

Legal Reconstruction of Regional Government Public Safety Based on Justice Values

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Abstract

The aim of the research is to examine and analyze the weaknesses of regulations on The Regional Government Public Safety, and how to reconstruct the regulations based on justice value. This research was conducted using socio-juridical research which is a legal research method that functions to see the law in its real sense and examines how the law works in a society that is analytically descriptive using primary and secondary data and using the theory of Pancasila justice as a grand theory. The weakness of regional government policy regulations in the field of public security and peace is the regulatory factors where the provisions of RI Law Number 23 of 2014 regulate in a limited manner regarding the requirements to be appointed as civil service police. therefore The Legal Reconstruction of Regional Government Public Safety based on the values of justice is the provision of Article 26 of the Republic of Indonesia Law Number 23 of 2014 and Article 255 of Law of the Republic of Indonesia Number 23 of 2014, that regulate the main task of the Satpol PP to enforce regional regulations and regional regulations, administer public order and peace and carry out community protection. In carrying out these basic tasks, Satpol PP must be equipped with authority. Furthermore, the reconstruction of Article 256 of RI Law Number 23 of 2014, that this article regulates the requirements to be appointed as civil service police. The provisions of this article regulate, although limited, the requirements referred to so that in practice it will be difficult to fulfill them, therefore the regional head can make a policy or discretion. However, this is appropriate when viewed from the hierarchy of laws and regulations because the regional head's policies are not in accordance with the norms stipulated in the provisions of Article 256 of the Republic of Indonesia Law Number 23 of 2014.

Keywords: Legal Reconstruction, Regional Government, Public Safety, Justice Value.

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INTRODUCTION

Penyelenggaraan Otonomi Daerah
Emphasizing the importance of democratic principles, increasing community participation, and equal distribution of justice by taking into account various aspects related to potential and diversity between regions. In the sense that the implementation of the Regional Autonomy policy concerns the transfer of authority from the government to the community, which is expected to grow and develop its initiative and independence in today's democratic climate.

Democracy and Decentralization are two different concepts, but they are not mutually exclusive. The implementation of democratic life in the administration of regional government is interpreted as the absorption of aspirations and participation of the community in determining regional policies to improve

the welfare of the regional community. Meanwhile, government decentralization gives authority to local communities to play a role in independence and freedom while remaining within the framework of the Unitary State of the Republic of Indonesia (NKRI). Delegation of authority from the government to regional governments to manage their household affairs based on statutory regulations is a means of achieving goals for people's welfare, people's participation, accountability, and transparency.

After the birth of the Job Creation Law, there was a clear division of authority including standards and conditions determined by the Government, unlike before the birth of the Job Creation Law where the authority of the Regional Government was to issue certain business licenses, Norms Standard Procedures and Criteria hereinafter abbreviated as (NSPK) is

determined by the region based on higher laws and regulations, and regulated by the regional government concerned, but after the issuance of the Job Creation Law, the NSPK is determined by the central government (Annisa, 2023). This means that the authority remains with the Regional Government concerned under existing laws and regulations, but the NSPK is determined by the Central Government, thus, the work of the Regional Government is simpler as long as its implementation is following the NSPK.

On the other hand, if the regional government does not carry out or implement but is not following the NSPK, the central government will take over the permit within certain limits. Thus the Job Creation Law emphasizes the role and function of the regional government as part of the government system, in which the existing authorities are still exercised by the regional government, following the NSPK set by the central government, so that good service standards will be created for all regions. This rearrangement of regional authorities is in line with the philosophy of the Job Creation Law. The impact arising from the birth of the Job Creation Law requires that regional governments be guided by central government policies.

Seeing the extent of the impact that the Job Creation Law has had on various regional legal products, the Regional Government must identify and take an inventory of regional legal products, both Regional Regulations (Perda) and Regional Head Regulations (Perkada) whose content relates to the Law of Job Creation. The direction is to amend, repeal or stipulate regional regulations or regional regulations that are adjusted to the Job Creation Law. As the provisions of Article 250 of the Republic of Indonesia Law Number 23 of 2014 concerning Regional Government which were amended through the Job Creation Law, in principle that Perda and Perkada are prohibited from contradicting higher Legislation, the principle of forming good statutory regulations, and court decision so as not to conflict with these signs. Whereas the provisions of Article 251 mandate the Regional Government to coordinate with the Ministries in charge of Domestic Government affairs and involve experts/or vertical agencies in the regions who carry out Government affairs in the field of forming statutory regulations.

Coordination and harmonization of vertical agencies in the area to realize the higher quality and responsive laws and regulations and contribute to supporting development in the region. Regions must comply and submit voluntarily to act proactively to help realize the delegated affairs in the relevant laws and regulations.

Talking about current policy issues, the term policy is often used broadly concerning the actions or activities of the government or the behavior of the state

in general, or it is also often interpreted as political action.

The understanding of public policy itself is still divided by experts, however, there are some similarities regarding the meaning of the public policy, as stated by Thomas R. Dye, in Islami (1997), who defines public policy as "*is what the government ever chose to do or not to do*" (whatever the government chooses to do or not do). If the government chooses to do something, then there must be a purpose and the policy that is carried out must cover all government actions, meaning that it is not just statements and wishes of the government or government officials. Meanwhile, something that is not implemented by the government is also a policy, this is because something that is not implemented by the government will have the same impact as something that is implemented by the government.

Therefore, Based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction Of Regional Government Public Safety Based On Justice Values*" where the main problem discussed in this article is as follows:

1. What are the weaknesses of Regional Government Public Safety in Indonesia currently?
2. How is the Legal Reconstruction Of Regional Government Public Safety Based On Justice Values?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of Regional Government Public Safety in Indonesia Currently

The Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government, Article 1 paragraph (2) confirms the Regional Head as an element of Regional Government administration who leads the implementation of government affairs which fall under the authority of the autonomous regions. Regional Government Administrators consist of Regional Heads and DPRD's assisted by Regional Apparatuses and in administering Regional Governments are guided by the principles of state administration which consist of the principles of legal certainty, orderly administration of the state, public interest, openness, proportionality, professionalism, accountability, efficiency, effectiveness, and justice (Article 58 of RI Law Number 23 of 2014).

The Regional Head has the task of leading the implementation of government affairs which are the authority of the Region based on the provisions of laws and policies stipulated by the DPRD. the community in addition to carrying out other authorities following the provisions of laws and regulations

In addition to the tasks mentioned above, the Regional Head also must uphold and practice Pancasila, implement the 1945 Constitution of the Republic of Indonesia and defend and maintain the integrity of the Unitary State of the Republic of Indonesia, comply with all provisions of laws and regulations, develop democratic life, maintaining ethics and norms in the implementation of government affairs which are the authority of the region. In addition, regional heads are also obliged to apply the principles of clean and good governance, carry out national strategic programs and establish working relationships with all Vertical Agencies in the regions and all Regional Apparatuses, this is as emphasized in Article 67 of the Republic of

Indonesia Law Number 23 of 2014 on Regional Government.

Based on Article 76 of Republic of Indonesia Law Number 23 of 2014, Regional Heads are also prohibited from making decisions that specifically benefit their personal, family, cronies, certain groups, or political groups that are contrary to statutory provisions. In addition, regional heads are also prohibited from making policies that harm the public interest and unsettle a group of people or discriminate against citizens and/or other groups of people that are contrary to the provisions of laws and regulations. Regional Heads are also prohibited from being administrators of a company, whether privately owned or state/regional owned, or managing foundations in any field, abusing the authority that benefits themselves and/or harms the Region they lead, committing corruption, collusion, and nepotism and accepts money, goods, and/or services from other parties that affect the decision or action to be taken. Regional Heads are also prohibited from abusing their authority and violating their oath/pledge of office, concurrently serving as other state officials as stipulated in the provisions of laws and regulations.

In carrying out the authority as a regional head to maintain the security and peace of the people the Regional Head is still very limited, this is because laws and regulations limit the authority of the regional head, therefore the regional head must synergize with other security forces such as the Indonesian National Police (POLRI) and the Army National Republic of Indonesia (TNI) as well as other elements including Community Leaders, Religious Leaders (Widodo, 2019).

As the Regional Head in carrying out Government affairs assisted by regional apparatus including the Civil Service Police Unit (Satpol PP), Republic of Indonesia Law Number 23 of 2014, Article 255 confirms that the Civil Service Police Unit is formed to enforce regional regulations and regional regulations, carry out public order and peace, and organize public protection. Meanwhile, the authority of civil service police is to carry out non-judicial enforcement actions against members of the public, apparatus, or legal entities who violate regional regulations and/or regional regulations. (Widodo, 2018) Apart from that, the Civil Service Police can also take action against members of the public, apparatus, or legal entities that disturb public order and public order, carry out investigative actions against members of the public, apparatus, or legal entities suspected of violating regional regulations and/or regional regulations, as well as carry out administrative actions against community members, apparatus, or legal entities that violate regional regulations and/or regional regulations.

Based on RI Law Number 23 of 2014 above it appears that the authority of the Regional Government in the field of security and public order is still very

limited, especially the placement of regional government officials, especially Satpol PP to carry out the task of security and public order, this is because the authority they have is limited to maintaining public order and does not include taking action against criminals. The prosecution of criminals is still being carried out by the Indonesian National Police (POLRI). Even Regulation of the Minister of Home Affairs Number 26 of 2020 concerning the Implementation of Public Order and Public Peace and Public Protection Article 1 paragraph (3) confirms that Satpol. pp. as Regional Government apparatus occupied by Civil Servants and given duties, responsibilities, and authorities following statutory provisions in enforcing regional regulations and regional head regulations, administering public order and public order and protection (Toebagus, 2022).

Implementation of Public Order and Public Peace are efforts and activities organized by Satpol.PP. which enables the Central Government, Regional Governments, and the public to carry out their activities in a peaceful, orderly, and orderly situation and conditions following their authority to enforce regional regulations and regional head regulations (Article 1 paragraph (4) Permendagri Number 26 of 2020).

The regulations mentioned above specifically the provisions of Article 1 paragraph (3) Permendagri Number 26 of 2020 that Satpol. pp. as a Government apparatus occupied by Civil Servants, the number of Satpol.PP members with Civil Servant status are very limited, most Satpol. PP members are recruited from Voluntary Workforce (TKS), so if you want to follow the provisions of the laws and regulations that apply as regulations, so difficult to fulfill. What's more, if the regulation of the Minister of Home Affairs Number 26 of 2020 is applied consistently, it will certainly not be able to comply with the provisions of the legislation in question, such, for example, the provisions of Article 3 paragraph (6,7 and 8) which states:

- a. Article 3 paragraph (6) reads: For the Implementation of Public Order and Public Peace in the District, a Regency/City Satpol PP Technical Implementation Unit may be formed;
- b. Article 3 paragraph (7) reads: The Regency/Municipal Satpol PP Technical Implementation Unit in the District as referred to in paragraph (6) is led by a unit head who is held ex-officio by a head of the Public Order and Peace section in the sub-district;
- c. The implementation of Public Order and Public Peace and Community Protection in the Village/Kelurahan as referred to in paragraph (2), paragraph (3), and paragraph (4) is carried out by the Village Head/Lurah under the coordination of the Camat.

From the provisions above that Satpol. PPs with the status of Civil Servants are placed in Technical

Implementation Units in the District and even in the Village/Kelurahan which is difficult to fulfill considering the very limited number of Satpol PP personnel with the status of Civil Servants. The Regulation of the Minister of Home Affairs Number 26 of 2020 in essence places more emphasis on the duties and functions of the Community Protection Unit (Satlinmas).

2. Legal Reconstruction of Regional Government Public Safety Based on Justice Values

Based on the provisions of Article 256 of RI Law Number 23 of 2014 above, it shows that the position and function of Satpol PP are very important in assisting the implementation of the regional government, therefore, normatively, special requirements have also been determined to be appointed as civil service police, namely status as an employee civil administration whose stipulation as civil servant bodies, Police is following the applicable laws and regulations. However, in reality, there are still many civil service police who are not civil servants. Especially if it is related to the requirements to be appointed as civil servant bodies, Police that must attend technical and functional education and training, then most of the civil service police do not meet these requirements (Prihanti, 2022). Because in general civil servant bodies, Police personnel are not civil servants and have never attended technical and functional education and training as stipulated in Article 256 mentioned above.

For example, in *Empat Lawang* Regency, South Sumatra Province, the number of Satpol PP personnel is 50 people, consisting of 26 PNS people and 24 TKS people, plus 348 BANPOL PP people. From the data above, almost 95% have not attended technical and functional education and training, especially for the 348 Banpol PP recruited from members of the community, they have not met the requirements at all to be appointed as Satpol PP members if they wish to consistently apply the provisions of Article 256 of the Law. RI Law Number 23 of 2014 is mentioned above. However, due to a very urgent need in effort to maintain and maintain public safety and security, the Empat Lawang Regency regional government adopted a policy of appointing Banpol PP assigned to assist Satpol PP.

In connection with the provisions of Article 256 of the Republic of Indonesia Law Number 23 of 2014, it is necessary to carry out reconstruction so that the limitations of Satpol PP personnel can be fulfilled by appointing Satpol PP personnel who are not civil servants and have not attended technical and functional education and training, not only with the policies or discretion of the Regional Head so that they do not conflict with laws and regulations at a higher level, but with a clear formulation in higher organic regulations (Irwan, 2022).

Based on the description above, the reconstruction of Regional Government policies in the field of public security and peace is in Article 26 of the Republic of Indonesia Law Number 23 of 2014 that in the implementation of the regional government, there is a Regional Leadership Coordination Forum (Forkopimda) as a forum for coordinating regional leaders in carrying out general government affairs. The Forkopimda consists of regional heads, DPRD heads, police leaders, and TNI leaders as vertical agencies in the regions. Then Article 255 of Law of the Republic of Indonesia Number 23 of 2014, that the main task of the Satpol PP is to enforce regional regulations and regional regulations, administer public order and peace and carry out community protection. In carrying out these basic tasks Satpol PP is equipped with authority. Furthermore, the reconstruction of Article 256 of RI Law Number 23 of 2014, that this article regulates the requirements to be appointed as civil service police. The provisions of this article imitatively regulate the requirements referred to so that in practice it will be difficult to fulfill them, therefore the regional head can make a policy or discretion. However, this is appropriate when viewed from the hierarchy of laws and regulations because the regional head's policies are not following the norms stipulated in the provisions of Article 256 of the Republic of Indonesia Law Number 23 of 2014.

CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. The weakness of regional government policy regulations in the field of public security and peace is the regulatory factors where the provisions of RI Law Number 23 of 2014 regulate in a limited manner regarding the requirements to be appointed as civil service police. Then, the factor of law enforcement apparatus, that is, the National Police whose main task is to maintain security and public order; enforce the law; and provide protection, shelter, and service to the community has not been able to carry out its duties and functions to the fullest. Meanwhile, Satpol PP is very limited in the number of personnel and the quality of human resources that still need to be improved. Next, Factors of facilities and infrastructure that are unable to support the workload that has been programmed, and lastly, the factor of community culture where there are still many local government programs that have not been maximized due to lack of awareness and community participation caused by several factors, including the low HDI, poverty level and paternalistic culture.
2. The Legal Reconstruction of Regional Government Public Safety based on the values of justice is the provision of Article 26 of the Republic of Indonesia Law Number 23 of 2014

as in the implementation of the regional government, there is a Regional Leadership Coordination Forum (Forkopimda) as a forum for coordinating regional leaders in carrying out general government affairs. The Forkopimda consists of regional heads, DPRD heads, police leaders, and TNI leaders as vertical agencies in the regions. Then Article 255 of Law of the Republic of Indonesia Number 23 of 2014, that the main task of the Satpol PP is to enforce regional regulations and regional regulations, administer public order and peace and carry out community protection. In carrying out these basic tasks Satpol PP is equipped with authority. Furthermore, the reconstruction of Article 256 of RI Law Number 23 of 2014, that this article regulates the requirements to be appointed as civil service police. The provisions of this article regulate, although limited, the requirements referred to so that in practice it will be difficult to fulfill them, therefore the regional head can make a policy or discretion. However, this is appropriate when viewed from the hierarchy of laws and regulations because the regional head's policies are not in accordance with the norms stipulated in the provisions of Article 256 of the Republic of Indonesia Law Number 23 of 2014.

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