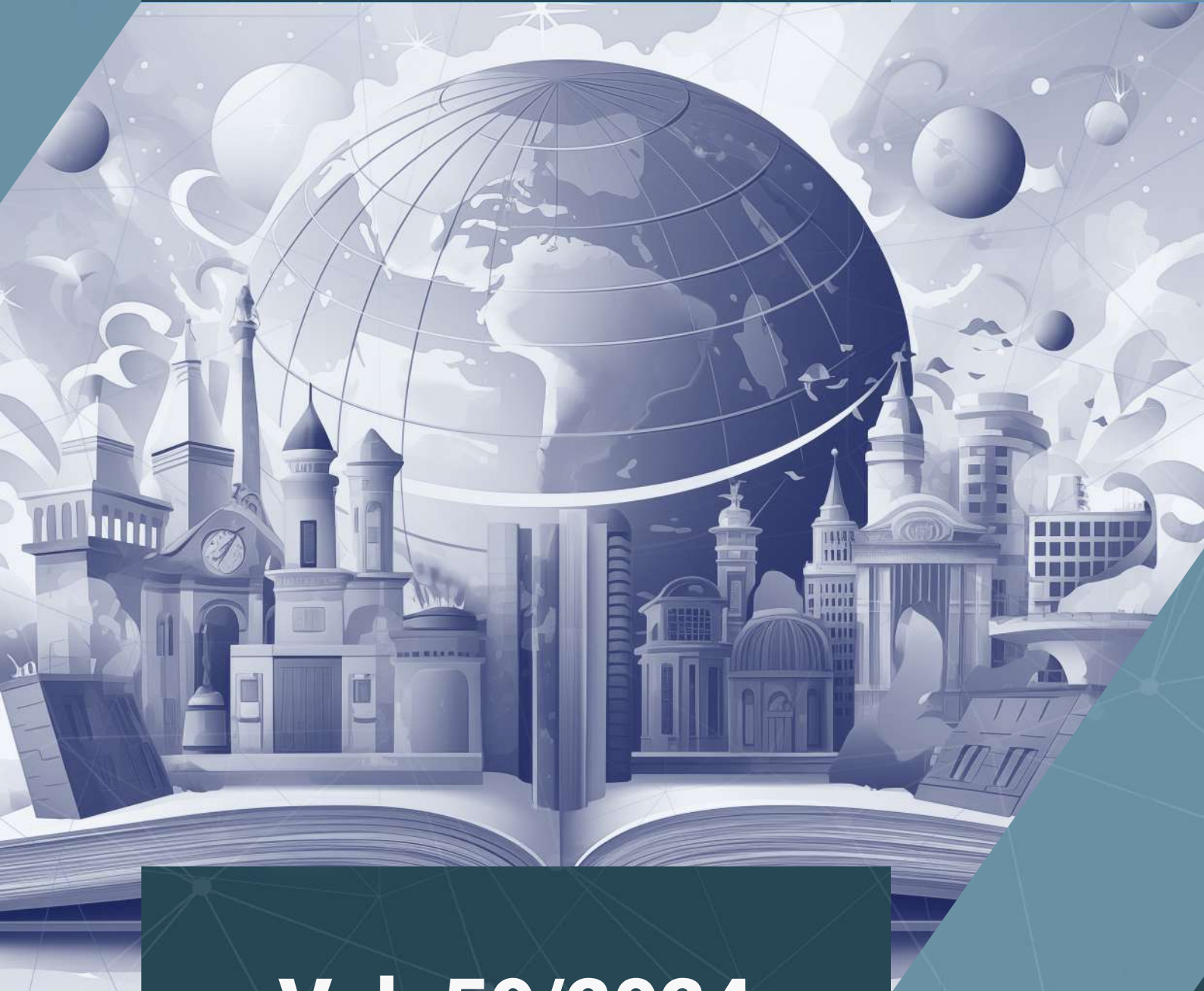




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## **Legal policy in controlling and supervising the governor's regulatory (regulating) and budgetary (budgeteir) functions at the district/city level**

**Ampera Ariyanto**

Faculty of Law, Universitas 17 Agustus 1945 Surabaya

[ampera.mebas67@gmail.com](mailto:ampera.mebas67@gmail.com)

**Abstract.** Article 18 paragraph (2) of 1945 Constitution Republic Indonesia shows that the relationship between provincial government and regency/city government is an equal relationship because the Governor and Regent/Mayor both run government in their respective regions based on principles of decentralization (regional autonomy) and assistance tasks. The governor has a dual position or role, namely as head of provincial region as well as Head of Region / Representative of the Central Government in region. Settle disputes in the implementation of government functions between districts / cities in 1 (one) province. Give approval to draft regency/city regulation on the formation and composition of regency/city regional apparatus, and exercise other powers in accordance with the provisions of laws and regulations the nature of authority is free authority, so in its application the governor can use discretion to make decisions and actions if regent / mayor is underperforming, does not carry out the obligations specified in laws and regulations, and violates the oath / pledge.

**Keywords.** policy; budgetary; law

### ***Introduction***

Article 18 paragraph (2) of 1945 Constitution Republic Indonesia shows that the relationship between provincial government and regency/city government is an equal relationship because the Governor and Regent/Mayor both run government in their respective regions based on principles of decentralization (regional autonomy) and assistance tasks. The governor has a dual position or role, namely as head of provincial region as well as Head of Region / Representative of the Central Government in region[1].

The portion of governor's duties as a representative the government is clearly regulated in Article 91 paragraphs (1) to (5) related the authority, finance, and supervision of district / city governments. In the regional household system, the position of each party in implementation of government affairs will appear. In addition, the relationship in field of autonomy will also be related to organizational, financial and supervisory arrangements[2].

In principle, maintaining the balance of relationship between central government and local governments, the Governor adheres to *Integrated Perfectoral System* as a form of consistency in maintaining a unitary state so as not to cause overlapping (*spanning*) government affairs between the central government and district / city local governments and balance

between district/city local governments. Therefore, efforts to build balance must be considered in context of power relations between the center and the regions. Regions must be viewed in two positions, namely as regional organs to carry out autonomy tasks and as agents of central government to organize central affairs in region [3].

The position of governor as the representative central government is ineffective due to 6 (six) *determinant factors*, namely the weak support of policy instruments, the absence of institutional institutions, the absence of apparatus personnel, budget uncertainty, leadership, and government political will. The research results formulated two designs of local government systems. First, the province of administrative regions and autonomous regions in district/city autonomous regions. Second, the province of administrative regions and autonomous regions in district/city of administrative regions and autonomous regions. Both of designs place deconcentration and decentralization in the province and place governor both as a representative of the central government and as head of region. The results also show the need for institutional institutions for governor as a representative of central government, which in this study is formulated as an *intermediate government* in form of a deconcentration directorate.

City districts that have not been maximized, not to mention the limited number of legislative drafters in regions drafting Regional Regulations. Furthermore, the unsolved problem is governor's authority given by central government in canceling a regency/city regulation with a governor's decree [4].

The State of Indonesia is a unitary state in the form of a Republic, as affirmed in Article 1 paragraph (1) in 1945 Constitution of Republic Indonesia which is then confirmed again through Article 37 paragraph (5) in 1945 Constitution after the amendment, it is expressly stated that specifically in form of the Unitary State of Republic Indonesia cannot be changed. This provision emphasizes the determination to maintain establishment of a unitary state in the Republic of Indonesia. In context of this unitary state, all government responsibilities are held by central government.

Referring to the public perspective, the success and welfare of a country can be judged by the quality of public service performance. Therefore, the community has the right to determine good and bad value of a service provided by local public officials or actors. Problems that arise are usually caused by ineffectiveness and efficiency of transparency and accountability in a government. Therefore, transparency and public accountability must be immediately realized properly to be able to increase global competition based on paradigm of life.

The vagueness and ambiguity contained in Law No.23/2014 makes the relationship between governments only between spheres of government, not hierarchical. Meanwhile, when referring to the 1945 Constitution of Republic Indonesia (UD NRI 1945), the relationship between governments is a hierarchical relationship, so that the pattern of intergovernmental relations is a *continuum* line, not contra each other and has no relationship [5].

The weak position of provincial government is also exacerbated by direct relationship between the central and regional governments without involving the provincial government as representative of central government, especially the ministries. The reason for this is found in Law of Republic Indonesia No.39/2008 on State Ministries (hereinafter referred to as Law No. 39/2008) which regulates ministries, where ministries are not required to coordinate with provincial governments. Many programs created by ministries do not involve provinces in their implementation. The lack of provincial involvement has resulted in a lack of synchronization and policy coordination between provinces and districts/cities.

The practice of direct coordination by district/city governments also shows absence the province's position in intergovernmental relations. District/city governments tend to coordinate and be accountable directly to central government (Ministry of Home Affairs or sectoral ministries) without going through the provincial government. This is due to the existence of sectoral regulations and policies that provide opportunities for this to happen, so that this practice weakens the position of Provincial Government before Regency/City Government.

Transparency and accountability are related to each other. Transparency refers to the freedom to obtain information. Accountability concerns accountability to the public for every activity undertaken. In this context, if a subject has been transparent, then it needs to be properly accounted for so that clarity and novelty are obtained transparency has an important role in the development of public accountability because by realizing transparency, the government has at least made it easier for citizens to know their actions, the rationality of those actions, and compare them with the existing value system without transparency, there will be no public accountability.

Local government policies are policies made and implemented by local governments, such as provinces, districts/cities, or villages. These policies are made to meet the needs of the people in the region and aim to improve people's welfare.

The substance of local government policies may vary depending on the problems or issues faced in the region. However, local government policies generally cover the following issues:

1. Infrastructure development
2. Education
3. Health
4. Environment
5. Community Empowerment
6. equitable development
7. Security and order
8. development planning and control

#### ***Problem***

There is uncertainty in using policy analysis methods starting from the formulation, implementation, and evaluation stages. This method is useful for gaining a deeper understanding of the factors that influence the success or failure of local government policies, as well as providing recommendations for policies that have been implemented. Policy analysis methods can be carried out using various approaches, such as economic, social, political, and interdisciplinary approaches. In the end, it causes the performance of services and administration not to run with what the people want. In addition, there is no sanction against the Regent/Mayor as a representative in the performance of government in the region, so there is no coordination between the Governor and the Regent/Mayor and there is a *miss understanding* in the implementation of regional government performance.

#### **Research Method**

The research used in this research process uses a type of normative legal research.[6]

#### **Result and Discussion**

##### **Legal Certainty of Sanctions on Local Government Performance**

Administrative sanctions can be imposed on officials who do not carry out their obligations. This is regulated in Article 116 paragraph (4) of Law number 51 of 2009 which states that administrative sanctions consist of light administrative sanctions, medium

administrative sanctions, and heavy administrative sanctions. These sanctions can be applied to every official/agency that doesn't carry out its obligations depending on the weight of the violation of the official concerned [7].

The main obstacle to the imposition of administrative sanctions against Government Officials who are not willing to implement the Decision of the State Administrative Court that has permanent legal force as referred to in Article 116 paragraph (4) of Law Number 51 of 2009 is that no laws and regulations have been issued as implementing rules. With the promulgation of Government Regulation Number 48 of 2016 concerning Procedures for Imposing Administrative Sanctions on Government Officials, a discourse emerged to transplant the provisions of Government Regulation Number 48 of 2016 in the implementation of Execution by the Chairman of the State Administrative Court. For this reason, this legal research was conducted, with a statutory approach and a conceptual approach. The result is that the provisions of administrative sanctions in Government Regulation No. 48/2016 can be applied *mutatis mutandis* by the President of the Court in the implementation of Execution against Government Officials who are not willing to implement Court Decisions that have permanent legal force [8].

Local governments are responsible for their function of organizing government in the regions based on statutory regulations. The regional head is an important element that leads the implementation of regional government has duties, authorities, and obligations that must be carried out properly. Regional heads have a very important obligation to implement national strategic programs. Failure to implement the national strategic program will result in sanctions up to dismissal of office imposed by the president. This provision raises questions regarding the basis of the president's authority to dismiss regional heads [9].

The concept of administrative sanctions is a doctrinal idea and is not normatively defined in the law. Administrative sanctions of written warnings that have been delivered twice in a row and still not implemented, the regional head concerned is temporarily dismissed for three months.

The administrative sanction of a written warning to the sanctioned regional head is a practice of administrative implementation through non-court channels. Meanwhile, the application of administrative sanctions for temporary dismissal and dismissal of regional heads contained in Article 68 of Law Number 23 of 2014 is unclear whether it is given through court or non-court channels [10].

### **Future Legal Policy to Control and Supervise Regulatory and Budgetary Functions**

The issue of regional finance is one of main elements in implementation regional autonomy. Local governments are required to submit their regional financial accountability reports to assess whether the local government has succeeded in carrying out its duties properly or not. One of tools to analyze the financial performance of the Regional Government in managing its regional finances is to conduct a financial ratio analysis the APBD that has been implemented [11].

The average independence ratio is 55.338% including in the participatory relationship pattern, for the average effectiveness ratio is 104.915% including in very effective criteria, the average efficiency ratio is 92.10% including in less efficient criteria, the average activity ratio is 75.85% for operating expenditure while for capital expenditure it is 24.14%.

In Government Regulation of the Republic of Indonesia Number 33 of 2018 relating to the duties of the governor in coordinating the guidance and supervision of the implementation of assistance tasks in districts /cities with Article 4 paragraph (1) letter c by Government Regulation of Republic Indonesia Number 23 of 2011 the governor is authorized to apply

sanctions to regents/mayors related to performance, violation of obligations, and implementation oath of promise [12].

The freedom of action government was born because in situation of limited legal arrangements as a basis for action for the government to answer the blurring of norms that occurred. Discretion cannot be exercised without *conditio sine quo non* that underlies the granting of discretion itself.[13]

Against the provisions of Article 4 paragraph (1) letter c of PP RI No. 23 Year 2011 is a legal system unit with other laws and regulations, especially those governing regional government. Because the provisions of Article 4 paragraph (1) letter c of PP RI No. 23 of 2011 do not regulate the mechanism, benchmarks, and forms of sanctions that can be given to regents/mayors, a systematic interpretation is used by linking the provisions of Article 4 paragraph (1) letter c of PP RI No. 23 of 2011 with Article 29 of Law 32/2004, Article 123 of PP 6/2005, Article 45 paragraph (1) and paragraph (2) of PP 79/2005, Article 58 paragraph (2) of PP 6/2008.

### **Conclusion**

Settle disputes in the implementation of government functions between districts / cities in 1 (one) province. Give approval to draft regency/city regulation on the formation and composition of regency/city regional apparatus, and exercise other powers in accordance with the provisions of laws and regulations the nature of authority is free authority, so in its application the governor can use discretion to make decisions and actions if regent / mayor is underperforming, does not carry out the obligations specified in laws and regulations, and violates the oath / pledge.

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