

Authority Dualism of Regional Law Enforcement in Indonesia

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This paper reviews the regulatory authority of local government regulations (“LGR”) which still leaves problems, namely the dualism of authority between the Civil Service Police Unit and the Indonesian National Police. The review is research based and uses methods of normative juridical with a statutory approach coupled with conceptual and case approaches. The main finding showed that there was obviously overlapping authority in the enforcement of LGR, conducted by the two different government office entities, which is CSPU and INP. This overlapping is due to the legal content of LGR as organic law to regulate the content of laws, sanctions and its enforcement. This resulted in dualism of authority between the INP and the CSPU authority. The authority dualism in local law enforcement resulted in ineffective law enforcement processes. Therefore, it is important to carry out a reconstruction of the provisions of Article 15 paragraph (3) of Law Number 12 of 2011, so that the dualism of authority in law enforcement can be resolved.

Key words: *Local- Regulations-Authority, LGR, INP.*

Introduction

The state of Indonesia has an obligation to maintain public order and social peace. This is because public order and peace play a central role in social life and become an important element to make the social system run dynamically. (Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, 2020) Additionally, public order and social peace are part of Human Rights that take place as part of state community orderly life. Article 28 G Paragraph (1) The 1945 Constitution of the Republic of Indonesia (1945) mandates "that every person has the right to personal, family, honor, dignity, and property under his control and is entitled to a sense of security and protection from the threat of fear of doing or not doing something that which is a human right." (Lego Karjokoa, Djoko Wahyu Winarno, Zaidah Nur Rosidah, I Gusti Ayu Ketut Rachmi Handayani, 2020)

Indonesia as a state law country that adheres to the principle of the rule of law has an obligation to respect, protect and fulfill people right to security and protection from the threats of fear. Efforts to fulfill these obligations are then reflected in various governmental aspects, such as the structure as well as the formation of laws and regulations that are able to create order and peaceful conditions, so that a sense of security may arise from that of the community. (Soediro, Handayani, I.G.A.K.R., Karjoko, L., 2020)

In order to fulfill the community right to security and protection from the threats of fear, structurally state institutions have been formed that cover law enforcement in providing people protection. These of the two state institutions namely are the Indonesian National Police (INP/POLRI) belonging to the state institution office and the Civil Service Police Unit (CSPU/Satpol PP) belonging to the local government institution office. (Leonard, T., Pakpahan, E.F., Heriyatia, Karjoko, L., Handayani, I.G.A.K.R., 2020) The INP institutional body is an organisational hierarchical type lining down from the top at national level to the bottom at the district level. The CSPU body is an organisational function kind of type that works in local government level. Both of the two law enforcement officers from different entities work independently in accordance with the provisions of the statutory legislations. However, the two agencies have the same peace and order keeping authority. The statutory legislation is considered one of the most critical instruments to create and maintain stable conditions of public order and social peace.(Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, 2019)

The statutory legislation at national level is called the “laws” at national scale, but at the regional level is called “local government regulations” for provincial/regency/city scale. The existence of CSPU is part of the law enforcement process as a regional government instrument needed to support the successful implementation of local government autonomy. However, in carrying out its duties, the CSPU's authority has often overlapped and collided with the INP's. This condition has resulted in friction between the two different autonomous official authorities of the INP and CSPU.(Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, 2020) The functions and authority of CSPU and the INP have each its respective legal basis. However, the regulating arrangement between CSPU and the INP still leaves dualistic issues of overlapped authority, so that the implication of its implementation has not been successful in the field. This can be seen from various disputes in the field that frequently occur, where both parties claims that some of the same type of authorities belonged to them. (Leonard, T., Pakpahan, E.F., Heriyatia, Karjoko, L., Handayani, I.G.A.K.R., 2020)

Based on the description above, it was considered important that this overlapping authority possessed by the INP and CSPU needed to be studied in-depth in the area of law enforcement. To get comprehensive and in-depth findings, the problem statement that needs

to be answered was “what is the genuine authority of each institution the INP and CSPU in law enforcement and “what is the main cause if any of the implications of the two different authorities collide? This research was a normative legal research type. The research approach was the statute approach, conceptual approach, and case approach. The legal materials of this study consisted of primary legal materials, secondary legal materials and tertiary legal materials. The technique of gathering the legal materials was to search the related literatures and access the internet of police and local government law enforcement resources.(Baranyanan, SD., Handayani, I.G.A.K.R., Isharyanto, 2019)

Results and Discussion

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Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia (Police Law) provides an understanding that the police matters relating to the functions and institutionalizations are in accordance with statutory regulations. The main tasks of the Police are to maintain public security and order, enforce the law, provide protection and services to the community. Article 14 of the Police Law states that in carrying out these main tasks, the Police are in charged: (Suhartini, E., Hartiwiningsih, Handayani, I.G.A.K.R., Roestamy, M., 2016)

- (a) Implementing arrangements, guarding, escorting and patrolling community and government activities as needed
- (b) Carrying out all activities to guarantee the security, order and smooth traffic on the road.
- (c) Fostering the community to increase community participation, community legal awareness and citizens obedience to laws and regulations.
- (d) Participating in the development of national law.
- (e) Maintaining order and ensuring public security.
- (f) Coordinating, supervising and providing technical assistance to special police, civil service investigators, and forms of self-help security.
- (g) Carrying out examinations and investigations into all criminal acts in accordance with criminal procedural law and other statutory regulations.
- (h) Organising police identification, police medical affairs, forensic laboratories and police psychological affairs for the purpose of police work supports.
- (i) Protecting the safety of body and soul, property, community and the environment from disruption of order and/or disaster including providing assistance by upholding human rights.
- (j) Serving the interests of the community before being handled by the proper agency and/or the authorities.
- (k) Providing services to the community in accordance with their interests within the scope of police duties.

(l) Carrying out other tasks in accordance with statutory regulations.

However, legally the understanding of public order and peace can be based on the Explanation of Article 5 letter b Government Regulation 16 of 2018 concerning the Civil Service Police Unit (CSPU), which states that public order and peace are the kind of effort and activity organised by CSPU that allows the Central Government, Regional Government, and the community that can possibly carry out its activities in situations, conditions which are serene, orderly and peacefully in accordance with their authority in the context of enforcement of local government statutory regulations and governor/regent/major regulations. (Sudarwanto, A.S., Handayani, I.G.A.K.R, 2019)

Based on this understanding, it can be understood that public order and peace of society have not been born from the conditions of society in an authoritarian government. The conditions of public order and tranquility have occurred in dynamic conditions of the society. It means that the community could actively run its social life without pressures. However, for the sake of community interest, the Government and local governments can also play its part in carrying out their tasks as well. (Prasetyo, B., Handayani, I.G.A.K.R., Sulistyono, A., Karjoko, L., 2019)

CSPU has existed since the colonial era. Since then CSPU has experienced the most dynamic of institutional change. At present the legal umbrella of the CSPU is Law Number 23 of 2014 concerning Local Government. Based on Article 255 paragraph (2) of the Local Government Law, the CSPU has the legal authority of: (a) carrying out non-judicial control measures against citizens, officials or legal entities that violate local government statutory regulations and/or local government head regulations; (b) cracking down on the members of the community and/or any legal entity that disturb public order and peace; (c) conducting an investigation of citizens, apparatuses or legal entities suspected of violating local government statutory regulations and/or local government head regulations; and (d) carrying out administrative actions against members of the community and/or apparatus of legal entities that violate local government statutory regulations and/or local government head regulations. (Sari, S.D., Handayani, I.G.A.K.R., Pujiyono, 2019)

In the above statutory provisions, CSPU has explicitly had the authority to uphold public order law enforcement. Whereas in the clarification of Article 255 paragraph (2) states that what is meant by "non-judicial control measures", is those actions taken by the Civil Service Police in order to maintain and/or restore public order and peace for any violations of the local government statutory regulations and/or local government head regulations in a manner which is in accordance with statutory provisions and not until the judicial process. Article 5 Government Regulation (PP/Peraturan Pemerintah) No. 16 of 2018 regulates that the CSPU's duties are including: (a) enforcing local government regulations and local government head

regulations; (b) maintaining public order and peace; and (c) organising community protection. (Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, 2019)

Dualism Investigation of Public Order Violations

Pursuant to the Article 238 of Law Number 23 of 2014 regarding the violation sanction under the Local Government Law and the Article 15 paragraph (2) of Law Number 12 of 2011 concerning the limitation of sanction under the Formation of Laws, stating the local government regulations may contain a maximum of 6 (six) months of imprisonment or a maximum fine of Rp 50,000,000.00 (fifty million IDR). Thus, the category of criminal acts contained in the local government regulations certainly can be considered a violation or also included a minor criminal offense. Because, the Criminal Law Act in Article 205 expressly states that "what is examined according to the criminal proceedings is a case that is threatened with imprisonment or confinement for a maximum of three months". (Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, 2020)

Regardless that horizontal disharmony occurred between Article 205 of Criminal Law Act and Article 15 paragraph (2) of Law Number 12 of 2011, the INP and CSPU have the same authority in enforcing the provisions contained in the local government regulations. Even though it has been explicitly stated that the enforcement of the provisions in the Regional Regulation is CSPU, overlapping authority between the institutions is still widely happening and is continuing. (Baranyanan, SD., Handayani, I.G.A.K.R., Isharyanto, 2019)

Because, based on Article 7 letter C Government Regulation Number 16 Year 2018 regarding the Civil Service Police Unit, it is ruled that the authority of the CSPU is to conduct a citizens investigation, officials or legal entities suspected violation related to local government regulations and/or local public elections. The INP also has the same authority based on Article 1 Number 4 of the Criminal Procedure Code which states that "investigators are police officers of the Republic of Indonesia who are authorised by this law to conduct investigations". The possibility of overlapping authority is due to the provisions of Article 15 paragraph (3) of Law Number 12 of 2011 concerning the Formation of Laws that state that "Provincial/Regency/City regulations may contain the threats of imprisonment or criminal fines other than as referred to in paragraph (2) in accordance with those regulated in other legislation". (Aprilindo, N., Handayani, I.G.A.K.R., Sulistiyono, A., 2019)

With this provision, it is strongly possible for a local government regulation to regulate the law material contained in its sanctions which very different among the local governments. When law material contents and sanctions are included in a local government regulation, it also indirectly gives CSPU authority to enforce the law against that of its related local government regulation. For example, the criminal provisions contained in Article 29

paragraph (1) and paragraph (2) of Banggai Regency Regulation Number 10 of 2011 concerning Hotel Taxes, that state: (Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, 2020)

- (1) Taxpayers who for their negligence have not submitted SPTPD (Local Tax Statement) or filled incorrectly, incompletely or attaching incorrect information, so that it is detrimental to the regional finances, can be subject to a maximum imprisonment of 1 (one) year or a maximum fine of 2 (two) times the amount of unpaid or underpaid payable tax.
- (2) Taxpayers who intentionally fail to submit SPTPD or fill incorrectly or incompletely or attach an incorrect statement, so that they are detrimental to the regional finances, can be sentenced to a maximum of 2 (two) years imprisonment or a maximum of 4 (four) times penalties the amount of unpaid or underpaid payable tax.

The same thing is also regulated in Sleman Regency of Yogyakarta Province through the Sleman Regency Regulation Number 9 of 2015 concerning the Amendment of Sleman Regency Regulation Number 1 of 2011 concerning Hotel Taxes, Article 11 paragraph (1) and paragraph (2) that state:

- (1) Taxpayers who for their negligence have not submitted SPTPD or filled in incorrectly or incompletely or attaching incorrect information as referred to in Article 11, so as to prejudice of harming the regional finances, it can be convicted with a maximum imprisonment of 1 (one) year or a maximum fine 2 (two) times the amount of tax due or underpaid as stipulated in Article 174 paragraph (1) of Law Number 28 Year 2009 concerning Regional Taxes and Regional Retribution.
- (2) Taxpayers who intentionally fail to submit SPTPD or fill incorrectly or incompletely or attach incorrect information as referred to in Article 11, so as to prejudice of harming regional finances can be sentenced to a maximum imprisonment of 2 (two) years or a maximum fine 4 (four) times the amount of tax owed that is not or not fully paid as stipulated in Article 174 paragraph (2) of Law Number 28 Year 2009 concerning Regional Taxes and Regional Retribution.

Therefore, the provisions contained in Article 15 paragraph (3) of Law Number 12 of 2011 concerning the Formation of Laws state that "Provincial Regulations and Regency/City Regulations may contain the threats of imprisonment or fines other than as referred to in paragraph (2) in accordance with those stipulated in other laws and regulations ", provides an opportunity for overlapping authority in the enforcement of local government regulations.



Conclusion

Although it has been explicitly stated that the authority of CSPU is limited in law enforcement upon local government regulation and local government head regulation, there is still a possibility of overlapping authority in the enforcement of local government regulations happened. This is because Article 15 paragraph (3) of Law Number 12 of 2011 concerning the Formation of Laws provides an opportunity for local governments to pour their local regulations with various and different law contents in its sanctions.

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