku, a number of Local regulation Drafts proposed by the Regional Government, were withdrawn by the Maluku

²⁸ Ekawestri Prajwalita Widiati, "Local Legislative Drafting in the Unitary States; A Comparison between Indonesia and PhiliPPines", *Yuridika*, Volume 28 Nomor 3, September - Desember 2013, PP. 307.

²⁹ NewsOnline.id, Rancangan Peraturan Daerah Izin Usaha Jasa Konstruksi dan Tanda Daftar Usaha Perseorangan Ditarik, https://newsonline.id/berita/Rancangan_Peraturan_Daerah-izin-usaha-jasa-konstruksi-dan-tanda-daftar-usaha-perseorangan-ditarik/

Provincial Government, so that it was not discussed by the Maluku Provincial Regional People's Representative Council. One of the Draft Local regulations that was withdrawn was the Draft Local regulation on customary institutions. "On January 23, 2019, the local government withdrew the Local regulation Draft on indigenous institutions of Maluku Province through a letter number 188.44/0347 on the grounds that the Draft Local regulation on customary institutions regulates the same urgency as the Draft Local regulation on institutional guidelines and village government that has been established on January 22, 2019. According to him, the Maluku Provincial Regional people's representative council has established a program for the establishment of Local regulation (Perda) in 2019 with the decision of the Regional People's Representative Council Number 21 of 2019 dated May 27, 2019. There are 4 pieces of Local regulation Draft proposed by the Regional People's Representative Council initiative, and 11 pieces of Local regulation Draft proposed by the local government. However, he said, on October 22, 2019, there were 8 Draft Local regulations submitted to be discussed with the Regional People's Representative Council.³⁰

Referring to the provisions in article 77 paragraph 2 of the Regulation of the Minister of Home Affairs (Permendagri) Number 80 of 2015 concerning the establishment of regional legal products as amended by Permendagri Number 120 of 2018 concerning changes to Permendagri Number 80 of 2015, it is stated that paragraph 2 of the withdrawal of the Perda as intended in paragraph 1 can only be done in the plenary meeting of the Regional People's Representative Council attended by the regional head. Paragraph 3 of the revised Draft Local regulation cannot be submitted again during the same session.³¹

Article 76 paragraph (1) of the Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Laws and Regulations stipulates that "The Draft Provincial Regulation can be withdrawn before being discussed jointly by the Provincial Regional People's Representative Council and the Governor". Furthermore Article 76 paragraph (2) stipulates that "The Draft Provincial Regulation under discussion can only be withdrawn based on the mutual agreement of the Provincial Regional People's Representative Council and the Governor".

³⁰ Berita Seru, Ditarik Pemprov Maluku, REGIONAL PEOPLE'S REPRESENTATIVE COUNCIL Batal Bahas Sejumlah Rancangan Peraturan Daerah, <https://beritaseru.blogspot.com/2019/10/ditarik-pemprov-maluku-regional-people's-representative-council-batal-bahas.html>

³¹ Sulteng Raya, Pembahasan Rancangan Peraturan Daerah BG dan IMB Dihentikan, <https://sultengraya.com/read/115606/pembahasan-Rancangan-Peraturan-Daerah-bg-dan-imb-dihentikan/>

Furthermore, in Article 76 paragraph (1) of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 80 of 2015 concerning the Establishment of Regional Legal Products stipulates that "The draft provincial regulation can be withdrawn before being discussed jointly by the provincial Regional People's Representative Council and the governor. Article 76 paragraph (2) "Withdrawal of the provincial draft regulation as intended in paragraph (1) by the governor, submitted by the governor's letter accompanied by the reason for withdrawal". Article 76 paragraph (3) "The withdrawal of the provincial draft regulation as intended in paragraph (1) by the provincial regional people's representative council, is carried out by the decision of the provincial regional people's representative council leadership **accompanied by the reason for withdrawal**".

However, so far in Law No. 23 of 2014 there has been no regulation of reasons in the form of clear parameters for the withdrawal of draft local regulations. The provisions of Article 236 of Law No. 23 of 2014 concerning Local Government determine that the material of the perda content is as follows: (1) To organize Regional Autonomy and Assistance Duties, the Region forms a Local regulation. (2) Perda as intended in paragraph (1) sPPI be formed by regional people's representative council with mutual approval of regional head. (3) Perda as intended in paragraph (1) contains content material: a. implementation of Regional Autonomy and Assistance Duties; and b. further elaboration of the provisions of higher laws and regulations. (4) In addition to the content material as intended in paragraph (3) of the Perda may contain local content material in accordance with the provisions of the laws and regulations.

All these parameters certainly aim to make the concept of regional autonomy run on a predetermined path, bring local government services closer to the community and most importantly do not threaten the Unitary State of the Republic of Indonesia, for that careful planning is needed so that the parameters are accommodated in the process of forming perda and regional content material.³²

4. Conclusion

To improve the quality of local regulations as one of the sub-systems of national laws and regulations, it is necessary to improve various regulations related to formil and material aspects. From the formil aspect, it is necessary to improve the withdrawal mechanism to the draft Local regulation before discussion by expressly containing the parameters that are used as the reason for the withdrawal. Thus, the process is not abused by the Regional Head. 3

³² Eka NAM Sihombing, "Initiating Aspirational Local regulations," in *The Paradigm of Reform Law Policy*, ed. Sophia Hadiyanto (Jakarta: Sofmedia, 2010). thing. 189

Article in several laws and regulations whose substance exists regulates the withdrawal of draft local regulations but there is no clear reason for withdrawal and definite parameters for withdrawing the draft local regulations so that it is necessary to revise to: First, Article 76 of the Minister of Home Affairs Regulation Number 80 of 2015 concerning the Establishment of Regional Legal Products As Amended by Permendagri Number 120 of 2018. Second, Article 76 of the Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Laws and Regulations. And Third, Article 236 of Law Number 23 of 2014 concerning Local Government.

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