

Authority of Local Governments in Issuance of Business Licenses Review of Law Number 11 of 2020 Concerning Work Creation

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Abstract. The regional autonomy law has provided flexibility for district and city governments to regulate themselves (self-management) so that the potential of districts/cities can be maximized for the benefit of the empowerment and welfare of the district/city communities themselves as well as improving the performance of public services. Law Number 23 of 2014 concerning Regional Government, which regulates the government's authority in issuing business permits based on the concurrent principle, still classified the authority of local governments in issuing business permits prior to the enactment of Law Number 11 of 2020 concerning Job Creation. The review utilizes a regulating juridical way to deal with legitimate exploration, which incorporates investigations of lawful standards, overall sets of laws, and vertical and flat synchronization levels. Regulation No. 11 of 2020 and Unofficial law No. 6 of 2021 give nearby states position to give licenses to operate, which is in opposition to the soul of provincial independence, where territorial independence is one of the models for a majority rules government.

Keywords: job creation, authority, autonomy, vertical and horizontal

1 Introduction

The state of Indonesia is known for the existence of various laws, both written law which is a rule inherited from the Dutch East Indies era, as well as unwritten law which is a variety of customary law. The formation of national law can be interpreted in two ways: first, as the formation of unwritten law in the form of customary law and customary law that applies to the lives of indigenous peoples; second, as the formation of written law in the form of legislation that is both legislative and legal and is formed by the authorized institution. mainly administrative.¹

The Indonesian Place of Agents (DPR) as of late passed Regulation Number 11 of 2020 in regards to the making of occupations. The public has responded favorably and negatively to this legislation. According to Lex Superior Derogate Legi Inferior, some of the rules in the Job Creation Act are deemed to be in violation of the preceding guidelines. One of them is the case that the arrangements of Article 176 number 9 of the Gig Creation Act, which changes Article 350 of the Law, are infringing upon the Republic of Indonesia's 1945 Constitution. These

¹ Maria Farida Indrati S, *Ilmu Perundang-Undangan Jenis, Fungsi, dan Materi Muatan*, (Sleman: PT Kanisius, 2020), hlm. 14.

arrangements are in Article 176 number 9 of the Law Number 11 of 2020. Regional Government was the subject of Law 23 of 2014. If we look at the clusters of simplification of licensing, ease of doing business, and government administration, it shows that the simplification and standardization of business licensing in the Job Creation Law actually creates uncertainty and has the potential to create inefficiency in public services in the regions. The central government always states that the division of affairs will be regulated in government regulations.²

The regional autonomy law has provided flexibility for district and city governments to regulate themselves (self-management) so that the potential of districts/cities can be maximized for the benefit of the empowerment and welfare of the district/city communities themselves as well as improving the performance of public services. One of the essence of regional autonomy is to give authority to regions to provide public services directly to citizens. Therefore, theoretically the implementation of regional autonomy policies will be able to improve the performance of public services because:

1. Regional autonomy shortens the decision-making hierarchy for regional public service affairs so that it is faster.
2. Regional autonomy enlarges regional authority so that local governments (districts/municipalities) can formulate and implement public service policies that are more in line with the needs and demands of local residents.
3. Regional autonomy brings the administration of government closer to the citizens so that government administrators can respond more quickly and more accurately to the demands of citizens.
4. Regional autonomy brings the administration of government closer to the citizens and brings citizens closer so that citizens have greater access to control the administration of government.³

Regulation Number 23 of 2014 concerning Territorial Government, which directs the public authority's clout in giving licenses to operate in light of the simultaneous rule, actually arranged the power of nearby state run administrations in giving licenses to operate preceding the authorization of Regulation Number 11 of 2020 concerning Position Creation. It Court's No to Follow the Established. In its decision, 91/PUU-XVIII/2021 expressed that Regulation Number 11 of 2020 in regards to Occupation Creation, which revised article 350 of Regulation Number 23 of 2014 in regards to Local Government, was pronounced illegal relying on the prerequisite that the Protected Court conceded officials a time of two (two) years to further develop Regulation Number 11 of 2020. On the off chance that a subsidiary guideline, for example, Unofficial law No. 6 of 2021 Concerning the Execution of Business Authorizing in the Locales, has been sanctioned, Regulation No. 11 of 2020 can in any case be applied in this example. The formula that follows is derived from this phenomenon:

1. How does the clause in article 176, number 9, relate to paragraph 2 of article 18 of the 1945 Constitution before and after the Constitutional Court's decision no. 91/PUU-XVIII/2021?
2. What authority does Law No. give local governments to grant business licenses? 11 of 2020 as well as Government Regulation No. 6 of 2021, prior to and following the Constitutional Court's decision No. 91/PUU-XVIII/2021?

² *Ibid*, hlm. 305.

³ Ulber Silalahi, Wirman Syafri, *Desentralisasi dan Demokrasi Pelayanan Publik*, (Bandung: IPDN Press, 2015), hlm. 105-106.

This research can help reform efforts in the field of law, legal unification, and other benefits such as harmonization in the field of law and can foster mutual understanding between nations. Thus, it can reveal the similarities and differences of the objects being compared, providing a deeper understanding of the objects being compared and knowing the background of the similarities and differences.⁴

Lawful standards, as per Hans Kelsen, are layered and layered in an order (association), as in a lower standard applies, starts from, and depends on a higher standard, a higher standard applies, starts from, and depends on a higher standard, etc until the essential standard (Grundnorm), which can't be followed further and is speculative and imaginary.⁵ As indicated by the past hypothesis, there is an ordered progression of each kind of regulation in light of the standard that lower regulations and guidelines shouldn't struggle with higher regulations and guidelines.

The relevant legitimate standards in the Republic of Indonesia's arrangement of lawful standards are coordinated in layers, levels, and gatherings, where a standard is consistently substantial, got from higher standards, and standards that apply higher qualities are gotten from considerably higher standards, etc until the basic standards of the state (Staatsfundamentalnorm), specifically Pancasila, are set up.⁶

In the theory of power sharing, the problem of the relationship between the center and the regions is a consequence of the division of power. Vertical division of power and also called territorial division of power is the division of power according to level and in this case what is meant is the division of power between several levels of government.⁷ Comparing the unitary, federal, and federated states reveals this power division clearly. This regional division of force in the Unitary Condition of the Republic of Indonesia is accomplished by the presence of an administration unit known as the focal government and nearby government.⁸

Considering the prior, it is important to decide "what" should be directed and overseen by the area. The things that should be directed and overseen by the districts are, in all honesty, certain issues that are presented by the focal government to provincial state run administrations to be completed on their own drive/drive and tact. Regional household affairs are essentially derived from autonomy and co-administration (medebewind). Autonomy and co-administration are rooted in the notion of decentralization. Authority, suggesting that delegation is seen as the delegation of authority from government officials or agencies to other government officials or institutions.⁹

The rule of law is based on the idea that laws and regulations are the source of authority for the government. This is the principle of legality, which is the main foundation of the rule of law. derived from the mandate, authority derived from attribution, and authority derived from delegation.¹⁰

⁴ Bachtiar, *Mendesain Penelitian Hukum*, Sleman: Deepublish, 2021), hlm. 75.

⁵ Susanti, Bivitri. "Menyoal Jenis dan Hierarki Peraturan Perundang-undangan di Indonesia." Jentera: *Jurnal Hukum* 1.2 (2017): hlm. 128.

⁶ *Ibid*, hlm. 143.

⁷ Carl J. Frederich, *Man and His Government*, (New York: McGraw-Hill, 1963)

⁸ Azmi Fendri *Op. Cit*, hlm. 92.

⁹ Henc Maarseveen dalam Philipus M. Hadjon, *Op.Cit*

¹⁰ *Loc. Cit*, Gandara, Moh, 93.

2 Method

The review utilizes a standardizing juridical legitimate examination approach, which inspects books, regulations and guidelines, expectations, web media, and exploration results distributed through library materials for lawful exploration on lawful standards, overall sets of laws, and levels of vertical and flat synchronization. Lawful materials, including essential, optional, and tertiary legitimate materials, are the wellspring of auxiliary information.

1. Primary Legal Materials.
 - a. 1945 Constitution of the Republic of Indonesia
 - b. Law Number 11 of 2020 concerning Position Creation.
 - c. Law Number 23 of 2014 concerning Local Government.
 - d. Constitutional Court Choice No. 91/PUU-XVIII/2021.
 - e. Government Guideline Number 6 of 2021 concerning the Execution of Business Permitting in the Areas.
2. Materials that explain primary legal documents are referred to as secondary legal materials.
3. Tertiary legitimate materials incorporate auxiliary lawful materials like lawful word references, reference books, and others that give directions and clarifications to essential lawful materials.¹¹

3 Results and Discussion

Division of Government Authority in Issuing Business Licensing

Authority is often interpreted as the power to make decisions based on rights and obligations within the framework of carrying out certain organizational activities. In a country that adheres to a vertical distribution of power, there will be a relationship of power between the focal government and the locales. This relationship occurs as a result of planning for state and government administration or planning power into smaller government units which in practice can be realized in various forms, such as territorial decentralization, territorial autonomous units, or federal.¹²

The relationship of authority relates to the way in which government administration affairs are divided or how to determine regional household affairs. The division of expert in the connection between the middle and the areas is connected with the division of family undertakings or in the language of regulations and guidelines it is called government issues. Expansive independence typically begins from the rule that all administration issues are fundamentally local family undertakings with the exception not entirely settled as focal undertakings. To do this, the local family framework is a request that is utilized as the reason for the organization of provincial government which is completed by partitioning the power, obligations, and obligations to control and oversee government undertakings between the middle and the areas.

Because the issue of autonomy involves not only aspects of law and government but also social, political, cultural, and economic factors, among other things, it is impossible to study in

¹¹ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: CV Rajawali, 1985).

¹² *Ibid*, hlm. 19.

isolation; rather, it must be multi- or interdisciplinary.¹³ To work with the execution of the local government, the standards utilized are the standards of decentralization, deconcentration, and the errand of petrification (medebewind). Decentralization is an exchange of government undertakings to the full power and obligation of the locale.¹⁴ The relationship between levels in government should be distinguished between:¹⁵

a. Vertical relationships (supervision, control, etc.).

Supervision carried out by higher government agencies against lower ones is as follows:

- 1) Coordination: forestalling or looking for goal of struggles/debates of interest for instance between regions.
- 2) Policy management: the change of arrangements from lower government authorities to higher ones.
- 3) Quality control: command over the specialized ability and nature of direction and activities of lower government authorities.
- 4) Financial reasons: expanding fitting and adjusted arrangements from lower government authorities.
- 5) Protection of the freedoms and interests of residents, in specific circumstances an exceptional security might be required for the interests of a resident.¹⁶

b. Horizontal relationship. (Cooperation of officials at the same level).

Decentralization without centralization will bring breaking down. Consequently, provincial independence, which basically contains opportunity and opportunity of drive, requires direction and oversight from the Public authority, with the goal that it doesn't become sway. Provincial independence and independent locales are the production of the public authority. Nonetheless, the connection between independent areas and the Public authority is between hierarchical and corresponding.¹⁷, consideration :

- 1) Considering the Interim Decision by delaying the enactment of Law 11/2020 until there is a final decision on the principal a quo petition.
- 2) Considering the request for a formal review of Law 11/2020 because it is contrary to Article 20 paragraph (4) and Article 22A of the 1945 Constitution.
- 3) Considering the formation of Law 11/2020 using the omnibus law method, it is unclear what type of law was formed.
- 4) Considering that the omnibus regulation technique isn't known in Regulation 12/2011 or Regulation Number 15 of 2019 concerning Changes to Regulation Number 12 of 2011 concerning the Foundation of Regulations (Regulation 15/2019).

Whereas furthermore with regard to the ratification of the draft Law, the Court needs to affirm the provisions of Article 20 paragraph (4) of the 1945 Constitution which is a formal ratification. That is, when a mutual agreement between the President and the DPR has been reached, doctrinally the agreement can be said to be a form of material

¹³ Abdurrahman, *Beberapa Pemikiran tentang Otonomi Daerah*, (Jakarta: PT. Melton Putra, 1987), hlm. 6.

¹⁴ BN. Marbun, *DPR Daerah, Pertumbuhan, Masalah, dan Masa Depan*, (Jakarta: Ghalia Indonesia, 1982), hlm. 25.

¹⁵ Philipus M. Hadjon et, al, *Pengantar Hukum Administrasi Indonesia*, (Yogyakarta: Gajah Mada University Press, 2018), hlm. 72.

¹⁶ *Ibid*, hlm. 73.

¹⁷ Huda, Ni'matul. *Hukum Pemerintahan Daerah*. Nusa Media, 2019, hlm. 13.

ratification. Thus, it means that every legislator must use definite, standardized methods and methods that have been determined, both related to the preparation of academic texts and draft laws, as stated in Article 44 and Article 64. Law 12 of 2011.

Authority of the Regional Government in Issuing Business Permits.

The power of the Local Government in giving licenses to operate after the authorization of Regulation Number 11 of 2020 related to Unofficial law Number 6 of 2021, in article 3 of Unofficial law Number 6 of 2021 states that the execution of business permitting in the districts is completed by the focal government, common territorial legislatures, and the public authority rule/city region as per its position in light of the arrangements of the regulation.

In light of its set of experiences, the Republic of Indonesia complies to the Mainland European school of graduate school or in different terms Common Regulation which is the tradition of the Dutch Pioneer. So the hypotheses in regards to the arrangement of lawful standards embraced by the Republic of Indonesia utilize the hypothesis of layered legitimate standards from Hans Kelsen.

In the order of regulations and guidelines in Indonesia in light of Article 7 of Regulation Number 12 of 2011 concerning the Foundation of Regulations, they are as per the following:

- a. the 1945 Constitution;
- b. TAP MPR;
- c. Laws/Government Regulations in Lieu of Laws (Perpu);
- d. Government Regulation (PP);
- e. Presidential Regulation (Perpres);
- f. Level I Regional Regulation (Perda Tk. I);
- g. Level II Regional Regulation (Perda Tk. II).

The genuine norms contained in Article 176 point 9 of Guideline Number 11 of 2020 concerning Position Creation don't meet the material essentials, Article 176 number 9 isn't gotten and considering a better quality, specifically Article 18 of the 1945 Constitution of the Republic of Indonesia. particularly in passage (1), section (2), and passage (5) which express that:

- a. The Unitary State of the Republic of Indonesia is divided into typical districts and the domain is isolated into systems and metropolitan networks, where each locale, district, city has a common government which is coordinated by guideline.
- b. Provincial, area, and regional authorities direct and deal with their own administration issues as indicated by the standards of independence and co-organization.

In this manner, the legitimate standards contained in Article 176 number 9 of Regulation Number 11 of 2020 concerning Position Creation are in opposition to the fundamental lawful standards (Groundnorm) which are the premise and hotspot for the arrangement of legitimate standards under it. Furthermore, likewise, it additionally doesn't follow the standards in that frame of mind of regulation as alluded to in Article 5 and Article 6 of Regulation Number 12 of 2011 concerning the Foundation of Regulation. So the pecking order can be deciphered as a progressive system of each kind of regulation in light of the rule that lower regulations and guidelines should not struggle with higher regulations and guidelines.

Alluding to the choice of the Protected Court in number 4 (four) which expresses that Regulation Number 11 of 2020 concerning Position Creation is as yet legitimate until the foundation is adjusted as per the elegance time not set in stone in this choice. For this situation, the position to give licenses to operate when the choice of the Sacred Court Number 91/PUU-

XVIII/2021 still needs to follow the lawful standards of article 176 number 9 and furthermore the legitimate standards contained in Unofficial law Number 6 of 2021 concerning the Execution of Authorizing Working in the Locale.

The division of simultaneous government undertakings between the focal and commonplace state run administrations as well as rules/districts depends on the standards of responsibility, effectiveness, and externalities, as well as public vital interests. In light of this guideline, the standards for government issues that fall under the power of the focal government are:

- a. Government undertakings situated across regions or across nations.
- b. Government undertakings whose utilization is cross-commonplace or crosscountry.
- c. Government undertakings whose advantages or adverse consequences are across regions or across nations.
- d. Government undertakings that utilization assets all the more proficiently whenever completed by the focal government.
- e. Government undertakings whose job is vital for the public interest.

4 Conclusion

The standard of article 176 number 9 is connected with article 18 section (2) of the 1945 Constitution which is disconnected (problematic), doesn't meet the material necessities in that frame of mind of regulations and guidelines, as expressed in article 7 of Regulation Number 12 of 2011 concerning the Foundation of Regulations Juncto Regulation Number 13 of 2022 concerning the Foundation of Regulation. In the various leveled request of regulations and guidelines, the lower guidelines should be obtained and in light of higher guidelines, article 18 of the 1945 Constitution. The power of nearby states in giving licenses to operate is in Regulation Number 11 of 2020 Juncto Unofficial law Number 6 of 2021 isn't as per the soul of territorial independence, where one of the contemplations of provincial independence is a benchmark in majority rules government. And furthermore not as per the simultaneous rule as alluded to in Article 9 section (3) of Regulation Number 23 of 2014 concerning Territorial Government, specifically simultaneous government undertakings as alluded to in passage (1) are government issues that are split between the focal and common state run administrations and locale/city region.

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