ESTABLISHMENT OF SPECIAL REGIONAL REGULATIONS IN THE IMPLEMENTATION OF SPECIAL REGIONAL GOVERNMENT IN INDONESIA

Martinus Guntur Ohoiwutun¹, Marthen Arie², Achmad Ruslan³, Zulkifli Aspan⁴
¹,²,³,⁴ Faculty of Law, Hasanuddin University, Indonesia
¹E-mail: etnirmangal@gmail.com

ABSTRACT:
This study aims to examine the essence of the formation of special regional regulations in the implementation of special regional government and examine the ideal construction of the formation of special regional regulations in the implementation of special regional government. This research is normative legal research. The technique of collecting legal materials is carried out through library research, collecting documents, statutory regulations, and as a complement to legal materials interviews. They are then systematized, explained, and then given arguments to form an interconnected amongst them. They are analyzed qualitatively. The study results show that the essence of granting special autonomy to Papua through Law No. 21 of 2001 is perfect in terms of legal politics. The problem arises when the special autonomy is implemented through the Perdasus. The difference of interpretation of norms and the absence of a derivative regulation between Law No. 21 of 2001 and Perdasus was annulled by the central government because it was contrary to the implementing regulations of Law No. 23 of 2014. Therefore, harmonization of laws and regulations is needed and can be done in 3 (three) ways. First, to revise the organic regulations of Law No. 23 of 2014 by adding specific articles that exclude Papua from the provisions contained in the quo regulations. Finally, establishing organic rules from Law No. 21 of 2001. The Perdasus can then be derived from a quo regulation and no longer considered contrary to the implementing regulations of Law No. 23 of 2014.

Keywords: Regional regulations; special; Papuans

I. INTRODUCTION
There are two most important reasons why special autonomy for the Papua Province is necessary. First, to give a large portion of the flexibility to the Papua Province to develop and manage its government affairs under the distinctive character of the region. Second, to ensure the development and experiences of the Papuan Provincial Government continue to run within the framework of the integrity of the Republic of Indonesia.

Papua Province has historically been a territory that the Netherlands and Indonesia had fought over is an undeniable fact. This conflict was then resolved when the Papua Province was handed over from the Dutch Government to the Government of the Republic of Indonesia through a United Nations Temporary Executives Authority (UNTEA) on October 1, 1962. Then on May 1, 1963, UNTEA handed over that power to the Government of the Republic of Indonesia. [1] But instead of developing together with other regions of Indonesia, Papua has experienced social, educational, political, economic discrimination, and even human rights crimes. In addition, the stigma of the Free Papua Organization, separatists, the Security Disruption Movement, all of these labels become instruments to suspect, pursue, arrest, rape, imprison, torture, kill and eliminate the people and nation of West Papua. [2]

According to Rathgeber, the conflict in Papua is rooted in an injustice that stems from the unequal distribution of economic development results carried out by the New Order. The process of unequal distribution of the results of economic development is ultimately institutionalized into an effort to impoverishment that is structured and permanent whether it is intentional or automatic, the concept of economic development is carried out and at the
same time functions as an ideology, the state inevitably has to pay more attention to the needs of the center than the regions. as a source of power for development funds. [3]

The state's acknowledgement of special regional government to the Papua Province is stipulated by Law Number 21 of 2001 concerning Special Autonomy for the Papua Province as amended by Law No. 35 of 2008 concerning Stipulation of Government Regulations in Lieu of Law No. 1 of 2008 concerning Amendments to Law No. 21 of 2001 concerning Special Autonomy for the Province of Papua (hereinafter abbreviated as Law No. 21 of 2001). The application of asymmetric decentralization to Papua Province certainly has a different background from other regions in Indonesia. The background in question is related to Papua's integration into Indonesia, human rights violations and discrimination related to race. This is under the results of research entitled Papua Road Map in 2009, which found three root problems in the Papua conflict, including political status and history, development failures, and state violence and human rights violations. [4] Special autonomy is a political solution to resolve the problems, but it has not significantly changed.

In carrying out special regional governments, they are given the authority to form regional regulations (Perda) to carry out the authority of regional governments that implement asymmetric decentralization. For the formation of statutory regulations, of course, the right to form legislation has been recognized in Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia. [5] On this basis, the Papuan Provincial Government informing laws and regulations is known as two regional regulations: the Papua Province Special Regional Regulation (Perdasus) and the Provincial Regulation (Perdasi).

Regional regulations are the primary and basic requirement in building decentralization and regional autonomy. Regions have attributive authority, authorized to make local regulations to organize their households, but in reality, the local regulation design lacks a systematic legitimacy system. The formation of laws and regulations (legislation) is very complex because, in terms of material content, regional regulations or regional legal products embody the wishes and opinions of the community. In addition, there is a need for regulations that contain more burdens as lower regulations require more concrete material. Perda has a narrower level of flexibility from a theoretical perspective because it cannot conflict with higher regulations. [6]

Based on the provisions of Article 29 paragraph (4) of Law No. 21 of 2001, the process/stages of forming the Perdasus were carried out under Law No. 12 of 2011 as amended by Law no. 15 of 2019 concerning Amendments to Law No. 12 of 2011 and following the mechanism/stages of Formation of Regional Regulations under Law No. 23 of 2014 concerning Regional Government which starts from the planning stage, the preparation stage, the discussion stage, the stipulation/ratification stage, the promulgation and dissemination stage.

In planning the preparation of the Perdasus, it is carried out in a Regional Legislation Program or the Formation of a Regional Regulation Program and the preparation of the Academic Paper on the Draft Perdasus which is carried out under the technique of preparing academic texts. Furthermore, harmonization, unification and consolidation of the draft Perdasus concept were carried out by the Provincial Government (Governor). In this case, the agency or regional apparatus organization that proposed/initiated the Draft and coordinated with the Provincial Law Bureau. Meanwhile, the Draft Perdasus originating from the Papuan House of Representatives (DPRP) is coordinated by the DPRP apparatus, which handles the Legislation Sector (Baleg) or the Perda Formation Agency (Bapemperda) explicitly. Provincial Regulations and Special Regional Regulations are regulated in the Papua Province Regional Regulation No. 9 of 2010 concerning the Establishment of Provincial Regulations and Special Regional Regulations.

The formation of a Perdasus is the process of making regional regulations which start from planning, preparation, technical preparation, formulation, discussion, stipulation/ratification and dissemination. Related to the planning for the preparation of the Perdasus, the problems are: First, whether the formation of the Perdasus in the context of the implementation of special powers originating from Papua's special autonomy has been established by the principles of establishing good laws and regulations and taking into account the appropriate content. The type and hierarchy of legislation do not conflict with other higher laws and regulations. Several Perdasus have been made contrary to the higher hierarchy of laws and regulations; even some of the Perdasus are not mandated by the Special Autonomy Law. [7] Second, whether the preparation of the formation of Perdasus and provincial regulations (Perdasi) in Papua province has been carried out in a planned manner in the regional legislation program (Prolegda) as confirmed in Law No. 12 of 2011, which mandates the importance of regional legislation
programs in the preparation of the formation of regional regulations. Prolegda is a planning instrument for forming provincial regulations or regency/municipal, regional regulations prepared in a planned, integrated, and systematic manner. Concerning the Prolegda in the formation of the Perdasus, as far as I know, it has never been implemented, neither by the provincial government nor by DPRP.

Third, regarding the preparation of the Draft Perdasus, it shows that the drafting of the Perdasus does not begin with the preparation of an academic text. It has caused many Perdasus to implement special autonomy not to be appropriately executed to improve Papua's community welfare and development progress. Still, the Perdasus made, in the end, is only used as a budget planning instrument. Fourth, specifically regarding the dissemination of the Draft Perdasus, it is almost certainly never carried out by either the provincial government or by the DPRP to the community or non-governmental organizations or universities to provide input on the material content Perdasus draft. It has led to many draft Perdasus, even the Perdasus, which was made useless and even only consumed the regional budget, but then did not benefit the Papuan people as expected. Therefore, implementing the formation of the Perdasus has caused various legal problems in the regions and is considered unable to answer the needs of special regional government administration or is even considered a product that is formed contrary to higher laws and regulations. Even the special regional regulations that began have not answered the community's legal needs, so the conflict in Papua Province seems never to end.

The focus of this research is to find out the essence of the formation of special regional regulations in the implementation of special regional governments. How is the ideal construction of the formation of special regional regulations in the implementation of special regional governments.

II. RESEARCH METHOD

The type of research is normative legal research. This study used several approaches, namely the statutory approach, the conceptual approach, the historical approach, and the comparative approach to law. The sources of legal materials consist of primary and secondary legal materials. Analysis of legal materials is carried out by constructing juridical by making analogies and reversing propositions related to the formation of regional regulations formed by special regional governments. Further analysis of legal materials is carried out systematically to find the link between a legal concept or legal proposition between equal and unequal laws and regulations.

III. RESULTS AND DISCUSSION

3.1. The Essence of Formation of Special Regional Regulations in the Implementation of Special Regional Governments

The formation of the Perdasus was more constrained by the understanding of the functions and interests of the Pegasus and the capacity of human resources in the three institutions, in this case, the DPRP, the Governor, and the (Papuan People’s Assembly (MRP). The work of institutions to overcome poverty experienced by indigenous Papuans is expected to change people's lives with the formation of a Perdasus. In addition, the Perdasus will reduce conflict in Papua Province, but it has not shown a change in reducing friction. In line with this, the argument from John Rawls that values such as justice, equal rights, and morality are human traits that need to be taken into account and developed. Fight for justice that can be enjoyed by all citizens, including those who are vulnerable and poor. It is called equity or distributive justice. Political institutions must implement a society with a strong consensus on the principles of justice. [8]

It can understand that legislation is part of the law and has an urgent value for developing the Indonesian legal system in the future. Therefore, it is necessary to increase the capacity of legislators so that they can contribute to the development of national law. It is appropriate to realize that in Indonesia as a state of law, it is necessary to develop a comprehensive, planned and sustainable national law. It has become a common problem that in the formation of regional regulations, among others, lack of guidance on the techniques of drafting existing laws and regulations, in-depth study of academic texts, preparation of programs for the formation of regional regulations that are not following the legal needs of the community and the absence of harmonization and synchronization of laws and regulations. Invitations, the lack of existing human resource capabilities, and the preparation of regional regulations are still influenced by short-term interests and prioritize local and elite political interests. Thoughts about the formation of Perdasus to provide benefits for changing the lives of indigenous Papuans who are still far behind compared to other parts of Indonesia, of course, Perdasus has a role in creating a transformation of the lives of indigenous Papuans. The Perdasus must aim to provide benefits to indigenous Papuans by providing
education, health, transportation, water, and social security so that the lives of indigenous Papuans are better. In addition, the Perdasus is not effective in implementing programs to provide services and does not create convenience for indigenous Papuans, especially in terms of employment.

The implementation of special regional government in Papua Province or special autonomy is considered a failure because, with a large budget from 2002 to 2019, the funds disbursed amounted to Rp. 83.93 trillion, consisting of special autonomy funds of Rp. 64.92 trillion and additional funds for new infrastructure provided starting in 2007 amounted to Rp. 19.01 trillion. Meanwhile, for West Papua Province, in the period 2008-2019, the total funds that have been disbursed from the central government reached Rp. 30.27 trillion, consisting of special autonomy funds of Rp. 20.91 trillion and additional infrastructure funds of Rp. 9.36 trillion. However, West Papua Province received additional infrastructure funds first in 2008, while only giving special autonomy funds in 2009. [9]

With the special autonomy funds received, it will impact the Human Development Index (HDI) in the Provinces of Papua and West Papua from 2011 to 2018, which is also in line with the national level. However, the HDI of the provinces of Papua and West Papua is always the lowest nationally. The HDI in Papua Province did not reach the target set in the RPJMD of 70.00 in 2018. Even so, Papua Province has the second-best average HDI growth rate of 0.70 per year. It should note that West Papua Province has an HDI growth rate of 0.52 per year, which is ranked 29th out of 34 provinces in Indonesia. [10] Meanwhile, in the context of poverty rates in Papua and West Papua Provinces, they are still the two highest nationally. Still, there is a trend of decreasing poverty rates in Papua and West Papua Provinces; even the average poverty rate decline in Papua Province is 1.14% per year. West Papua at 1.49% per year is the best nationally. The disparity in poverty levels needs to be a concern, in Papua Province, namely in Merauke Regency, by 10.78%. In Deiyai Regency, 44.32% or almost half of the area's residents are below the poverty line. The disparity in West Papua Province is relatively more minor, namely the poverty rate of Sorong City of 15.44%, while in Tambrauw Regency, it is 33.66%. [10]

According to Montesquieu, to avoid the formation of laws that tend to favour and benefit the parties/groups in power, and to prevent the formation of laws that are repressive and threaten the freedom of citizens, as well as to ensure the practical enactment of a law, the formation of laws must pay attention to and guide certain principles or principles informing laws, namely:[11]

a. If the legislator wants to convey the reasons for making his law, it is better if these causes have a proportional value to their position.

b. If a law is not valid, it is better to get rid of it because it will only weaken the law. Every law made must give effect, and its influence must not deviate from what it has found.

c. The law must contain convenience and directness. If it is made to punish people unfairly, the law itself must contain provisions that are as clean as possible.

d. The arrangement is concise, ordinary and straightforward. Direct expressions are usually easier to understand than indirect expressions. The word of law should appeal to the same idea in everyone.

e. Laws should be uncomplicated because they are designed for ordinary knowledgeable people. It was not intended for a logician but for people of common reason.

f. If the law does not require specialization and certain limitations, it is much better if removed as far as possible. Details of detail will make people need more information that is new.

g. There is no need to make changes to the law if there is no sufficient reason.

Soerjono Soekanto further states several conditions that must be met in forming a law so that lawmakers are not arbitrary. [12] in terms of the special regional authority, the Papuan provincial government has power in all government areas, except for absolute authority, which is the authority of the Central Government. A Perdasus or Perdasi further regulates the implementation of all areas of authority of the Papua Provincial Government. Meanwhile, district/municipality regional authorities have the authority based on this law which Perdasus and Perdasi will further regulate. However, in reality, the authority of the district/city government to date in the formation of Regional Regulations does not yet clearly have the authority to establish Perdasus and Perdasi as
referred to in Article 4 paragraph (4) of Law No. 21 of 2001. In addition to implementing authority based on special autonomy, district/city governments also carry out regional autonomy and assistance tasks based on Law No. 23 of 2014 concerning Regional Government.

In line with the granting of special powers in implementing the special autonomy policy, the special powers can be implemented when they are specifically regulated by the authority of the Papua Provincial Government (Governor) and the DPRP. Indeed, the MRP, as the institution in charge and authorized, gives consideration and approval to the Draft Perdasus submitted by the DPRP and the Governor. However, the problem is whether the formation of the Perdasus in the context of implementing the special powers originating from Papua's special autonomy has been following the principles of establishing good laws and regulations and taking into account the appropriate content according to the type and hierarchy of legislation and not contrary to other higher laws and regulations.

Uncertainty about the authority of the regencies/municipalities in Papua Province and the absence of authority arrangements in the context of affairs have prevented the implementation of special autonomy from being carried out optimally. Conflicts in implementing special autonomy are caused by the absence of regulation of provincial and district/city affairs in the implementation of special autonomy. In addition, the preparation of the formation of Perdasus and Perdasi in Papua Province has been carried out in a planned manner in the program for the formation of Regional Regulations as regulated in Article 239 paragraph (1) of Law No. 23 of 2014 or in Law No. 12 of 2011 as amended by Law No. 15 of 2019 is called Prolegda which mandates the importance of the Regional Legislation Program in drafting the formation of Regional Regulations. Prolegda is a planning instrument for forming provincial regulations or regency/municipal regulations that are prepared in a planned, integrated, and systematic manner. The preparation and stipulation of the Prolegda as a plan for forming the Perdasus is ready and stipulated every year before the stipulation of the draft regional regulation on the Provincial APBD and Regency/Municipal APBD. The DPRD determines Prolegda. However, the Provincial DPRD or the Governor may submit a draft Perda outside the Prolegda under certain circumstances under Article 38 of Law No. 12 of 2011 concerning the Establishment of Legislation.

The establishment of Prolegda as a planning instrument is very urgent. It can provide an objective picture of problems and the formation of Regional Regulations in the regions, accelerate the process of forming Regional Regulations by focusing on the activities of drafting Regional Regulations according to the priority scale set and controlling activities for the formation of Regional Regulations. The formation of Perdasus remains in the unity of the Indonesian legal system. Therefore, it is hoped that the formation of the Perdasus can be prepared in a planned manner in the Papua Province Regional Legislation Program in the context of implementing Papua's special autonomy to increase the acceleration of government administration, regional development and public services to improve the welfare of the Papuan people within the Unitary State of the Republic of Indonesia.

3.2 Ideal Construction for the Establishment of Special Regional Regulations in the Implementation of Special Regional Governments

In planning the preparation of a Perdasus, it must be carried out in a regional legislation program or a program for the formation of a Regional Regulation, the mention of which is in Law No. 23 of 2014 concerning Regional Government and also the preparation of the academic Draft of the Perdasus draft which carried out by the technique of preparing academic texts. Furthermore, harmonization, unanimity and consolidation of the draft Perdasus concept were carried out by the Provincial Government (Governor). In this case, the regional apparatus proposing/initiating the Perdasus Draft and coordinated with the Provincial Law Bureau. Meanwhile, the Draft Perdasus originating from the DPRP is coordinated by the DPRP apparatus which, handles the Legislation Sector (Baleg) or the Regional Regulation Formation Agency explicitly as stated in Law No. 23 of 2014 concerning Regional Government.

To implement the provisions of specific articles in Law No. 21 of 2001, a regional regulation of the Papua Province was made and stipulated, which we have discussed since the beginning as a Perdasus. Hierarchically, the absence of space for Government Regulations as a liaison between the law and the Perdasus aims to give Papua the freedom to regulate partial things, protect and empower the indigenous Papuan people. Law No. 21 of 2001 accommodates the fundamental right to realize the value of justice. Thus, the Perdasus is an instrument for learning justice and equality and providing more treatment (positive discrimination) to enjoy their rights in a unitary state. There may be differences in the material of the Perdasus with the national law if its formation does
not follow the provisions of Law No. 12 of 2011, as amended by Law No. 15 of 2019. Due to legal politics played by Papuan actors, which are very thick with political interests.

Based on the above argument, there could be a difference between a Perdasus and national law because it is not uncommon for a Perdasus to be made based on the political interests of certain groups in Papua. At the same time, juridically, every statutory regulation has a hierarchy, where the regulations below may not conflict with the prevailing laws and regulations. Higher or above. For example, regional regulations (Perda) must not conflict with Government Regulations or Presidential Regulations and laws. [13] It is under the principle of a unitary state. It means that any form of specificity is not an exception to the general rule. But only as an authority given only to a region because that region only owns the special original character. In essence, there is always a value that is the highest reference for all types of legislation. All interests regulated in the Perdasus must be within the Unitary State of the Republic of Indonesia's scope and adjust their formation to the prevailing laws and regulations.

It can be seen that there is no single regional regulation that can exist if the values in the regional regulation conflict with national law. It is in line with the opinion of M.C. Burkens, who argues that decentralization is not intended as a process of completely detaching oneself from the higher government. Still, decentralization is more related to the distribution/delegation of authority from higher institutions to lower and lower institutions.[14] As a unitary state, decentralization is a form of tolerance from the Central Government to regional government administrators in granting authority to carry out affairs that can become government affairs for regional government administrators. The delegation of authority in a unitary state does not mean that the recipient of the authority can act without supervision from the central government administration.

Regarding decentralization, which led to the authority to make regional regulations by local governments, the content of the regional regulations contains all the material for the implementation of autonomy and assistance tasks, accommodates special regional conditions, and further elaboration of higher laws and regulations. Local regulations are regulations that are closest to aggregating community values in the regions. This opportunity is open because Perda can contain values identified as special conditions of the region. For this reason, there are many regional regulations whose contents regulate local government with a local character. Thus, the aspect of public interest, which must be the primary concern in the formation of the Perdasus (material content), so that the people's aspirations in the area are accommodated.

IV. CONCLUSION

It can conclude that the essence and purpose of granting special autonomy to Papua through Law No. 21 of 2001 is the best way provided by the government, particular the legal politics approach. The big challenge of the law is to harmonize between Law No. 21 of 2001 and the Perdasus. It is because it is contrary to Law No. 23 of 2014. Therefore, the right solution to answer this is to harmonize regulations. Thus, the revision of Law No. 21 of 2001 and Law No. 23 of 2014 is needed. Another aspect is to establish organic rules from Law No. 21 of 2001. The Perdasus can then be derived from the quo regulation and is no longer considered to conflict with the implementing regulations of Law No. 23 of 2014.

REFERENCES

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