

## LEGAL DRAFTING LOCAL REGULATIONS IN LOCAL PARLIAMENT

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### ABSTRACT

*Elements of regional governance Council has a role to the make policy in the form of regulation (legislative function). Increased legislative function of Parliament seen from the number of regional regulation initiatives generated parliament. Increased legislative function is not only seen from the number of local regulation of the output, but the quality of Parliament in carrying out this function also measured regional regulation should charge a lot more pro-public interest. The research was conducted in the local parliament Blora Central Java. The method used is the method of empirical legal research. From the results of the study that the forms of good governance at the local parliament Blora can be seen from the Legal Drafting Local Regulations made by the Council. In accordance with Act No. 28 of 1999 on the Implementation of the State, free of corruption then established good governance. In applying these principles to the implementation of a clean governance and free of corruption that these principles also a reference in the preparation of local regulation as the implementing regulations in the area.*

*Keywords: legal drafting, local regulations, local parliament*

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### INTRODUCTION

Rules of law regulate not only the creation, administration, and adjudication of such rules, and the constitution, character and termination of institution but also the condition under which a private individual can modify the incidence or application of the rules (John Finnis, 2011). Aspects of the establishment of local regulations covering at least three important aspects, namely power, aspects of transparency and control aspects. Aspects authority expressly required by the provisions of Article 1 paragraph 2 of Act No. 12 of 2011 on the establishment of legislation which states that: Legislation is a written rule that contains a binding legal norms in general and formed or established by state agencies or the competent authority through the procedures set out in the legislation. Authorizes the formation of local regulation is at the Head of Region and Regional Representatives Council. Regulations set by the Head of the Regional District after approval with the Regional Representatives Council. Aspects of openness in any formation of local regulation required disclosure is giving the opportunity to the public either from academicians, practitioners, as well as from other related elements of the community to participate, both in the planning, preparation, preparation and / or the draft discussion by providing an opportunity to provide input judgment or advice orally or in writing in accordance with the provisions of legislation in force. In establishing local regulation supervision, either in the form of preventive supervision of the Bill and repressive supervision over local regulation. Preventive supervision in the form of a tiered evaluation of the draft regulation on the budget, draft regulation on Local Taxes, Levies on draft, and draft regulation on spatial planning. Related to preventive supervision, the Minister of the Interior has issued Circular No. 903/2429/SJ dated 21 September 2005 on the Evaluation of Draft Regulation on Budget / Budget Amendment and Draft Regulations Regional Head of Translation Budget / 2006 Budget Amendment. As for the evaluation of the consideration, among other things, to protect the public interest, aligning and adjusting materials to the Regional Regulation Legislation higher and/or other local regulation.

### RESEARCH METHOD

This study used empirical methods or non-doctrinal Juridical intended as an attempt to approach the problem studied by the nature of the law in accordance with the realities of life in the community. The approach is sociological / empirical non-positivistic approach and uses qualitative analysis. Empirical research means collecting and analyzing data about law. It is a method of research rather than an end in itself and may be conducted with different aims in mind: simply to know more about some aspect of law, or to lay the groundwork for reform, or to build a set of generalizations about law (D.J. Galligan, 2010). The descriptive nature of developmental research that provides a systematic overview of the object to be studied, developed a model that can be further developed to solve problems in the field. The research approach using qualitative research approach. Research location is Blora parliament. In this study the data needed include the primary data and secondary data. Primary data, ie the data obtained directly from the data source or first hand, especially concerning aspects of behavior, perception, attitude, and motivation of the Legislature in lawmaking. Secondary Data can be magazines, reports, results of previous research, legislation, and other publications. Secondary data sources include primary legal materials, secondary and tertiary. In this study, Researchers used a qualitative analysis techniques, the data collected given the largely qualitative data. This technique is appropriate for research that results are qualitative data, ie the data that can not be statistically Categorized as qualitatively.

### LEGAL DRAFTING IN LOCAL PARLIAMENT

The government of political communities is rationally limited not only by constitutional law and by the moral norms which limit every decent person's deliberation and choice, but also by the inherent limits of its general justifying aim, purpose or rationale ( John Finnis, 2011).

In Practical Guide Understanding Design District regulations issued by the Ministry of Justice and Human Rights Directorate General of Legislation (2011: 8) mentions local regulation has various functions:

- 1) as a policy instrument to implement regional autonomy and the duty of assistance as mandated by the Constitution of the Republic of Indonesia Year 1945 and the Law on Local Government.
- 2) is the implementing regulations of the legislation is higher. In the function, local regulation is subject to provisions of Rule hierarchy regulation.
- 3) as a container for the specificity and diversity of the region as well as the voice of the people in the area, but in this setting it within the remit of the Unitary State of the Republic of Indonesia based on Pancasila and the Constitution of the Republic of Indonesia Year 1945.
- 4) as a development tool in improving the welfare of the region.

According to Indonesian dictionary is the legal principle of base / foundation or something that is used as the foundation of thought, argued (Ministry of Education Language Centre, 2008: 96). Principles of legislation forming the basic means used as a footstool or something in drafting legislation. Principle equivalent word meaning principle is the fundamental basis of truth in thought, speech and action.

Purnadi Purbacaraka and Soerjono Soekanto (1989: 7-11), introduced the following six principles:

1. Legislation is not retroactive (non-retroactivity);
2. Legislation made by a higher authority, have a higher position as well;
3. Legislation that is specifically set aside the legislation of a general nature (*lex specialis derogat lex generalis*);
4. Legislation in force later cancel the legislation in force earlier (*lex posteriori derogat lex priori*);
5. Legislation alone can not sue;
6. Legislation as a means to the maximum extent possible to achieve spiritual and material well-being for communities and individuals, through the renewal or preservation (*welvaarstaat* principle).

According to the provisions of Act No. 32 of 2004, known as three (3) principles of governance in the region, namely the principle of decentralization, deconcentration, and the principle tasks. Principles of Decentralization means the transfer of government authority by the government to the autonomous regions in the framework of the Unitary Republic of Indonesia. Principle Deconcentration is the delegation of authority from the Government to the Governor as representatives of the government and / or the center in the area, while the principle Tasks are assigned to local government and village, and from the area to the village to carry out certain tasks, along with funding, advice and infrastructure and human resources to the implementation of mandatory reporting and accountable to those who appointed him.

In search of principles that can be used to provide counseling and guidance in the formation of legislation is appropriate, must be traced to the general principles of governance is appropriate, considering the formation of legislation is part of governance.

Formation of legislation in Indonesia, there are 2 (two) to note the legal principles, namely the principle of common law that specifically provides guidance and counseling for the content of the rules and principles of the formation of other law that provides guidelines and guidance for regulatory pouring into the form and structure, the method of its formation and the formation processes and procedures. The principle of the law of the latter may be called the principle of regulatory. Both legal principle goes along side by side simultaneously provide guidance and guidance whenever there is activity in the formation of legislation in accordance with their respective fields.

In view of the law from the point of forming legislation, Fuller saw the law as a tool to organize the community. He argues that the task of forming legislation will be successful if he gets to a certain level of attention to the following requirements:

1. The law must be poured into the rules that apply generally and not in different arrangements with each other;
2. The law must be published and those concerned with the rule of law must be able to know the content of the rule;
3. Legal rules must be intended for the events to come, and not for the events already past, because legislation on the past in addition to being able to regulate behavior, can damage the authority of the law governing the future;
4. The rule of law must be understandable, because otherwise people do not know what to do;
5. The rule of law must not contradict each other, because when that happens people do not know what else will stick to the rules which;
6. The rule of law should not put the burden / requirement can not be met by those concerned;
7. The rule of law should not be changed frequently because if such person can not attended a rule which is still valid;
8. Rulers themselves must also abide by legal rules establish, because if not the law can not enforceable.

Principles of the legal establishment under Law No. 12 Year 2011 on the establishment of legislation set out in Article 5 of its explanation states that the form of legislation should be based on the principle of formation of legislation that both include the following:

1. The principle objective Clarity - That any formation of legislation must have clear objectives to be achieved.
2. Institutional principle or Right Forming Organs - That any type of legislation should be made by the agency / officer Forming legislation authorized. Legislation may be canceled or null and void, if made by the agency / official who is not authorized.

3. Principle of Correspondence between Content Types and Content - That in the formation of legislation should really pay attention to the substance of the right to the kind of laws and regulations.
4. Can be Implemented - That every establishment legislation should take into account the effectiveness of the legislation in both the physiological, legal, and sociological.
5. Usefulness - That any legislation be made because it is really needed and helpful in regulating the life of society, state and nation.
6. Clarity Principle Formulation - That any legislation must meet the technical requirements of drafting legislation, systematic and choice of words or terms, as well as the statutory language is clear and easy to understand so as not to cause a wide range of interpretations in the implementation.
7. Principle of Openness - That in the formation of legislation ranging from planning, preparation, approval or determination discussion and enactment is transparent and open. Thus, all the people have the widest possible opportunity to provide input in the formation of legislation.

Act No. 12 of 2011 on the establishment of legislation and an explanation of Article 6, used the principles to be used as the substance of legislation:

1. That any substantive content of legislation should provide protection function in order to create public tranquility.
2. Humanity, that any substance Legislation should reflect the protection and respect of human rights and the dignity of all citizens and residents of Indonesia proportionally.
3. Nationality, that any substance Legislation should reflect the nature and character of a pluralistic nation Indonesia (diversity) while maintaining the principle of the Unitary Republic of Indonesia (Republic of Indonesia).
4. That any substantive content of legislation should reflect deliberation to reach consensus in decision-making.
5. That any substantive content of legislation always consider the interests of the whole of Indonesia and the substance of legislation made in the area is part of the national legal system based on Pancasila and the 1945 Constitution of the Republic of Indonesia.
6. Unity in Diversity, that the substance of legislation must consider the diversity of the population, religion, ethnicity and class. Specific areas and cultural conditions, especially concerning sensitive issues in the life of society, state and nation.
7. Justice, that the substance of legislation should reflect the proportional justice for every citizen.
8. Equality before the law and government, that the substance of legislation should not contain things that are differentiating based background including religion, ethnicity, race, class, gender or social status.
9. Order and Legal Certainty, that the substance of legislation should be able to induce order in society through legal certainty.
10. Balance, Harmony and Harmony, That any substance of legislation should reflect balance, harmony, between the individual and society and the interests of the nation and the state.

Related to the main points of financial management should pay attention to the area in addition to these conditions, then it must also meet the principles important to realize that the area of financial management systems include:

1. The principle is that the financial orderly managed areas in a timely and appropriate are supported by administration accountable.
2. Obeying the principle of the legislation is that financial management should be guided by local laws and regulations.
3. Effective Principles is an achievement of program outcomes to set targets, ie by comparing the output with the results.
4. The principle of Efficient is an achievement of maximum output with certain input or use the lowest input to achieve a particular outcome.
5. Economic Principles is an input to the acquisition of a certain quality and quantity at the lowest prices.
6. Transparent principle is a principle of openness that allows the public to know and gain access to information.
7. Responsible principle is a manifestation of one's obligation to the management and control of resources and the implementation of policy entrusted to him in order to achieve the goals set.
8. The principle of justice is to balance the distribution of authority and funding and / or distribution of the balance of rights and obligations based on objective considerations.
9. The principle is the act or an act performed with a reasonable and proportionate.
10. The principle benefit to the public is that the priority for the local financial community needs.

The principle of regional financial management implemented in an integrated system embodied in the annual budget established by local regulation.

In addition to the above principles, certain laws may contain other principles in accordance with legal regulations concerned. What is meant by "another principle in accordance with legal regulations concerned", among others:

1. in the Criminal Code, for example, the principle of legality, the principle of no punishment without fault, coaching principles prisoners, and the presumption of innocence;
2. in the Civil Code, for example, in the law of contract, among other things, the principles of the agreement, freedom of contract, and in good faith.

Further stated that the positive law is the embodiment of norms in order to deliver legal norms. Embodiment norm appears as a building or arrangement of the hierarchy starting from the positive norm until the embodiment of the highest to the lowest, which is referred to as individual norm.

In terms of arrangements / hierarchy system of norms, the norms of the highest (basic norm) it becomes a dependent norms under it, so that when it turns the basic norms will become corrupted system of norms under her (Maria Farida Indrati Soeprapto , 2002: 28-29).

Finally, depending on the norms of positive law it should also be traced back to the most basic norms that Grundnorm. Therefore, in the arrangements of legal norms is not justified the contradiction between the higher legal norm with lower legal norms. For the existence of law as a system can still be defended, then he should be able to realize the level of usability (efficaces) is minimum.

In accordance with Stufenbau Theory Kelsen, the regulation sort order of the Republic of Indonesia as stated in Decree No. III/MPR/2000 and Law No. 10 of 2004, as amended by Act No. 12 of 2011, the legislation of the Republic of Indonesia has position means legislation called the first has a higher position than the legislation called later or in other words, legislation that has the higher position a source of law that legislation there under. Existing legislation under the rules of execution that existing legislation on it.

## CONCLUSION

In search of principles that can be used to provide counseling and guidance in the formation of legislation is appropriate, must be traced to the general principles of governance is appropriate, considering the formation of legislation is part of governance. Formation of legislation, there are 2 (two) to note the legal principles, namely the principle of common law that specifically provides guidance and counseling for the content of the rules and principles of the formation of other law that provides guidelines and guidance for regulatory pouring into the form and structure , the method of its formation and the formation processes and procedures. The principle of the law of the latter may be called the principle of regulatory. Both legal principle goes along side by side simultaneously provide guidance and guidance whenever there is activity in the formation of legislation in accordance with their respective fields. From the results of the research that the forms of good governance at the local parliament Blora can be seen from the Legal Drafting Local Regulations made by the Council. There are some local regulation (Perda) that initiative DPRD (local parliament) in Blora.

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