

Evaluation Of The Local Regulations Draft Of Bengkulu Selatan Regency Concerning Local Taxes And Local Retributions By The Governor

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ABSTRACT

Evaluation is the study and the assessment on the local regulation draft regulated in accordance with the law in the field of local government and other statutory regulations to find out if there are things that are contrary to the public interest, and/or higher legislation and/or decency. The evaluation on the local regulation draft in the regency/city area regarding local taxes and Local Retribution by the governor as a representative of the central government is a form of authority de-concentration delegated by the central government to the governor. The evaluation process is carried out before the relevant legal norms are binding on the general public. The central government gradually evaluates, tests, and even rejects the local regulation draft. Regarding the implementation of the evaluation, in practice it still creates complexities of obstacles in the evaluation of local regulation draft which actually has an impact on legal certainty, especially the legal interests of the district/city government. The problems of this research were how to evaluate the implementation of the Local Regulation Draft concerning Local Taxes and Local Retribution by the Governor and the obstacles in the implementation of the evaluation of the Local Regulation Draft concerning Local Taxes and Local Retribution by the Governor. The approach method used in this research was the normative legal method (juridical normative), while the analysis used was qualitative analysis. The data sources used were primary legal materials obtained through laws and regulations, and secondary legal materials sourced from various official documents. The results of the study indicate that the implementation of the evaluation of the local regulation draft in the regency/city area regarding local taxes and local retribution by the Governor seen from the role and authority of the institution has been in accordance with the legislation, but when viewed from the side of the procedures and time regulated in its implementation it has not been effective and does it not provide legal certainty. Obstacles in evaluating the local regulation draft in the regency/city area are the ineffectiveness of tiered supervision and the inaccuracy of time as stipulated in the legislation.

Keywords: Evaluation; Local Regulation Draft; Local Taxes and Local Retribution; Governor.

INTRODUCTION

Background of the Research

In carrying out government affairs which are the authority of the region, the Local Head and the Local People's

Representative Council as the organizer of the Local Government make a local regulation as the legal basis for the region in implementing local autonomy in accordance with the conditions and

aspirations of the community as well as the peculiarities of the region. Local regulations made by regions only apply to the jurisdictional boundaries of the concerned regions. However, the local regulations stipulated by the regions may not conflict with the laws and regulations at a higher level in accordance with the hierarchy of laws and regulations.¹

In order that the regulation of local regulations is in line with national law and does not conflict with the public interest, a supervisory mechanism is regulated in Law Number 23 of 2014 concerning Local Government. Likewise, for the Local Regulation of Taxes and Local Retribution, special arrangements are made through Law Number 28 of 2009 concerning Local Taxes and Local Retribution.

Law Number 23 of 2014 concerning Local Government gives the government the authority to oversee local regulations both when they are still in the form of draft local regulations and after they are promulgated. Law Number 23 of 2014 concerning Local Government has determined supervision of regions in the form of preventive supervision through evaluation processes and repressive

supervision through the cancellation of local regulations.²

Based on the provisions of Article 245 Paragraph (1) and Paragraph (3) of Law Number 23 of 2014 concerning Local Government, supervision of local regulation draft uses the term evaluation. The use of the term evaluation here is the authority of the above government on the draft local regulation that has been approved by the government below it. In this case, the central government evaluates the draft local regulation that has been approved by the provincial government or the governor evaluates the draft local regulation approved by the regency/city government.³

In addition to Law Number 23 of 2014 concerning Local Government, the same arrangements regarding the authority and procedures for evaluating the local regulations draft on taxes and local Local Retribution are also regulated in Article 157 of Law Number 28 of 2009 concerning Local Taxes and Local Retribution.

Although the procedures have been fully regulated, evaluation of local regulations draft should not only be viewed from the government's point of

¹ Law Number 23 of 2014 concerning Local Government, General Explanation of Part Eight First Paragraph

² Nurbaningsih, Enny. *Problematika Pembentukan Peraturan daerah, Aktualisasi Wewenang Mengatur Dalam Era Otonomi Luas*, PT. RajaGrafindo Persada. Depok. 2019. p. 336

³ Imam Soebchi, Op. Cit, pp 191 -192

view related to the supervision of local regulations draft, but it must also be viewed from the point of view of legal certainty, objectives and benefits for local governments, especially regencies/cities. The aspect of legal certainty is very important for regency/city governments in the stages and process of evaluating the draft local regulation on local taxes and local Local Retribution because the target of achieving local original income through local taxes and Local Retribution will affect the financing of local development plans as outlined in the local revenue and expenditure budget.

In addition, there is also a 15 (fifteen) day period in the evaluation process. This stipulation is intended to provide certainty for the status of the evaluated local regulations draft related to legal certainty.

Then the problem regarding the affirmation of the time limit is not only about the time but needs to be balanced with the "rights of the district/city". The law does not regulate the provisions if the evaluation time limit is passed or expired, there are legal consequences that the district/city is obliged to implement it according to the provisions and has the right to stipulate the local regulation draft into a local regulation so that the existing regulations do not seem "one-sided".

In its journey, both the process and the stages still have problems as mentioned above, therefore, this is what encourages the author to study and examine the implementation of tiered supervision, the process and stages of evaluation as well as the factors that become obstacles in the implementation of the evaluation of the local regulation draft, particularly evaluation of draft of regency/city regulations concerning local taxes and local Local Retribution.

Moving on from such a rationale that prompted the author to conduct research with the title: **Evaluation of the Local Regulations Draft of Bengkulu Selatan Regency Concerning Local Taxes and Local Retributions by the Governor.**

Identification of the Problems

1. How was the evaluation of the Local Regulation Draft concerning Local Taxes and Local Retribution carried out by the Governor?
2. What were the obstacles in implementing the evaluation of the Local Regulation Draft on Local Taxes and Local Retribution by the Governor?

RESEARCH METHOD

The approach method used in this research was the normative legal method (juridical normative). Normative Legal Research is research or legal writing that is

carried out by researching library materials which are secondary data.⁴

RESEARCH RESULTS AND DISCUSSION

Evaluation of The Local Regulation Draft Concerning Local Taxes and Local Retribution Carried Out By The Governor

Theoretically, the formation and testing of local regulations is based on the teachings of Hans Kelsen, namely tiered legal norms (*stufenbau des rechts*), where the legal norms contained in a regulation must not conflict with the legal norms regulated in the regulations that are hierarchically above it. Broadly speaking, the teaching of tiered legal norms (*stufenbau des rechts*) revolves around the understanding that a legal norm that is below must not conflict with a legal norm that is above. A norm is valid because it is created in a certain way, that is, it is determined by another norm above it.⁵

In order to ensure that there is no conflict between lower regulations and higher regulations in the local government administration system, the draft of regency/city local regulations concerning taxes and Local Retribution before being stipulated as local regulations must be

evaluated first by the governor as the representative of the central government in the region. Evaluation is mandatory which is also a form of preventive guidance and supervision.

Thus referring to the General Elucidation of the 16th paragraph of Law Number 28 of 2009 which regulates the preventive supervision model and repressive supervision, the preventive supervision model is carried out in stages where the Governor supervises the regency/city local regulations draft on Local Taxes and Local Retribution, while the Minister of Home Affairs supervises the provincial regulations draft. This form of preventive supervision is known as evaluation.

As a form of preventive supervision, evaluation of the local regulations draft concerning local taxes and Local Retribution in a normative juridical manner is a form of statutory orders (attributive authority) given to the governor in his position as the representative of the central government in the region.

The evaluation of the local regulations draft concerning local taxes and local Local Retribution carried out by the Governor is a form of de-concentration authority delegated by the central government to the governor. Therefore, in carrying out his duties and authorities as a

⁴ Soerjono Soekanto, *Metode Penulisan Hukum*, Jakarta: UI Press, 2002 p. 82

⁵ Imam Soebchi, *Judicial Review Perda Pajak dan Retribusi Daerah*, Bandung, Sinar Grafika, 2013, p.9

representative of the central government, the Governor is assisted by the Governor's secretary who is *ex officio* held by the Provincial Secretary of the Region who is assisted by the Secretariat and Experts.⁶

Thus, the position of the Governor as the representative of the central government in the regions in evaluating the local regulations draft in a formal juridical manner does not have a device or institution, because in this case the governor is considered as one of the central government apparatus.

In order to facilitate and expedite the implementation of the duties and functions of the governor as the representative of the central government in evaluating the draft of regency/city local regulations concerning local taxes and Local Retribution, the governor may form an Evaluation Team which is determined by the Governor's decision. Membership of the team can come from elements of civil servants from local apparatus in charge, experts, experts or academics and/or vertical agencies whose operational evaluation teams are carried out and are in the Provincial Legal Bureau.

Normatively, the Draft of Regency/City Local Regulation

⁶ See Article 17 of Government Regulation Number 19 of 2010 concerning Procedures for the Implementation of Duties and Authorities as well as the Financial Position of the Governor as a Representative of the Government in the Province

concerning local taxes and local Local Retribution that have been mutually agreed upon by the regent/mayor at the latest 3 (three) days is submitted to the Governor as the representative of the Central government for evaluation in order to test its conformity with the provisions of the legislation, higher order and public interest. In conducting this evaluation, the Governor consults with the Minister of Home Affairs and then the Minister of Home Affairs coordinates with the Minister of Finance.

Then based on the results of the consultation, the governor submits the evaluation results to the regent/mayor with a maximum grace period of 15 days from the receipt of the draft of local regulation. If the results of the evaluation are declared to be in accordance with the provisions of higher laws and regulations and the public interest, the regent/mayor shall stipulate the draft of local regulation in question to become a local regulation. However, if the evaluation results are declared not in accordance with the provisions of higher laws and regulations and the public interest, then within a period of 7 (seven) days from the receipt of the results of the evaluation, the Regent/Mayor together with the Local People's Representative

Council shall complete the evaluation results.⁷

In its implementation, the South Bengkulu Regent through Letter Number 500/135/B.3/2019 dated on August 16, 2019 regarding the Request for Evaluation of the South Bengkulu Regency Draft of Local Regulation, has submitted an evaluation request for 3 (three) draft Local Regulations concerning:

1. Amendment to Local Regulation Number 01 of 2011 concerning Local Taxes;
2. Amendment to Local Regulation Number 04 of 2011 concerning Certain Licensing Fees;
3. Amendment to Local Regulation Number 02 of 2013 concerning Rural and Urban Land and Building Taxes.

Then the Governor of Bengkulu submit a request for consultation on the three draft local regulations mentioned above to the Minister of Home Affairs as stated in the Governor's letter Number 188.34/751/B.2/2019 dated October 10th, 2019 regarding Consultation on the Local Regulation Draft of South Bengkulu Regency. Against the governor's letter, the Minister of Home Affairs submit the results of consultations on three draft local regulations for South Bengkulu Regency,

as stated in the Letter of the Minister of Home Affairs Number 973/76/SJ dated the January 6th, 2020 p; submission of the results of the Consultation on the Draft Local Regulation of South Bengkulu Regency concerning Local Taxes and Retributions.

Based on the results of the consultation on the Local Regulation Draft of South Bengkulu Regency regarding Local Taxes and Retributions, the Governor of Bengkulu on January 30, 2020, issued:

1. Bengkulu Governor Decree Number V.91.B.2 of 2020 concerning Evaluation of the Local Regulation Draft of South Bengkulu Regency concerning Amendments to Local Regulation Number 01 of 2011 concerning Local Taxes,
2. Bengkulu Governor Decree Number V.92.B.2 of 2020 concerning Evaluation of the Local Regulation Draft of South Bengkulu Regency concerning Amendments to Local Regulation Number 04 of 2011 concerning Licensing Retribution,
3. Bengkulu Governor Decree Number V.93.B.2 of 2020 concerning Evaluation of the Local Regulation Draft of South Bengkulu Regency concerning

⁷ See Law Number 23 of 2014 concerning Regional Government Article 325

Amendments to Local Regulation Number 02 of 2013 concerning Rural and Urban Land and Building Taxes.

The three Governor's Decrees are only received by the South Bengkulu Regency Government on February 4th, 2020, and before the 7 (seven) day deadline the South Bengkulu Regency Government had followed up on the results of the Bengkulu Governor's Evaluation by sending back the results of improvements to the evaluation.

From the description above, in the author's view, the evaluation of the Local Regulation Draft of South Bengkulu Regency in terms of the stages has been under the procedures, but if viewed from the side of the time that has been set, the results of the evaluation of the Governor of Bengkulu received by the Regent of South Bengkulu have exceeded the maximum time limit is 15 (fifteen) days as of the receipt of the draft regency/municipal regulation on local taxes and retribution, which is approximately 6 (six) calendar months or 115 working days.

The birth of Law Number 11 of 2020 concerning Job Creation, redefined through Government Regulation Number 10 of 2021 concerning Local Taxes and Retribution in the Framework of Supporting Ease of Doing Business and Local Services, there has been a

fundamental change in the process of evaluating the Draft Regency/Municipal Regulation on taxes and local retribution can be seen from the authority of the Minister of Home Affairs and the Governor to evaluate the draft of the local regulations concerning taxes and retribution to test the suitability of the draft of the local regulations referred to with the provisions of the Job Creation Act, public interest and/or higher laws and regulations, while the Ministry of Finance evaluates the local regulation draft in terms of the National Fiscal Policy.⁸ Previously, in evaluating the draft of the local regulations on district/city taxes and retribution, in carrying out the evaluation the Governor only consult with the Minister of Home Affairs and then the Minister of Home Affairs coordinated with the Minister of Finance.

In the evaluation process, each plays a role as an evaluator, where the Governor and the Minister of Home Affairs evaluate to test the suitability between the draft district/city regulations regarding taxes and retribution with the Law on Job Creation, Public Interest, and/or more comprehensive legislation. while the Minister of Finance evaluates to test the suitability between the draft district/city

⁸ see Law Number 11 of 2020 concerning Job Creation, article 114 to 5

regulations regarding taxes and retribution with the National Fiscal Policy.

Based on the results of the evaluation of the Minister of Home Affairs and the Minister of Finance, the Governor synchronizes with the results of the evaluation of the governor, then the results of the evaluation of the Governor that has been synchronized are submitted to the regents/mayors no later than 5 (five) working days from the date of receipt of the evaluation results from the Minister of Home Affairs and Minister of Finance.

According to the author's study, the evaluation setting of the draft of *Perdaon* Local Taxes and Retribution, where the Governor, the Minister of Home Affairs, and the Minister of Finance in the process of evaluating the draft of the Regency/Municipal *Perdaon* local taxes and retribution under their respective authorities "together and jointly" evaluate the draft. district/city regulations regarding local taxes and retribution.

Constraints or Obstacles in the Process of Evaluating The Draft of Local Regulations Concerning Local Taxes and Retribution

a. Ineffective tiered supervision.

The tiered supervision model on the evaluation of draft district/city regulations on local taxes and retribution requires the Governor as

the representative of the central government to consult in writing with the Minister of Home Affairs and then the Minister of Home Affairs coordinates with the Minister of Finance. Based on the results of the consultation, the Governor stipulates a Governor's Decree concerning the Evaluation Results of the Local Regulation Draft on Local Taxes and Retribution.

The capacity to control this regulation is an obstacle for the provinces. Even though in practice the district/city submits the concern Raperda to the Governor, then the provincial government forwards it to the Ministry of Home Affairs without conducting a study or evaluation first. The ineffectiveness of tiered supervision is due to the unavailability of budget, limited staff in the provincial law department, besides that the provincial law department also has several other tasks in the government, such as preparing local regulations, handling legal issues in the government. So that the task of evaluating the *Raperda* is also hampered and does not even fall into the priority category. On the other hand, the arrangement for the governor to consult with the Minister of Home

Affairs, then the Minister of Home Affairs coordinates with the Minister of Finance adds to the lengthy and time-consuming procedure.,⁹

After the issuance of Law Number 11 of 2010 on Job Creation and Government Regulation Number 10 of 2021 concerning Local Taxes and Retribution in the Framework of Supporting Ease of Doing Business and Local Services, along with changes in the evaluation settings of the draft of *Perda* concerning Local Taxes and Retribution, where the Governor, the Minister of Home Affairs and the Minister of Finance in the process of evaluating the draft if district/city regulations on Local Taxes and Retribution according to their respective authorities “simultaneously and jointly” evaluate the draft district/city local regulations regarding Local Taxes and Retribution

Therefore, according to the author's view, in practice, it shows that there are problems in the tiered supervision model. The stages described above raise new problems, namely adding lengthy procedures, of course, this also has implications

for the complicated administrative process, especially if there are differences between the Governor, the Ministry of Home Affairs, and the Minister of Finance in providing a test assessment in the evaluation of the Draft of Regency/Municipal Regulation on Taxes. and Retribution, then the submission of evaluation results will be more hanging.

b. Punctuality

Law Number 23 of 2014 concerning Local Government in Article 325 paragraph (4), Article 157 of Law Number 28 of 2009 concerning Local Taxes and Retribution in conjunction with Government Regulation Number 10 of 2021 concerning Article 157 of Law Number 28 of 2009 concerning Local Taxes and Retribution in Support of Ease of doing business and Local Services, regulates the period of implementation of the Evaluation of the Draft of Regency/Municipal Local Regulation concerning Article 157 of Law Number 28 of 2009 concerning Local Taxes and Retribution for 15 (fifteen) working days as of the receipt of the said local regulation draft.

⁹Center for Indonesian Law and Policy Studies, reports on the Implementation of Supervision of Regional Regulations by the Government and the Supreme Court. 2011, Pg 50

Evaluation in stages will have an impact with a long procedure and will certainly take a long time, this of course has implications for the complicated administrative process.

Administrative facts show that the South Bengkulu Regent through Letter Number 500/135/B.3/2019 dated on August 16th, 2019 regarding the application for evaluation of the South Bengkulu Regency local regulation. Taking into account the evaluation process, three evaluation results of the Bengkulu Governor received by the South Bengkulu Regent have exceeded the deadline no later than 15 (fifteen) days as of the receipt of the draft district/city regulation on Article 157 of Law Number 28 of 2009 concerning Local Taxes and Retribution, which is approximately 6 (six) calendar months or 115 working days

The problem of not being able to fulfill the evaluation period is caused by the need for time in the evaluation stage of each level, this process can result in the implementation of the evaluation exceeding the time set by the legislation.

The need for time can also be ascertained to arise from the administrative process of submitting

and receiving letters or files in connection with the evaluation file of the *Raperda* from the Governor, Ministry of Home Affairs, Ministry of Finance, and/or vice versa. Not to mention being a relatively busy state official, often the Governor, the Minister of Home Affairs, and the Minister of Finance are not present.¹⁰

Moving on from the description above, according to the author's point of view, timeliness is still a problem and an obstacle that cannot even be guided by the Central Government and the Governor as the representative of the central government in the regions. Thus, the regulation regarding the time limit for the evaluation of the draft of local regulation on Local Taxes and Retribution is only limited to regulation, so that in its implementation it does not guarantee legal certainty.

CLOSING

Conclusion

Based on the results of the discussion and description above, conclusions can be drawn in this study as follows that the implementation of the

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<http://jurnaluntat.ac.id/index.php/tmlf/article/view/0>, *Evaluasi Rancangan Peraturan Daerah Oleh Gubernur Sebagai Wakil Pemerintah Pusat Di Daerah*.

evaluation of the draft of district/city regulations concerning Local Taxes and Retribution by the Governor, judging from the role and authority of the institution is under the laws and regulations, however, from the point of view of the procedures and time regulated in its implementation, it has not been effective and has not yet been implemented and has not provide legal certainty.

Factors that become constraints or obstacles in the evaluation of the Draft of Local Regulation of the City Regency are the ineffectiveness of tiered supervision and the timeliness as stipulated in the legislation is often exceeded

Suggestion

The issuance of Law Number 11 of 2020 concerning Job Creation, the regulation of material content, and the authority to evaluate the draft of Local Regulation on Local Taxes and Retribution are still contained in several provisions of Law Number 23 of 2014 concerning Local Government, Law Number 28 of 2009 concerning Local Taxes and Retribution and Law Number 11 of 2020 concerning Job Creation, so that in our opinion ideally, they need to be synchronized in one law.

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