

Formation Policy Of Regional Regulation On Investment Climate

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Abstract. Community prosperity is the aim of the State. To strive with the utmost effort to advance the economy of the community is one of the ways to bring investors to open their businesses in Indonesia. The presence of foreign and national investors, besides being proven to make the community more prosperous, turned out to create new legal problems in the field. This study aims to describe the Norm regulatory in the formation of regional regulation of Bali Province number 1 of 2016 and the Procedure of formation the regional regulation of Bali Province number 1 of 2016 on the investment climate. This type of study is the normative legal study because there are indications of the occurrence of norm conflict especially the inconsistencies between article 1 number 7 Regional Regulation of Bali number 1 of 2016 about Granting incentives and/or facilities to the community and/or Investor with article 1 number 4 of law number 25 of 2007 about investment. The approach of this study is legal material through literature review. Based on the result, it can be concluded that there is an inconsistency found in the normalization regulation concerning the Provision of Incentives and/or Facilities to the Community and/or Investors. The procedure of forming regional regulations based on article 1 Number 1 of Law number 12 of 2011, basically divided into several stages namely planning, drafting, discussion, ratification or determination, and promulgation.

Keywords: formation of regional regulations, investment climate, policy

1. Introduction

Fair and civilized community prosperity based on Pancasila is the main aim of the Unitary State of the Republic of Indonesia. Because the state's goal to prosper the community and the issue of people's poverty makes the government try hard to advance the community's economy by bring investors to open their businesses in Indonesia. The presence of investors, both foreign and national investors, in addition to being proven to have made the community more prosperous, in fact raises new legal problems in the field. One of the problems is the uncertainty of regulations that often overlap between regulations from the central government and regional regulations. At present the formation of laws and regional regulations have not met the objectives of the formation of laws. This happens because it is not supported by professionalism of human resources who play a role both in the formation of legislation and in

the socialization and implementation of laws. In addition, the formation is still elitist and full of interests, the articles are often traded, and weak coordination between sectors in preparation of material of laws or regional regulations [1].

In this study, the principles of the formation of good laws and regulations must be the basis of guidelines in the process of forming laws. Poor and inconsistency regulation will not be obeyed by the public. Conversely good regulation will make people feel fulfilled their sense of justice, legal certainty, and feel its usefulness. One indication of the procedures for formation of good legislation have to go through good planning and stages. Meanwhile in the process of planning legislation, academic studies are very important to know and understand the character, habits and culture of the community in order that the regulations formed can be accepted by the public and not tested by parties who object to the Constitutional Court.

The efforts of Government and community to bring investors to be interested in investing in Indonesia must be supported by good regulations and can be implemented. Especially the Regional Government of Bali Province has formed the Regional Regulation of the Province of Bali Number 1 of 2016 about the Provision of Incentives and / or Facilities to the Community and / or Investors. However, these efforts are not balanced by regulations that provide legal certainty, especially for legal subjects of investors. There are inconsistencies norms in the General Provisions of Article 1 number 7 of the Regional Regulation with Article 1 number 4 of Law Number 25 of 2007 on Investment.

Some previous studies had been carried out with a different purpose. First, the study about role of regional regulations in supporting business climate. The results of this study indicate that there is a significant relationship between regional regulations and business prospects. There are five factors that are important criteria for the quality of a law, namely the principle of transparency in the purpose of establishing a law; transparency in terms of fare and penalties; there is no overlap between one regional regulation and another; Friendly regional regulations in supporting the business environment; and Regional regulations that are well targeted in supporting business dynamics (Syahir, 2008). Batubara (2018) conducted a research about investment policy of government of the north Sumatera province in the hospitality tourism business field. The result of the research shows that the regional government made is only imitate from the law provided, but in fact it is contrary to the principle of protection and nationality.

Based on the description of the problem above, the purpose of this study are to describe the Norm regulatory in the formation of regional regulation of Bali Province number 1 of 2016 and the Procedure of formation the regional regulation of Bali Province number 1 of 2016 on the investment climate.

2. Method

Because of the problems caused by the regulatory of regulation that raises new problems that cannot be accommodated by other regulations therefore, this study needs to be designed in normative legal study. Based on the background of the problem, the study uses a statute approach, conceptual approach and comparative approach.

3. Discussion

3.1 Norm Regulatory in the Formation of Regional Regulation of Bali Province Number 1 of 2016

Regional Regulations, hereinafter referred to as *Perda*, are the products of legislation issued by the Regional Government, namely the Governor or Regent, and / or Mayor with the Regional House of Representatives.

In forming a regional regulation or *Perda*, the stakeholders involved should not be elitist or more concerned with their groups than to fulfill a community justice and improve the investment climate in the area they lead. The law in simple definition is meant as a rule, but in its concept, the rules are directed at the notion of written law, whereas factually there are also unwritten rules and as well as laws that Not written [2].

The forms of legal sources in the system have a difference. Among them are the *Anglo saxon* system or the common law system. Anglo saxon or the common law system is a system of law that originated in England, then spread to the United States and its former colonies [3]. Anglo saxon or common law system is a legal system whose main legal sources are:

- 1) Judicial decision, which is that the judge not only serves as the duty of assigning and interpreting legal decision, but also forming the entire Ordinance and creating new Principles (jurisprudence);
- 2) Rules and Customs and regulations of the State administration. Based on the source of the law, the rule of law in common law system are:
 - a. Law is a cultural institution that continues to develop;
 - b. Law is human creativity;
 - c. Law does not require codification, it's only a part of the law;
 - d. Judicial decision is a law [4]

Furthermore, the Continental European legal system or Civil Law is the legal system adopted by Indonesia. The main principle that underlies the Continental European legal system or Civil Law is that law gains binding force because it is realized. According to Frederich Julius Stahl, the concept of the legal system is characterized by four main elements:

- 1) Recognition and protection of human rights;
- 2) The state is based on trias politica theory;
- 3) Government is organized based on law;
- 4) There is a judicial administration of the State responsible for handling the case of unlawful conduct by the Government (*Oncechtmatige Overheidsdaad*).

Legal resources on the Civil Law system include:

- 1) The legislation is formed by the legislative authority;
- 2) Regulations made by the executive authority under the authority stipulated by law;
- 3) Habits that are lived and accepted as law by the community as long as not contrary to law [4].

In the law state, Indonesia, it is possible to have legal problems in regulating a rule of law- in which legislation are the main source in regulations. Therefore, it can be possible to occur legal problems including legal inconsistencies.

Inconsistencies in the legislation conduce public confusion in understanding the regulations. The confusion in the community conduce to the nonoptimal regulation in solving a problem that occurred and affect the balance of the laws that live in the midst of community due to differences of interpretation of legislation.

Consistency in legislation is needed, in order to maintain the balance of legal regulations in the community. If a regulation is inconsistent with other regulations, it can affect the legal system in Indonesia. Legislation is a legal substance that provides regulations on individual rights and obligations.

The consistency of a regulation can be seen from the hierarchy in the order of existing legislation. It is clear according to the principle that regulations that have a lower order should not contradict the regulation of higher position. This is in accordance with Article 7 paragraph (1) of Law Number 12 of 2011 concerning the formation of legislation that the types and hierarchy of legislation consist of:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. The provisions of the People's Consultative Assembly;
- c. Law/Government Regulation in lieu of law; Government regulations;
- d. Presidential decree;
- e. Provincial Regional Regulations; and
- f. Regency regulations / City Regulations

In this type of normative legal study. The essence of normative legal study has an object of study on legal principle, legal history, legal vacuum, conflict of norms that affect the behavior of public legal. Especially for this study, indications of the norm inconsistencies/norms conflicts are the main study. there is an indication of norms inconsistencies/norms conflicts between article 1 number 7 of the regional regulation of Bali Province number 1 of 2016 about the provision of incentives and/or facilities to the community and/or investors with article 1 number 4 of law number 25 of 2007 on capital investment.

The indication of inconsistency or disharmony of the norm implicates the uncertainty of the law for the community, especially investor who gain incentives and/or facilities for investment regarding definition and boundary of understanding of investors, where the definition and boundary of understanding is normalized in the regional regulation of Bali Province number 1 of 2016 concerning the granting of incentives and/or facilities to the public and/or investors with article 1 Number 4 of Law number 25 of 2007 concerning inconsistencies of investment provide different limit boundary on understanding and definition of investors. The definition and boundary of understanding that is normalized in the regional regulation provides a broader understanding of the subject and object of investors. While in the law provides a narrower understanding only concerning the subject of investor. Thus, in this case the inconsistency of norms/conflicts of norms can lead to uncertainty of the law on understanding of investor itself.

Based on the description above, according to the aim of the first can be analyzed with the two theories below:

1. The theory of legal certainty where normatively is when a regulation is made and promulgated for certainty as it regulates clearly and logically. The legal certainty refers to a clear, consistent, and consequent legal enforcement that its implementation cannot be influenced by subjective circumstances. Based on the theory of legal certainty, the value to be achieved are the value of justice and happiness.
2. The theory of legislation hierarchy by Hans Kelsen stated that the legal system is a ladder system with a tiered hierarchy. The legal norms are tiered and layered in a hierarchy (arrangement) it means that a higher norm applies, sourced and based on even higher norm. It can be concluded that the lower regulation should not be contrary to higher regulations, thus article 1 number 7 of the regional regulation of Bali province can be said inconsistencies norms/conflicts with article 1 number 4 of law Number 25 of 2007 about investing.

3.2 Procedures of Formation of Regional Regulation of Bali Province Number 1 of 2016 on Investment Climate

Based on normative studies that support this research, all regional legal products that formed are aimed at creating the regularity and public welfare, but there are those that can actually hamper the conducive investment climate. If examined more deeply, identified there are disharmony / inconsistency nuances that cause confusion and even seem to confuse the investors, thus they are hesitant to invest in the regions due to the absence of legal certainty.

Investment attractiveness of a region is not only determined by the economic potential of its "natural gifts". Various other elements also affect the investment attractiveness of a region, such as Regional Regulations, service bureaucracy, security, socio-cultural conditions, labor, and so on. Problems or weaknesses in one factor, will affect the overall attractiveness of investment. Although on average there has been an improvement in a number of factors forming regional attractiveness, but it also still leaves some problems. This condition is certainly very influential on the development of investment and the existence of the business in carrying out its activities. In this study, business actors are the most competent in evaluating the function of legislation products in the form of regional regulations or *Perda*. Whereas the investment climate is built on the indicators of profit growth, business competition, business / legal certainty and business prospects. From the description above it can be emphasized that regional regulations that support the investment climate must be issued in order to provide guidance and to investors in investing their capital.

The essence is that the formation of various kinds of regulations both in the form of laws and in the form of regional regulations has a vision and mission in order to guarantee the realization of social order and welfare of public.

Before discussing what is a welfare state, it is important discussing the concept of welfare which is often interpreted differently by different people and countries. Referring to the opinion of legal experts. At least the notion of welfare contains at least four indicators, including:

1. As a condition of well-being. This term usually refers to the social welfare (social welfare) as a condition of meeting material and non-material needs. Welfare conditions occur when human life is safe and happy because the basic needs for nutrition, health, education, shelter, and income can be met; and when humans get protection from the main risks that threaten their lives.
2. As a social service. In the United Kingdom, Australia and New Zealand, social services generally cover five forms, they are social security, health services, education, housing and personal social services.
3. As social benefits in Indonesia, most welfare recipients are poor people, disabled, unemployed. This situation then gives rise to negative connotations in terms of welfare, such as poverty, laziness, dependency, which are actually more accurately referred to as helpless.
4. As a planned process or business carried out by individuals, social institutions, communities and governments to improve the quality of life through the provision of social services, and social benefits.

The welfare state is a concrete form of transition that used to be a limitation on the role of the State to interfere with the economic and social life of society (*staatsonthouding*) to become a *staatsbemoeyenis* that requires the State and government to be actively involved in the economic and social life of the community, as a step towards realizing public welfare, besides maintaining security order (*rust en order*) [5]. The formation of various kinds of

regulations both in the form of laws and in the form of regional regulations has a vision and mission in order to guarantee the realization of social order and welfare of public.

4. Conclusions

Based on the research findings, there are 2 (two) conclusions that can be formulated:

- a. In the normalization regulation found an inconsistency in Article 1 number 7 of the regional Regulation of Bali Province Number 1 of 2016 concerning the Provision of Incentives and / or Facilities to the Community and / or Investors that provides a boundary of understanding and different definition on the subject of investors with the understanding of the subject of investors in Article 1 number 4 of Law Number 25 of 2007 concerning Investment.
- b. The procedure of forming regional regulations to support the investment climate based on article 1 Number 1 of Law number 12 of 2011, namely the formation of legislation is the process of forming legislation which basically divided into several stages: planning, drafting, discussion, ratification or determination, and promulgation.

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