

## Disharmony of Regulation of Developmental Planning and Budgeting in Region (Special Analysis of Regional RPJM)

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### ABSTRACT

*Several laws which regulate development planning and budgeting in region issued almost at the same time constitute the root cause of disharmony. The implication is that there are some contradictive articles, for example different establishment of legal principle of regional RPJM, disharmony between central and regional planning and budgeting, because there are no specific laws which can made guidance in establishing legislative regulation in region. Interest conflict arises between ministries (departments) about performance of regional government; this is attributable to interdepartmental ego. Constitutionally operationalization or performance of post-reform regional government provides clear position between regional chief executive and regional legislative assembly, but in the level of implementation, there is still ambiguity in the establishment or formation of regional RPJM. It can be seen here only pretension of political elites in region.*

**Keywords:** Disharmony, Developmental Planning, Budgeting

### INTRODUCTION

Synchronization of legislation (statute) rule Indonesia after UU no 10 Tahun 2004 tentang Pembentukan Peraturan Perundang-Undangan has been issued, as it has been changed with UU No 12 Tahun 2011 tentang Peraturan Pembentukan Perundang-Undangan. Article 15 point (1) and Article 16, UU No. 10 Tahun 2004 that process of establishing rule of legislation is carried out in accordance with Prolegnas (Program Legislasi Nasional), carried out cohesively between legislative assembly and government. Whereas procedure and management or regulation of implementation of the Prolegnas is determined by Peraturan Presiden No. 61 Tahun 2005 tentang Tata Cara Penyusunan dan Pengelolaan Program Legislasi Nasional, set on October 13, 2005. And so does UU No, 12 Tahun 2011, article 16 states: The plan of Law establishment is carried out in the Prolegnas”

BPHN (Badan Pembinaan Hukum Nasional) states that while legal synchronization is important, legal harmonization is a must, by stating that a legal system continually undergoes change, Indonesian legal system is also the product of harmonization process between a number of elements and factors based on clear legal paradigm, principles, norm, and method. Moh. Hasan Wargakusumah et al in a book wrote as follows, legal harmonization is a scientific activity to reach process of written harmonizing that refers to philosophical, sociological, economical and juridical values.

In the reform era, there is fundamental change in the performance of regional government; one that experiences the change is system of regional development planning. This can be seen from some rules of legislation (legislative rules) which regulate regional development planning. First, Undang-Undang No 25 Tahun 2004. Tentang Sistim Perencanaan Pembangunan Nasional, that regulates specifically about planning. Second, Undang-Undang No 17 Tahun 2003 tentang keuangan Negara, that regulates financial management. Third, Undang-Undang Nomor 32 Tahun 2004 tentang Pemerintahan Daerah, this act had

undergone changes twice and the last change by Undang-Undang No 12 Tahun 2008 about second change of the Act No 32 of 2004 about regional government, it also regulates regional development planning, and fourth, Undang-Undang No 33 Tahun 2004 tentang Perimbangan Keuangan Antara Pusat dan Daerah, that regulates regional planning and budgeting. In addition to four aforementioned laws, there is Undang-Undang No 17 Tahun 2007 tentang Perencanaan Pembangunan Jangka Panjang as implementation of aforementioned laws.

These Laws have the same legal power and they will result in multi-interpretations in the implementation, because they regulate interconnected substances, so they will consequently and potentially create disharmony.

Disharmony in the four laws is revealed by Ibnu Tricahyo and the researcher as follows:

1. *There are four laws which regulate development planning and budgeting, those are: UU No 25 Tahun 2004 regulates specifically about planning; UU No 17 Tahun 2003 regulates financial management; UU No 32 Tahun 2004 and UU No 33 Tahun 2004 regulate regional planning and budgeting; UU No 17 Tahun 2007 about RPJPN. It means that process of planning and budgeting in region must refer to these four laws. There is possibility that four aforementioned laws which have the same legal power can result in multi-interpretations in the implementation, because they regulate interconnected substances.*
2. *Based on UU No 25 Tahun 2004, article 19 point 3 that states: Regional RPJM is determined with Peraturan Kepala Daerah at least 3 months after the regional chief executive has been inaugurated. Whereas in the UU No 32 Tahun 2004, article 150 point 3e states: Regional RPJP and RPJM as mentioned in point 3a and b are set with regional regulation referred to government regulation.*

The existing difference in the regulations of regional development planning which are still equally valid complicates the implementation of the regulation. The difference, in turn, will result in serious juridical problem against legality of document of regional development planning since regional regulation and regional chief executive (regional head) regulation have different legal standing. This relates to legal power of the legislative regulation stated in Article 5 of UU No. 10/2004 changed with UU No 12/2011, article 7 point 2 jo. Article 8 point 1 and 2, jo. Article 14.

According to Maria Farida, function of regional regulation and function of regional chief executive regulation are different. Regional regulation is attributive function, and regulation of regional chief executive is the delegating function from regional regulation, or from a higher legislative regulation.

3. *Article 150 point 3a and b of UU No 32/2004 states: plan of regional long term development or regional RPJP for period twenty years containing vision, mission, and regional development direction refers to national RPJP; plan of regional intermediate term development or regional RPJM for period five years constitutes description of vision, mission and program from regional chief executive referring to regional RPJP by considering national RPJM*

Article 5 point 2 of UU No 25/2004, states: Regional RPJM is exposition made by regional chief executive about vision, mission and program referring to regional RPJP and considering national RPJP contains policy direction, regional finance, strategy of regional development, public policy, and program of regional apparatus unit, regional apparatus inter-unit, and program.

Provincial regional RPJM is exposition of vision and mission, i.e. the RPJM comes from candidate for regional chief executive (governor). The aforementioned article indicates that planning regulated in the provincial regional RPJM is the regional chief executive's program based on vision and mission from regional chief executive elected in the direct general election.

4. *Based on article 150 point 1c of UU No 32/2004 that: plan of regional intermediate term development or regional RPJM for period five years constitutes description of vision, mission and program from regional chief executive referring to regional RPJP by considering national RPJM*

Problem arising in the formation of provincial RPJM that must refer to national RPJM, this is attributable to election of regional chief executive possibly predates presidential election or vice versa.

5. *Disharmony of UU No 32/2004 and UU No 33/2004. Both regulate those relating to planning and budgeting in region, while UU No 25/2004 had regulated regional development planning in detail.*
6. *Disharmony of UU No 17/2003 and UU No 33/2004, both regulate annual planning and regional budgeting. This can be seen that part of articles and points in the UU No 33/2004, particularly those relating to APBD is "copy-paste" of UU No 17/2003.*
7. *RPJPD curtails candidate for regional chief executive in delivering vision, mission and regional RPJM. It means that candidates deliver their missions-visions and programs are dependent upon regional RPJP. As illustration, if there are 5 candidates, there will be struggle for issues existing in the regional RPJP. Moreover, long term planning has weak legal principle. National RPJP established by laws and regional RPJP by regional regulation can change or it will be replaced along with succession of national or regional government.*
8. *In the formation of RKPD, it did not say that public has to be involved or participated, this was different with formation of regional RPJP and RPJM. But, RKPD (Rencana Kerja Pemerintah Daerah) is annual program that directly comes into contact with the public. Participation of the public in the RKPD means simply as encouragement in the funding for development.*

Some existing laws regulate system of development planning will possibly cause conflict between public executors (including regional government), because those disharmonious laws carry potency of conflict.

According to Sjachran Basah, legal substance as development vehicle should be capable of:  
a) Providing direction on how government and development should operate and the outcomes; b) Developing national unity and integration; c) Maintaining, stabilizing and safeguarding development and the outcomes; d) Improving behavior of public administration and the people; and e) Correcting behavior of public administration and the people.

## **METHOD OF RESEARCH**

Bahder Johan Nasution said that discipline of normative law is discipline of law that is basically sui generis, i.e. it cannot be compared to other disciplines, and the focus is on positive law. To answer questions which have been formulated in this research, method of normative legal research is used. This research is also called doctrinal legal research. Some approaches are used in this research; those are statute approach, conceptual approach, and comparative approach.

**Statute approach** is used because legal rule that regulates planning system is nationally applied to regions which have different characteristics.

**Conceptual approach.** It relates to juridical concepts which regulate planning system of regional development, in order to be effective and efficient committed by governmental apparatus in the planning sector and public participation in the regional development planning.

**Comparative approach.** Legal comparison in this research acts as supporting knowledge for dogmatic law, i.e. it considers certain formulations and solutions from other legal order.

Legal material obtained from library research is analyzed descriptively and qualitatively with argumentation based on deductive logic. The writer will present and describe and also connect all relevant materials systematically, comprehensively and accurately, so that it can be found solution for the proposed problem.

## **RESULT AND DISCUSSION**

UU No 12.2011 regulates harmonization, rounding off and stabilization of law conception, both that comes from government or legislative assembly. It also regulates harmonization, rounding and stabilization of conception of all bills, from RUU, RPP, Perpres to Raperda, both provincial and regency/municipal raperda.

Harmonization of statute regulation is to synchronize, adapt, stabilize and round off conception of a bill with other statute and other material other than statute, so that it is arranged systematically, not in conflict or overlapping. This is consequence of the existent hierarchy of statute regulation.

Procedure of harmonizing, rounding and stabilizing the conception of the statute that comes from president had been formally regulated in Peraturan Presiden Nomor 68 Tahun 2005, as implementation from article 18 point 3 of UU No 10/2004. In reality the process of harmonizing, rounding, and stabilizing the conception cannot work well, so that Direktorat Harmonisasi Peraturan Perundang-undangan has to adapt it to practical demand, in order to the process can work well in accordance with UU No 10/2004 and PP No 68/2005 it requires a guidance of technical policy and instruction of implementation of harmonizing, rounding, and stabilizing conception of the bill.

In the regulation of the regional development budgeting and planning can be found some disharmonious statutes:

1. Disharmony between UU No 25/2004 on SPPN and UU No 32/2004 on regional government.

Both statutes from viewpoint of document of regional development planning are relatively harmonious, but there are some articles of these statutes should be evaluated. UU No 25/2004 on SPPN, article 19 point 3 states: regional RPJM is determined with regional chief executive's decision or regulation at least three months after the chief has been inaugurated. Whereas in UU No 32/2004 on regional government, article 150 point 3e states: regional RPJP and regional RPJM as mentioned in point 3a and b are determined with regional regulation by referring to government regulation.

2. Disharmony between UU No 17/2003 on state finance and UU No 32/2004 on regional government.

The disharmony resides in existent dualism in the guidance of designing financial budgeting, i.e. between central and regional governments. In central government, budgeting is based on APBN referring to UU No 17/2003 and regulation that comes from secretary of the treasury,

whereas in regional government, budgeting is based on APBD referring to UU No 17/2003 and UU No 32/2004 and UU No 33/2004 and regulation of the implementation comes from secretary of state.

3. Disharmony between legal principles of statute on equal level in designing UU that regulates development planning and budgeting.

In addition to review of legal principle contained in the four laws which regulate budgeting and development planning, which include several articles of 1945 constitution, it is necessary to review legal principle other than Constitution of 1945 as juridical foundation, such as UU No 17/2003 that does not include legal principle of the statute existing at that time, for example UU No 28/1999 on apparatus who free from corruption, collusion, and nepotism.

4. Disharmony of UU No 25/2004 on SPPN, UU No 17/2003 on state finance, UU No 32/2004 on regional government, and UU No 33/2004 on financial balance.

Four aforementioned laws include stipulation in the article 18 of UUD 1945:

1. Republic of Indonesia consists of provincial regions and those provincial regions comprise regency and municipal; every province, regency, and municipal have regional government, regulated by laws.
2. Regional government of province, regency, and municipal govern and manage its own governmental business according to autonomy principle and supporting duty.
3. Provincial, regency. And municipal government have regional legislative assembly (DPRD), the members of DPRD are elected through general election.
4. Governor, regent, and mayor as regional chief executive officer or regional head of provincial, regency, and municipal government elected democratically.
5. Regional government sets in motion the autonomy as widely as possible, except government matter that by laws is determined as matter of central government.
6. Regional government is entitled to determine regional regulation and other regulations to implement autonomy and supporting duty (service).
7. Order and procedure of performing regional government are regulated by laws.

Based on analytical analysis above, concrete steps should be taken to harmonize the fourth laws which regulate development planning and budgeting. The urgent matter that should be harmonized is fiscal decentralization, because it is vital to regional budgeting.

The stipulation which requires regional RPJM should be determined by regional regulation, whenever it is reviewed from system of performance of regional government, is logical, because performance of regional government is carried out by regional chief executive officer (regional head) with regional legislative assembly, as mentioned in article 19 point 2 of UU No 32/2004: operators (performers) of regional government are regional government and regional legislative assembly.

## **CONCLUSION**

Based on aforementioned explanation, it can be concluded that several laws which regulate development planning and budgeting in region issued almost at the same time constitute the root cause of disharmony. The implication is that there are some contradictive articles. Interest conflict arises between ministries (departments) about performance of regional government; this is attributable to interdepartmental ego. Constitutionally operationalization or performance of post-reform regional government provides clear position between regional

chief executive and regional legislative assembly, but in the level of implementation, there is still ambiguity in the establishment or formation of regional RPJM. It can be seen here only pretension of political elites in region. Materially the four laws which regulate development planning and budgeting in region are disharmonious, since there is no concrete effort to harmonize the statute vertically and horizontally in the regional budgeting and development planning.

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