

# Philosophy Of Fair Regional Regulations In The Implementation Of Special Autonomic Orders In The Regions

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**Abstract :** This research is supposed to 1) To find out and find and analyze Fair Regional Regulations in the Implementation of Special Autonomy Orders in the Regions. This research used a normative legal research method. This research was conducted by examining the existing concepts, doctrines, theories and statutory provisions using the Philosophy Approach, the Statute Approach and the Conceptual Approach. The results of the study show that the fundamental basis of just regional regulations in the administration of special autonomy government in the regions includes three basics or foundations, namely the philosophical basis, namely the legislation is produced, has a philosophical basis and if the formulation or norms get justification and are studied philosophically then the law has justifiable reasons, Sociological Foundation; a law is said to have a sociological basis if its provisions are in accordance with the general belief or legal awareness of the community, and the juridical basis; or also called the legal basis is the basis contained in the legal provisions of a higher degree. Legal regulation in the framework of establishing good and fair regional regulations in special autonomous regions is a necessity in the era of regional autonomy based on broad, real, and responsible decentralization in the context of realizing the objectives of special autonomy. The establishment of responsive and participatory regional regulations can have a fair value in the implementation of special autonomy orders in the regions, so special institutions in the regions are needed.

**Keywords:** regional, regulations, philosophical, sociological, juridical

## 1. INTRODUCTION

Since the collapse of the New Order, a wave of reforms has changed the format of politics and the system of government in the country. The government's authority which was previously very centralized is now increasingly distributed to regional governments based on the principle of decentralization. According to Hari Sabarno ( Sabarno, 2007) the implementation of decentralization that results in autonomy is carried out and developed in 2 (two) basic values, namely: unitary values and territorial decentralization values. The basic unitary value is realized in the view that the Unitary State of the Republic of Indonesia will not have other government units in it that are state in nature, meaning that the sovereignty inherent in the people, nation and state will not be divided between government units. Meanwhile, the basic value of territorial decentralization is manifested in the administration of local government in the form of autonomy. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) affirms that the State of Indonesia is a state of law. As a state of law, all aspects of life in the fields of society, nationality, and the state, including government, must be based on laws that are in accordance with the national legal system.

The national legal system is the law that applies in Indonesia with all its elements that support each other in order to anticipate and overcome problems that arise in the life of society, nation and state. As a state of law, Indonesia embodies the applicable law through written law, namely statutory regulations. The normative juridical study in the process of forming legislation is a procedural concept (included in the normative aspect of democracy) and has not been *hermeneutic* in carefully examining the context and text of the Articles in the Legislation which is the substance of the content. The provisions governing the formation of laws and regulations are the implementation of the mandate of Article 22A of the 1945 Constitution of the Republic of Indonesia which states that "Further provisions regarding the procedure for establishing laws are further regulated by law. However, the scope of the material content of this law is expanded not only by law but also to other laws and regulations, in addition to the 1945 Constitution of the Republic of Indonesia and the Decree of the People's Consultative Assembly. Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia affirms "Local governments have the right to stipulate regional regulations ("Perda") and other regulations to carry out autonomy and assistance tasks". From this provision, every local government, whether at the provincial, district/city levels, in carrying out their duties, is given the freedom to form local

regulations. Basically, local regulations are local government legal instruments in implementing central government policies and local government policies themselves. Perda functions to carry out regional autonomy, assistance tasks, accommodate special conditions of the region and further elaboration of the laws and regulations on it. ( I Gde Pantja Astawa and Suprin Na'a, 2008)

Regional regulations are one of the instruments in carrying out social and democratic transformation. In addition, local regulations are expected to be the main driver for the fundamental changes needed by the regions. Judging from its function, local regulations have an important function to realize prosperity in the region. If all regions prosper, it is certain that the ideals and goals of the Indonesian state as a whole will be achieved automatically as well. The stages of the formation of laws and regulations as regulated in Article 1 number 1 of Law Number 12 of 2011 concerning the Formation of Legislations are through the stages of planning, drafting, discussing, ratifying and determining, as well as enacting the steps through the study of academic texts which basically must be taken in the formation of laws and regulations, including the formation of regional regulations. In the formation of laws and regulations, including regional regulations, it begins with planning, in this case it begins with the preparation of academic texts. Before compiling an academic text of a Regional Regulation, it is very necessary to conduct a legal study or research in order to obtain comprehensive and relevant data and information with the material to be regulated. This is also confirmed in Law Number .12 of 2011 concerning the Establishment of Legislation, related to solutions to problems and community needs, scientifically setting problems in a draft law, draft Provincial regulation or draft Regency/Regency regional regulation. The city is very important so that the problems and legal needs of the community can be resolved. Furthermore, Law Number 12 of 2011 concerning the Establishment of Legislations, followed up with Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 80 of 2015 concerning the Establishment of Regional Legal Products and related to regional legal products in this case Perda, Article 33 of Law No. 12 of 2011 concerning the Establishment of Legislations confirms the following:

- (1) The Prolegda as referred to in Article 32 contains a program for the formation of Provincial Regulations with the title Draft Provincial Regulations, the materials to be regulated, and their relation to other Legislations.
- (2) The regulated material and its relation to other Legislative Regulations as referred to in paragraph (1) is a description of the conception of the Draft Provincial Regulation which includes:
  - a. Background and purpose of preparation;
  - b. Goals to be realized;
  - c. The main idea, scope, or object to be managed; and
  - d. Setting range and direction.
- (3) The regulated material as referred to in paragraph (2) which has gone through the assessment and alignment is set forth in the Academic Manuscript.

The complexity of legislation is shown that even though there are legal rules as guidelines for carrying out legislation, especially with the enactment of Law Number 12 of 2011 concerning the Establishment of Legislations, it cannot be avoided that the process is full of interests and political interactions in it. Law No. 12 of 2011 concerning the Establishment of Legislation and Law no. 23 of 2014 concerning Regional Government has paved the way for democratic political interaction in the legislation of Regional Regulations. The formulation of the Elucidation of Law Number 23 of 2014 concerning Regional Government essentially states that the legislation of regional regulations is in the context of improving people's welfare by always paying attention to the interests and aspirations that grow in the community. The two laws have also determined the principle of openness, the right of the community to participate in the formation of regional regulations, and the existence of orders for organs authorized to form regional regulations and publish draft regional regulations. Democratic political interaction in the legislation of regional regulations is intended to build *good governance* , which demands a democratic climate with governance management based on the principles of participation, accountability and transparency to produce responsive regional regulations. In other words *Good Governance* is very dependent on the participation of the wider community. This is commensurate with what A. Pangerang Moenta stated that:

“Laws or laws (including regional regulations) that are effective are those that actually embody the behavior desired by the law itself. And good laws (including local regulations) are really effective in making government decisions that are not arbitrary. In other words , a good law is a law that is made by involving as much community participation as possible. In this way, a *sense of belonging* and a *sense of responsibility* will emerge among the people who are involved in the formation of the regional regulations”. (A. Prince Moenta. 2003.)

In this regard, Jimly As-shiddiqie also stated that the legal norms to be included in the draft laws and regulations had actually been prepared based on careful thought and deep reflection, solely for the *public interest* . ), not personal or group interests. (Jimly As-shiddiqie, 2006 ) By referring to the principles of the formation of legislation including the formation of Regional Regulations as stated above, a good Regional Regulation of course must also follow the principles of good legislation, so that the formed Regional Regulation is useful in the long term and lasts in accordance with the conditions of community development and is sustainable. As for the steps that can be taken to obtain good and fair laws and regulations, including Regional Regulations in this case there are several steps as follows: “First, the need for planning the formation of laws through the preparation of academic texts; Second, there is public participation in the formation of laws; Third, there is a need for conformity between the content material and the requirements for the formation of the law”. (Yuliandri , 2009)

In addition, with research and assessment prior to the formation of Regional Regulations, it can also avoid overlapping with other Regional Regulations ( *Existing Local Law* ). The formation of Regional Regulations is still felt to be lacking or has not gone through good planning for the formation of legislation. It is marked by:

- a. There are still many problematic local regulations because their substance is still considered controversial, ambiguous, overlapping and inconsistent both vertically and horizontally;

- b. Has not shown commitment and responsive character to the development of human rights, weak and marginalized communities, the value of gender justice; and
- c. The formation process is less aspirational and participatory. (Wicipto Setiadi, 2011)

With regard to the number of problematic Regional Regulations found because their substance is still considered controversial, ambiguous and overlapping and inconsistent vertically and horizontally, it is generally triggered by the high spirit of regional autonomy, resulting in an increase in the formation of Provincial and Regency/City Regional Regulations. However, the Regional Regulation that was formed still caused many problems, so it was canceled. The results of the research by the Monitoring Committee for the Implementation of Regional Autonomy (KPPOD) showed that of the 709 regional regulations studied, 85.2% were problematic regional regulations and only 14.8% were not problematic. In addition, from the results of the 2015-2019 Ministry of Home Affairs (Kemendagri) study, it was found that 369 problematic Tax and Retribution regional regulations had to be suspended, revised, or revoked. (Ministry of Home Affairs, 2019 ) Many regional regulations are problematic or canceled because in the process of forming regional regulations they did not go through a good study of academic texts or it is suspected that the study of academic texts was inadequate, so that the substance of regional regulations was unable to solve the problems and needs of the community. In addition, the cancellation of regional regulations occurs because they are contrary to higher laws and regulations and are contrary to the public interest. Starting from these problems, it will greatly affect the attitude of people's non-compliance with regional regulations. As a form of community disobedience, there is a rejection of a draft regional regulation as well as the attitude of the community not to comply with regional regulations in their implementation. This has an impact on the number of regional regulations that have been set by the DPRD together with the Regional Head, but in its implementation it does not go well.

These problems are overcome by conducting scientific studies and research, so that the results of the study show whether the formation of regional regulations is needed and how ideally it is regulated in the regional regulations themselves. through the Regional Regulation Formation Program ("*Propemperda*"). Based on Article 16, Article 32 and Article 39 of Law Number 12 of 2011 concerning the Establishment of Legislation, the legislation program consists of the National Legislation Program ("*Prolegnas*") and the Provincial Legislation Program ("*Prolegda*") as well as the Regency/City Regional Legislation Program (Prolegda). In Article 1 points 9 and 10 of Law Number 12 of 2011 it is stated that the National Legislation Program, hereinafter referred to as "*Prolegnas*", is an instrument for planning programs for the formation of laws that are prepared in a planned, integrated and systematic manner. While the Regional Legislation Program is the Regional Legislation Program, hereinafter referred to as "*Prolegda*", is a planning instrument for the formation of Provincial Regulations or Regency/City Regional Regulations which are prepared in a planned, integrated, and systematic manner.

Based on this explanation, there are at least four reasons why the formation of laws and regulations needs to be based on the Regional Regulation Formation Program ("*Propemperda*"), namely:

- a. So that the formation of regional regulations is based on a priority scale in accordance with the development of the legal needs of the community;
- b. So that regional regulations are vertically and horizontally synchronized with other laws and regulations;
- c. For the formation of coordinated, directed, and integrated regional regulations that are jointly prepared by the DPRD and the Regional Government.
- d. So that the products of regional laws and regulations remain in the unity of the national legal system.

In addition, according to Mahendra (Mahendra, AA. Oka, 2006), there are several reasons why "*Prolegda*" is needed in planning the formation of laws and regulations including regional regulations, namely:

- a. To provide an objective picture of the general conditions regarding the issue of the formation of regional regulations;
- b. To determine the priority scale for the preparation of draft regional regulations for the long, medium or short term as a joint guideline for the DPRD and the Regional Government in the formation of regional regulations;
- c. To carry out synergies between institutions authorized to form regional regulations;
- d. To speed up the process of forming regional regulations by focusing on activities to formulate regional regulations according to a set priority scale;
- e. Become a means of controlling activities for the formation of regional regulations.

The preparation of regional regulations also needs to pay attention to conformity with regional development planning. These adjustments need to be made to ensure that the regional regulations that are drawn up are able to support regional development and do not otherwise hinder development. For example, the provisions of regional regulations that impose a burden on regional or community finances on a large scale and are not in accordance with development planning can become obstacles that hinder development. Article 18B of the 1945 Constitution of the Republic of Indonesia states that "The state recognizes and respects special or special regional government units that are regulated by law." The provisions of Article 18B of the 1945 Constitution indicate that the Republic of Indonesia provides opportunities for regions to carry out special autonomy, special regions and special regions such as Papua, Nanggroe Aceh Darussalam (NAD), DKI Jakarta and DI Yogyakarta. Regions in Indonesia that get special treatment in autonomy, both special autonomy, special capital areas and special regions include : (duniapolitikmu ,2008 )

1. Province of Irian Jaya which was granted Special Autonomy within the framework of the Unitary State of the Republic of Indonesia. This autonomy was granted by the Republic of Indonesia through Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua (LN 2001 No. 135 TLN No 4151);
2. State Recognition of the Privileges and Specialties of the Aceh Region given through Law Number 11 of 2006 concerning the Government of Aceh (LN 2006 No 62, TLN 4633) and Law Number 18 of 2001 concerning Special Autonomy for the Special Region of Aceh as the Province of Nanggroe Aceh Darussalam .

3. The specificity of DKI Jakarta Province as the State Capital is given through Law Number 29 of 2007 concerning Provincial Government of the Special Capital City Region of Jakarta as the Capital of the Unitary State of the Republic of Indonesia (LN 2007 No. 93; TLN 4744).
4. The Special Region of Yogyakarta within the Unitary State of the Republic of Indonesia is given special privileges. This is regulated in the Law of the Republic of Indonesia Number 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta. (LN 2013 TLN No. 5339).

During the reign of the New Order through Law Number 5 of 1974 concerning the Implementation of Regional Government, it was clearly seen that the government was carried out based on the principle of centralization. The government at this time thought that if the regions were given the freedom to organize their own government, there would be a potential loss of a sense of nationalism and the potential for national disintegration. In practice, the government enforces diversity in the implementation of local government in Indonesia. This is proven by neglecting and not acknowledging local institutions in Indonesia that have long lived and developed and are respected and obeyed by the local community. Another form of centralization that we can see in the implementation of government during the New Order era is the existence of very tight supervision and domination by the central government over the regions.

Papua and West Papua are provinces that have received awards from the Central Government in the form of the passage of Law Number 21 of 2001 concerning Special Autonomy for the Provinces of Papua and West Papua. These two provinces are known regionally as Indonesian Papua apart from Papua New Guinea (PNG). Philosophically, in recognition of the local communities, these two provinces are collectively referred to as Tanah Papua through pledges and commitments such as; "two for one and one for two". Two for one - one for two, meaning one Papuan Special Autonomy Law for two provinces, namely Papua and West Papua, two provinces for one development, namely Tanah Papua. The similarity of past experiences is why the implementation of Special Autonomy (*OTSUS*) is given by the central government and applies absolutely to the two provinces, both Papua and West Papua. the issuance of Law Number 21 of 2001 which has been replaced by Law Number 35 of 2008 concerning Special Autonomy for the Province of Papua, which in one of its articles also stipulates the ulayat rights, namely Article 43 which affirms that the Government of the Province of Papua is obliged to recognize respect, protect, empower and develop the rights of indigenous peoples by referring to the provisions of the applicable legal regulations. The rights of the customary law community include the customary rights and individual rights of the indigenous peoples concerned.

*Perdasus* No. 23 of 2008 concerning ulayat rights (customary rights of indigenous Papuans to land) clearly places the position of indigenous peoples in maintaining the existence of indigenous peoples in Papua. "*Perdasus*" No. 23 of 2008 appears as if the identity of the community and its customary rights to land can only be recognized if there is an acknowledgment from the Governor (regional head/government) of the Papua Region. Legislators actually place local governments as if they were the real owners of the Land of Papua, so that the local indigenous community (indigenous Papuans) that existed long before the birth of the 1945 Constitution, 1960 Agrarian Law and 2008 Special Autonomy Law were as if they were newcomers. requiring recognition and placement in a region. This Regional Regulation is a product of regional law that does not have the value of justice in protecting the rights and existence of the Customary Law community in Papua and cannot be implemented properly in communities in special autonomous regions such as Papua and West Papua.

### Research purposes

1. To find out and find and analyze Fair Regional Regulations in the Implementation of Special Autonomy Orders in the Regions?

### Benefits of research

The results of this study are expected to provide the following benefits:

1. Theoretically for the development of science, it is hoped that it can describe the extent to which the making and implementation of just regional regulations in the administration of special autonomous regions is expected.
2. Practically, it is a contribution of thought for the Indonesian government and regional governments, especially the special autonomy system in Indonesia.

## 2. RESEARCH METHODS

### Types of research

This study uses a normative legal research method, which is a research that mainly examines positive legal provisions, legal principles, legal principles and legal doctrines in order to answer the legal issues faced. (Peter Mahmud Marzuki, 2005). This research is related to just regional regulations in the administration of special autonomy government so that philosophical problems and the preparation of responsive and participatory local regulations must receive full attention in achieving values and a sense of justice in the community in special autonomous regions. The main approach in this research is the statutory *approach* and the *conceptual approach*, this is considering the statutory *approach* as the legal basis for analyzing the problems in this research which is strengthened by the conceptual approach. (*conceptual approach*) to obtain legal arguments in answering the problem.

### Types and Sources of Legal Materials

Secondary legal materials include materials that support primary legal materials such as text books, articles in various scientific magazines or research journals in the field of law, papers submitted in various forms of meetings such as discussions,

seminars, workshops, and others. other. Primary legal materials in the form of statutory regulations are collected by conducting inventory and categorization codes. Secondary legal materials are collected using a *card system*, either with an overview card (containing a summary of the writing according to the original, in outline and the main essay containing the author's original opinion); citation cards are used to contain notes on the subject matter, as well as review cards (contains analysis and special author notes).

### Legal Material Analysis Techniques

Primary legal materials and secondary legal materials that have been collected (inventory), are then grouped. This is then studied with a statutory approach to obtain an overview of the level of synchronization of all legal materials. The legal materials that have been classified and systematized are studied, studied and compared with legal theories and principles put forward by experts, to be analyzed normatively. In the processing and analysis of legal materials, the use of normative legal research types is used to try to answer the problems of Philosophy, Analysis of legal materials using normative legal research types is intended to obtain a more optimal picture related to equitable regional regulations in the administration of special autonomy government.

## 3. RESULTS AND DISCUSSION

### 1. National Regulation Perspective;

National regulations which are part of the national legal political agenda, in order to carry out the national legal political agenda related to the formation of national legal regulations (legislation process), there are three important things that must be considered as guidelines, namely **the philosophical basis, the sociological basis and the juridical basis**. **The philosophical basis** is a consideration or reason that illustrates that the regulations formed take into account the views of life, awareness, and legal ideals which include the spiritual atmosphere and the philosophy of the Indonesian nation which originates from Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia.

**The sociological basis** is a consideration or reason that illustrates that regulations are formed to meet the needs of the community in various aspects. The sociological basis actually concerns empirical facts regarding the development of problems and needs of society and the state. While the juridical basis is a consideration or reason that illustrates that regulations are formed to overcome legal problems or fill legal voids by considering existing rules, which will be changed, or which will be revoked in order to ensure legal certainty and a sense of justice for the community. **The juridical basis** concerns legal issues related to the substance or material that is regulated so that it is necessary to form new laws and regulations. Some of these legal issues, among others, are outdated regulations, inharmonious or overlapping regulations, types of regulations that are lower than the law so that their enforcement power is weak, the regulations already exist but are inadequate, or the regulations do not exist at all. According to Kreems, (Kreems in Maria Farida Indrati, 2007) the substance of the science of legislation (*Gesetzgebungslehre*) can be grouped into 3 (three) parts, namely:

- a. Legislative process (*Gesetzgebungs-verfahren*);
- b. (*Gesetzgebungs-method*);
- c. Legislative engineering (*Gesetzgebungs-technik*).

Legislative process (*Gesetzgebungs-verfahren*), namely discussing and analyzing the process or mechanism for making laws and regulations, to monitoring and testing them. The Legislative Method (*Gesetzgebungs-methode*), which discusses and analyzes the substance or content material (het onderwerp) of laws and regulations, including ways to find the content material. Legislation technique (*Gesetzgebungs-technik*), namely discussing and analyzing the external form (*kenvorm*) of statutory regulations. Thus, statutory theory is oriented towards explaining understanding and is cognitive, while statutory science (in a narrow sense) is oriented to carrying out implementing actions and is normative.

In relation to national legal politics, Padmo Wahjono (Padmo Wahjono, in Mahfud MD, 2010) said that legal politics is a basic policy that determines the direction, form, and content of the law to be formed. In another article, Padmo Wahjono clarified this definition by saying that legal politics is the policy of state administrators regarding what criteria are used to punish something which includes the formation, application and enforcement of the law. Padmo Wahjono is of the view that legal politics is a basic policy that determines the direction, form, and content of the law to be formed. In addition, Satjipto Rahardjo (Satjipto Rahardjo in Mahfud 2009) also said that legal politics is an activity of choosing and the method to be used to achieve a social goal with certain laws in society whose scope includes answers to several basic questions, namely; what goals are to be achieved through the existing legal system, what methods and which are considered the best to be used in achieving these goals, when and through how the law needs to be changed, can a standard and established pattern be formulated to help in deciding the process of selecting goals and how to best achieve those goals. According to Satjipto Rahardjo, legal politics is a voting activity and a mechanism used to achieve certain social and legal goals in society.

Same context, Soedarto (Soedarto in Mahfud MD, 2010) also said that legal politics is a state policy through state agencies authorized to establish the desired regulations which are expected to be used to express what is contained in society and to achieve what is aspired to. - aspire. In another article, Soedarto reiterated that legal politics is an effort to realize good regulations according to the circumstances and situations at a time. Soedarto explained that legal politics is a state policy through state agencies that are authorized to establish the desired regulations that are expected and used to express what is contained in society and to achieve the goals that are ideals. at the same time, that legal politics is a legal policy regarding laws that will be enforced or not enforced to achieve the goals of the state. Law as a tool to achieve the goals of the State. Practically legal politics is also a tool

or means and steps that can be used by the government to create a national legal system in order to achieve the ideals of the nation and the goals of the state.

The basis of these various thoughts is born from the fact that our country has goals that must be achieved and efforts to achieve these goals are carried out by using the law as a tool through the enforcement or enforcement of laws in accordance with the stages of development faced by our society and country. Some legal politics are permanent or long term and some are periodic. For example, the permanent implementation of the principle of judicial review, the balance between legal certainty, justice and expediency, the replacement of colonial laws with national laws, the independence of judicial power, it is seen that several principles contained in the Constitution also apply as legal politics. Periodic is legal politics that is made in accordance with the development of the situation faced in a certain period, whether it will be enacted or will be repealed, for example codification and unification in certain legal fields, national legislation programs.

The various thoughts put forward lead to our understanding that the study of legal politics includes *legal policy* as the official policy of the State regarding laws that will be enacted or not enforced and matters related to it. There are differences in the scope of legal politics and the study of legal politics; Legal politics is more formal in terms of official policy, while the study of legal politics covers official policy and other matters related to it. The study of legal politics covers at least three things; First, state policy, the official line of law that will be enforced or not enforced in the context of achieving the goals of the state; Second, the political, economic, social, cultural background for the birth of legal products; Third, law enforcement in the field reality. (Moh Mahfud MD,2009)

The factors that determine legal politics are not only determined by what one aspires to or depends on the will of lawmakers, theorists and legal practitioners, but also depends on the reality and developments of international law. As a legal discipline, legal politics provides an academic basis for the process of forming and finding laws that are more in line with the historical context, situations and conditions, culture , values that develop in society, and by taking into account the community's needs for the law itself. Through a process like this, it is hoped that legal products that will be implemented in the midst of society can be accepted, implemented and obeyed. In the view of Moh. Mahfud, the implementation of legal politics can be in the form of (i) making laws and updating legal materials that are considered foreign or not in accordance with needs by creating the necessary laws; (ii) Implementation of existing legal provisions, including affirmation of institutional functions and training of members of law enforcement. (Moh Mahfud MD,2009)

In relation to Pancasila as the basis of the State, Mahfudz MD (Moh Mahfud MD,2009) introduced four rules to guide the making of legal politics or other state policies so that Pancasila is not just a mere jargon, namely **First** , general policies and legal politics must maintain integration or integrity . nation both ideologically and territorially. Any laws or policies in Indonesia must not threaten our integrity as a nation, both ideologically and in terms of its territory. Political law and public policy must be shared and accepted without being damaged by sectarian values. Every policy or effort that has the potential to tear the integrity of our ideology and territory must be resisted and dealt with firmly. **Second**, public policy and legal politics must be based on efforts to build democracy (people's sovereignty) and nomocracy (state of law) at the same time. Indonesia is a democratic country which means handing over the government and determining the direction of state policies to the people through healthy political contestation, but Indonesia is also a legal state (nomocracy) so that every state policy made on behalf of the people must be in accordance with legal principles and legal philosophy that underlying it. **Third** , public policy and legal politics must be based on efforts to build social justice for all Indonesian people. Indonesia is not a follower of liberalism, but ideologically adheres to the prism of individualism and collectivism with an emphasis on general and social welfare.

The function of regulation or legislation is the first branch of power that reflects the sovereignty of the people. The first activity of the state is to organize common life. Therefore, the authority to stipulate the regulations must first be given to the people's representative institutions or the parliament or the legislature. One that is regulated is an arrangement that can reduce the rights and freedoms of citizens. The first function of the people's representative institution is the function of legislation or regulation. This regulatory function ( *regelende functie* ) relates to the authority to determine regulations that bind citizens with binding and limiting legal norms. Therefore, this authority can only be exercised as long as the people themselves agree to be bound by such legal norms .

In the legal world, it is known that there are three forms of pouring legal norm decisions, namely (i) regulatory decisions (*regeling*) resulting in regulatory products ( *regels* ), (ii) decisions that are administratively decisive or stipulating something that results in state administrative decisions (*beschikking*s) and (iii) judgmental decisions as a result of the judicial process (*adjudication*) resulting in a decision (vonnis). Besides that, there are also what are called beleidsregel or policy rules which are often referred to as quasi-regulations, such as implementation instructions, circulars, instructions, and so on which cannot be categorized as regulations, but their contents are regulatory as well. (Jimly Asshiddiqie , 2007). The formation of law in Indonesia has been regulated by type and hierarchy by the Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Legislation.

In the formation of law there are at least three theories, namely: *Materiele theorie* , *Formile theorie* , and *Filosofische theori* . (Muhammad Khambali , 2014) The Materiele theory, put forward by Leopold Pospisil, is in three frameworks of thought, namely: **First**, the law in a country can essentially only be divided into two: (1) *Authoritarian law* , the law that comes from the *author* (ruler), and (2) *Common law*, the law that lives in society. **Second** , in the dimensions of advantages and disadvantages. The advantages of *authoritarian law* are in two respects: (1) high legal certainty, and (2) high coercive power. The weakness of authoritarian law is that it is static and the objectivity of justice is difficult to realize because it is made by the author (ruler) not by the people. Meanwhile, the advantages of common law are: (1) it is dynamic, and (2) the objectivity of justice is easy to realize. The weakness of common law is that its legal certainty is low, and its enforcement power is also low. **Third**, good law is law whose material (content) is as much as possible taken from common law but given a place in the form of authoritarian law (written law). Formile theory, put forward by Rick Dickerson in Legal Drafting Theory. A good law must fulfill three conditions:

(1) thoroughly regulate the problem, (2) there are no provisions regarding the delegation of legislation (delegatie van wetgeving), and (3) there should not be any provisions (articles) that are elastic. Philosophische theorie, put forward by Jeremy Bentham in Legal Theory. A good law must meet the following elements : (1) apply philosophically. In the Indonesian context, legal products must apply according to the Pancasila philosophy. That is, if the legal product is filtered with Pancasila, it can pass, (2) applies sociologically. This means that the legal product formed must be in accordance with the legal awareness of the community where the law will be applied. If it is not appropriate, then the legal product formed will be redundant, and (3) juridically applicable. These three applicable properties must be owned by a legal product that is formed.

## 2. Regional Regulation Perspective

Simultaneously with the enactment of Law Number 32 of 2004, then followed by the issuance of Law Number 33 of 2004 concerning Financial Balance between the Center and the regions or precisely on October 15, 2004, the State Gazette of the Republic of Indonesia of 2004 Number 126 and the Supplement to the State Gazette of the Republic of Indonesia Number 4438.

The background that led to the birth of Law Number 32 of 2004 is as follows: (BN. Marbun,2003)

- a. There is a shift in the atmosphere and a shift in political power in Indonesia which is reflected in the considerations considering Law Number 32 of 2004, namely:
  - 1) Whereas in the context of administering regional government in accordance with the mandate of the 1945 Constitution, regional governments that regulate and manage government affairs themselves according to the principles of autonomy and assistance tasks are directed to accelerate the realization of community welfare through improvement, service, empowerment, and community participation, as well as increasing competitiveness. regions by taking into account the principles of democracy, equity, justice, privileges, and the specificity of a region within the system of the Unitary State of the Republic of Indonesia;
  - 2) That the efficiency and effectiveness of regional government administration needs to be improved by paying more attention to aspects of the relationship between government structures and between regional governments, regional potentials and diversity, opportunities and challenges of global competition by giving the widest possible authority to regions accompanied by the granting of rights and obligations to implement autonomy regions within the unity of the state administration system; and
  - 3) Whereas Law Number 22 of 1999 concerning Regional Government is not in accordance with the development of conditions, state administration, and demands for the implementation of regional autonomy so that it needs to be replaced.
- b. The atmosphere of reform has been misinterpreted;
- c. The issue of special autonomy for Aceh and Papua and the principle of the Unitary State;
- d. DPRD and local government are "drunk" of reforming and making regulations that overlap with other laws and regulations;
- e. The rise of corruption in DPRD throughout Indonesia;
- f. DPRD acts " *overacting* " against the Regional Head, especially regarding the Accountability Report (LPJ) at the end of each year and at the end of the Regional Head's term of office; and
- g. Amendment of the 1945 Constitution by the MPR.

As stated above, that the state as a system, local government is a subsystem in the administration of government at the basic level of the state structure. Regional People's Representative Council (DPRD). Each agency or institution carries out its role in accordance with its position, main tasks, and functions in the Indonesian state government system. The Regional Government and DPRD are an integral unit that provides public services in accordance with the legal provisions mandated by the Constitution. (BN. Marbun,2003)

Meanwhile, the principles used in the administration of regional government as regulated in Law Number 32 of 2004 concerning Regional Government include : (BN. Marbun,2003) (1) The principle of autonomy and assistance tasks; (2) DPRD is an element of regional administration; and (3) Regional Heads and Deputy Regional Heads are elected directly, publicly, freely, confidentially, honestly and fairly by the people in the area concerned. Furthermore, in accordance with the provisions of Law Number 32 of 2004, the relationship between the regional government and the DPRD is a working relationship of equal position and is a partnership. This is reflected in making regional policies in the form of regional regulations. The partnership relationship means that between the local government and the DPRD are both partners in making regional policies to implement regional autonomy in accordance with their respective functions so that between the two institutions build a working relationship that is mutually supportive and not an opponent or competitor to each other in implementing each function.

Taking into account the description above, it can be concluded that: (Hanif Nurcholis, 2007) (1) In Indonesia, a regional government is formed; (2) Regional Government consists of large and small regions; (3) Regional government must be based on democracy, namely the existence of deliberation in the DPRD; and (4) Autonomous regions and indigenous legal community units that have original structures must be considered to become special regional governments after reforms are carried out, namely by adopting a democratic system in their government system. This is the most authentic understanding of Article 18 of the 1945 Constitution.

Thus, it is clear that in accordance with the original meaning, regional government when viewed from its structure consists of large regions and small regions. Meanwhile, if viewed from the form, the regional government is in the form of an autonomous region, not an administrative area. This is very clearly shown by the clause, by looking at and remembering the basis of deliberation in the state government system. The basis for deliberation is a democratic system whose essence is deliberation in the Regional People's Representative Council. Regional government that adheres to a democratic system is an autonomous regional government, not an administrative regional government. (Hanif Nurcholis, 2007 ) Based on the description above, regional

autonomy is the basis for expanding the implementation of democracy and an instrument for realizing public welfare. Therefore, the basic principle in the implementation of regional autonomy is that the implementation of autonomy is carried out by giving broad, real, and responsible authority.

If viewed from the aspect of constitutional law (HTN), autonomy is related to the basics of the state and the organizational structure of the state which leads to 2 (two) basic directions of state administration in the Indonesian government, namely democracy and state administration based on law. Therefore, the provisions of Article 18 of the 1945 Constitution as a juridical framework for the implementation of regional government in Indonesia must be interpreted as: (1) Regional government is the composition of government within the Unitary State of the Republic of Indonesia; (2) The desired regional government is a government that has the right to regulate and manage its own household (autonomous region); (3) The regional government is composed of a maximum of two levels, and the village is an integral unit in the regional government structure; (4) Regional government is structured by taking into account rights, origins in special regions, and (5) Regional administration is carried out on the basis of the widest possible autonomy.

The consequence of the implementation of regional government based on the widest possible autonomy is that the regions are given the authority to administer and regulate all government affairs outside those that are government affairs regulated by law. In this case, the regions have the authority to make regional policies in order to provide services, increase participation, initiatives, and community empowerment aimed at improving people's welfare. In line with this principle, the principle of real and responsible autonomy is also implemented, which means that the principle of real autonomy is a principle in terms of government affairs that are carried out based on tasks, authorities and obligations that actually already exist and have the potential to grow, live and develop in accordance with with the potential and uniqueness of the region. Through this principle, it can be concluded that the content and type of autonomy for each region is not always the same as for other regions. Meanwhile, responsible autonomy is autonomy which in its implementation must be in line with the aims and purposes of granting autonomy, which in essence is to empower the regions, including improving the welfare of the people, which is the main part of national goals.

In addition, the implementation of regional autonomy must also ensure harmonious relations between regions and other regions. In another sense, regional autonomy must be able to build cooperation between regions to improve mutual welfare and prevent inequality between regions, and must be able to maintain and maintain the territorial integrity of the country for the sake of the establishment of the Unitary State of the Republic of Indonesia. Thus, several things that are considered important in relation to the implementation of regional autonomy in Indonesia are: (1) The distribution of power and authority of government from the Central Government to the regions; (2) democratize, or carry out democratization; (3) Fostering initiative and creativity in the region in developing the local area; (4) Equity and justice in the utilization of regional natural resources; (5) Fishing and providing opportunities for community participation in development; (6) Paying attention to and appreciating regional potential and regional diversity (not necessarily uniform); and (7) Improving public services and welfare.

Some of the things mentioned above are the main essence of the implementation of autonomy which is seen as very urgent in the framework of the life of the nation and state in one unit of the Unitary State of the Republic of Indonesia. Therefore, the existence of regional government is a logical consequence of the existence of a vertical division of power in a country, namely between the central government and regional governments. The vertical division of power with the establishment of local government aims solely at achieving efficient governance, because local governments are considered to be more important in dealing with various matters relating to the problems of the local community which cover all aspects of life and values that live in a full local community. with its diversity.

With a decentralized system that is closely related to empowerment, local governments are given the flexibility and authority to take the initiative and make decisions. In taking the initiative, local governments have broad opportunities to develop creativity, find the best and flexible solutions based on the context of people's lives in solving the problems they face. This means that in acting, local governments do not need to first ask for instructions or wait for instructions from the central government, but are required to be able to respond and serve the various demands of the community. In addition, the urgency of the formation of regional governments is also intended to answer and overcome various issues that are specific and characteristic of localities in accordance with geographical conditions, population conditions, economic activities, cultural characteristics and historical backgrounds. In this case, local governments are seen as more capable of quickly understanding regional specific values or local community sentiments and aspirations, so that on the one hand local communities feel more secure and at peace with local government institutions.

Local government, in fact if viewed from the administrative aspect is part or branch of the government above. The relationship between the regional government and the central government is the relationship between carrying out orders or the relationship between superiors and subordinates, especially for financing the administration of regional government, everything is financed from the finances of the central government and its authorities. However, in an autonomous regional government, the status is not part or a branch of the superior government or the central government. Regional governments that are given the right to manage certain affairs as their own household affairs have their own responsibilities regarding what actions will and must be taken and their implementation in order to bring the maximum benefit for the benefit of their own household. In this case, the relationship between the regional government and the central government or its superior government is a supervisory relationship, not in a superior-subordinate relationship or in carrying out orders.

In other words, the implementation of the authority, duties and responsibilities of the state government is not only carried out by the central government, but besides the central government there are also lower government units that also carry out the authority, duties and responsibilities in order to carry out some of the government affairs that are submitted or assigned to the government. recognized as regional affairs concerned. On this basis, regional autonomy which is applied to regional government through decentralization policies must be understood that regional autonomy is a regional obligation in the context of the success of national development. Therefore, the nature of regional autonomy is more of an obligation than a right, namely the obligation

to participate in launching the course of development as a means to achieve people's welfare which must be accepted and carried out with full responsibility.

#### 4. CONCLUSION

The fundamental basis of just regional regulations in the administration of special autonomy governance in the regions includes three basics or foundations, namely the philosophical basis, namely that legislation is produced, has a philosophical basis (*filisofische grondslag*) and if its formulation or norms are justified (*rechtvaardiging*) and studied philosophically. then the law has a justifiable reason, Sociological Basis; a piece of legislation is said to have a sociological basis (*sociologische grondslag*) if its provisions are in accordance with the general belief or legal awareness of the community, and the juridical basis; (*rechtgrond*) or also called the legal basis is the basis contained in the legal provisions of a higher degree.

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