

Policy Analysis Regarding Law And Regulations And Legal Sanctions On Four Wheel Parking In Makassar City

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ABSTRACT: This study aims to find out Government Regulation Number 25 of 2000 concerning Government Authorities and Provincial Authorities (State Gazette of the Republic of Indonesia Year 2000 Number 54 Supplement to State Gazette of the Republic of Indonesia Number 3952); and Law Number 14 of 1992 concerning Road Traffic and Transportation (State Gazette of the Republic of Indonesia of 1992 Number 49, Supplement to the State Gazette of the Republic of Indonesia Number 3480); In addition to statutory regulations and the law in violation of the law, which cannot be separated from government regulations concerning laws issued in the context of running the government. Policy regulations always appear in controlling regulations that are not regulated in laws and regulations as regulations regarding the prohibition of special parking in Makassar City. the Makassar city government considers policies and regulations against laws and sanctions against motorists or vehicle owners. it's a. Regardless of the type of research, it is qualitative and descriptive research, which discusses several things related to policy, including similarities and differences with the legislation. The results of the study show that there are still many four-wheeled vehicle users who continue to park their vehicles in certain areas causing unclear rules and laws or regulations regarding parking restrictions.

Keyword : Legal and statutory policies and legal sanctions.

INTRODUCTION

Indonesia adheres to the concept of the rule of law as stated in the 1945 Constitution, that Indonesia is based on law (Rechtsstaat), not based on mere power (machtstaats). In line with the conception of the rule of law, the judiciary in exercising judicial power must uphold the principle of "Rule of Law"(Bingham, 2011; Thompson, 2013). The formation of laws and regulations is one of the requirements in the context of developing national law which can only be realized if it is supported by definite, standard and standard methods and methods that bind all institutions authorized to make laws and regulations(Lempert et al., 2016; Zaboli et al., 2016). Recently, it seems that more and more laws have been promulgated and more and more implementing regulations are being and will be prepared. Apart from laws and regulations (wettelijkeregels) which originate from the state's legislative function and which are indeed necessary for the implementation of government policies that are bound

(gebonden beleid), there is also the field of implementing government policies that are not bound (vrij beleid)(Suprpto et al., 2018). From the field of implementing government policies that are not bound, various policy regulations (beleid regulations) are issued which originate from the state executive function(Ahmad & Basri, 2015). These policy regulations are numerous and their shape is not easy to predict. The implementation of "unbound" government policies does open up wide opportunities for the function of administrative regulations(Alpanda et al., 2014; Tükenmez & Demireli, 2012). Overall, you can imagine how many laws and regulations and policy regulations for the future, not all of which meet the requirements of proper and good laws and regulations (wet geving principle)(Grady, 2010). However, the flood of regulations cannot be dammed or reduced, therefore the solution that can be taken is to ensure that these regulations fulfill the principles of their proper and good formation. This study is closely related to several regulations regarding policies carried out by the policy government, including similarities and differences between laws and regulations and policy regulations(Tisdell, 2012; White et al., 2013). These things become interesting, one of which is because until now there are still types of regulations that have become the center of attention. For example, the regulations set by the Makassar City Transportation Service regarding the prohibition of parking in certain areas Makassar City Regulation Number 26 of 2005 concerning the Establishment, Makassar City Transportation Service (Makassar City Regional Gazette Number 27 of 2005 Series D Number 23); Determination of Traffic Control Areas and Obligation to Transport at least 3 (three) Persons per Vehicle in Control Areas, which are better known as KPP Regulations.

LITERATURE REVIEW

Laws and Regulations

The word "legislation" is a translation of "wetgeving, gesetzgebung, legislation," and contains 2 (two) meanings, namely: 1). Means the process of forming state legislation from the highest type, namely laws (wet, gesetz, statute) to the lowest, produced by attribution or delegation of statutory powers (wetgevende macht, gesetzgebende gewalt, legislative), and; 2). Means the entire product of the country's regulations. Experts differ in their understanding of the laws (wetbegrip, gesetzbegriff) which are formed based on the legislative function as one of the state functions that always exist in each country(Chandersekaran & Simpson, 2011). However, the drafters of the 1945 Constitution (UUD 1945) have found their own understanding of the law, and have formulated and stipulated it in the Constitution of the Republic of Indonesia (RI). The founders of the Republic of Indonesia and the drafters of the constitution have emphasized their understanding of the law and the power of legislation based on the ideals of the state and the theory of the state of the Indonesian nation itself. What is the position of the law in Indonesia in the Indonesian constitutional constellation, especially in the function of general regulations? The president is the highest state government administrator (chief of executive) who holds government power according to the 1945 Constitution based on Article 4 of the 1945 Constitution. Meanwhile, sovereignty is the concept of the highest power. People's sovereignty which is implemented according to the 1945 Constitution means that the highest power is in the hands of the people, exercised by the people themselves through general elections, and by various state institutions whose existence, duties and authorities are stated in the 1945 Constitution. People's sovereignty in practice is manifested in institutions and also

in Thus, the law in Indonesia is essentially a legal product which is a "meeting point" between the sovereign will of the people and the will of the people represented by the people's representatives. Laws in Indonesia should be the embodiment of the will of the Indonesian people. Legislative power in Indonesia is the power in the formation of law through the basic law (UUD 1945). The purpose of the existence of statutory power is to regulate in more detail the life of the state and social life in Indonesia. - other laws and regulations established based on the attribution authority or the delegation authority of the law(Lempert et al., 2016). Considering that the attribution authority is certain and limited, and the delegation's authority cannot be delegated further without the "approval" of the delegate (delegates non potest delegate), therefore the laws and regulations are also certain and limited in type

Types and Content of Laws and Regulations

Legislation (wettelijk regels) is literally defined as regulations relating to laws, both regulations in the form of laws themselves or regulations formed based on attribution or delegation of laws(Mascott, 2019). Based on the attribution and delegation of statutory authority, the types of laws and regulations in Indonesia (with adjustments to the mention based on Law Number 10 of 2004 concerning the Establishment of Legislations) are as follows: central level: 1). Laws and Government Regulations in Lieu of Laws (Perpu); 2). Government Regulations; 3). Presidential decree; 4). Ministerial Regulation; 5). Regulation of the Head of Non-Departmental Government Institutions; 6). Regulation of the Directorate General of the Department, and; 7). State Legal Entity Regulation(Mascott, 2019).

Legislation at the regional level: 1). Provincial Regulations; 2). Regulations/Decrees of the Governor of the Head of the Province; 3). Regency/City Regional Regulations; 4). Regulations/Decrees of the Regent/Mayor of the Head of the Regency/City(Siregar, 2017). Each type of legislation has its own function. For example, laws, which function, among other things, are to further regulate matters that are expressly "requested" by the provisions of the 1945 Constitution or by the Decree of the People's Consultative Assembly (MPR) which expressly mentions them as well as for arrangements in the field of constitution. Therefore, the law is a regulatory forum for matters with a specific content. Then, government regulations, for example, serve to further regulate matters regulated by law, whether explicitly requested or not. Other regulations, such as presidential regulations, are to regulate matters delegated by government regulations and other matters in the field of state administration which are regulated in law or in government regulations, and so on. Of all types of legislation, only lawswhose formation requires mutual agreement between the president and the House of Representatives (DPR), others do not(Al-Tamimi, 2015). Therefore, to be able to know the content material and the function of the type of legislation, it is necessary to first know the content of the law(Vlachos et al., 2014). This is because the content of other types of statutory regulations is the residual content of the content of the law. Broadly speaking, the law is a container for a collection of content material, which includes: 1). Matters which the basic law (the body of the 1945 Constitution and the MPR Decree) requires expressly or not, and to be stipulated by law; 2). Matters which according to the principles adopted by the Republic of Indonesia as a state based on law or rechtstaats are required to be regulated by law; 3). Matters which according to the principles adopted by the Government of the Republic of Indonesia are required to be regulated by law. From the three collections of materials, 9 (nine)

items of detailed material can be found, the regulation of which one of them must be stated in the law. Other materials other than the nine points can be regulated without requiring the approval of the DPR, for example, they can be regulated by presidential regulation.

Policy Regulation

In addition to statutory regulations, people are also familiar with policy regulations (Alpanda et al., 2014). The word "policy regulation" is a translation of the Dutch word (*beleid regels*). This policy regulation is not something new in the administration of government in Indonesia, as well as in other countries. In the Netherlands in 1965, Van Der Hoeven called it, among other things, with the terms: *vaarschriften*, *ugelingen*, *beleidsnota*, and *reglementen*. In Germany people call it by: *verwaltungs*, *voorschriften*. In England it is called: administrative rules, policy rules. And Logemann calls it administrative regulation. Thus, in the administration of state government, there are indeed 2 (two) types of regulations that can apply side by side, namely statutory regulations and policy regulations. Regarding policy regulations, Van Kreveld put forward the following characteristics: 1). The regulation, either directly or indirectly, is not based on law; 2). The regulation may: first, unwritten and occur by a series of decisions of an independent government agency in the context of the implementation of government authority that is not bound, or secondly, firmly stipulated in writing by a government agency; 3). The regulation generally refers to how a government agency will act in carrying out government authority which is not bound to everyone in the situation referred to in the regulation. Policy regulations can be understood as a manifestation of the running of government functions in a narrow or administrative sense, namely issuing regulations that are not statutory regulations (Goodnow, 2017; Raadschelders, 2011). So it is not strange if in the administration of government in a narrow or administrative sense there will be found many regulations in the form of circulars, implementation instructions, technical instructions, etc. regulate society.

METHOD

In this study, using a method with a qualitative approach, namely research methods carried out through in-depth observations to obtain information, observations to obtain information and data on a problem under study. This study uses qualitative methods, namely research or research that is descriptive and tends to use an inductive approach to analysis. The inductive approach is a way of compiling/drawing conclusions with a method of thinking that departs from specific rules (events) to do general things. Process and meaning (subject perspective) are more highlighted in qualitative research. The theoretical basis is used as a guide so that the research focus is in accordance with the facts on the ground.

RESULT AND DISCUSSION

General Binding Policy Regulations

Policy regulations are said to be different from statutory regulations, but in fact they are felt to be "register bound" in general, because the people affected by the regulations cannot do anything other than follow them. One example is, if a Decree of the Regent of the Head of the Regency and the Mayor stipulates that, for example, it will provide a type of credit to farmers who need it, and the credit cannot be given unless the farmer includes proof of payment of the

tax owed. This can be done, even though there is no type of Regency Regional Regulation or a bank regulation that stipulates it, but the credit cannot be obtained by farmers without fulfilling the specified conditions. Thus, the decision of the Regent of the Head of the Regency is felt by the people to be binding in general, such as binding statutory regulations. From the description above, it is clear that policy regulations always exist, appear, within the scope of government administration that are not bound (*vrijbeleid*), in the sense that they are not explicitly regulated by government administration laws and regulations. Officials who carry out such independent governance actions are given the freedom to consider (*bevordelings vrij beleid*, *freies ermesen*, discretionary powers), evaluate and then take certain useful policy actions. Can a policy regulation conflict with the legislation (*tegen-wettelijk*)? In practice, one can find policies that actually contradict the legislation, and an example of this usually occurs in the field of tax law. Judging from its form and format, policy regulations are often the same as statutory regulations, complete with an opening in the form of considering considerations and the legal basis for considering, the body in the form of articles, sections, chapters, and closings that fully resemble regulations. legislation. But apart from that, policy regulations are often found appearing in other forms and formats of statutory regulations, such as official notes, circulars, implementation instructions, technical instructions, and announcements. It can even appear in the form of verbal instructions (to subordinates), which obviously does not have a visible form and format.

Some Similarities between Legislation and Policy Regulations

When juxtaposed between laws and regulations with policy regulations, it will be seen some similarities between the two. The equation includes: 1). This is a generally accepted rule. Legislation and policy regulations have the same address (subject name), and behavioral regulation (object of norms), namely general and abstract (*algemene regeling algemene regel*); 2). These are regulations that apply to the outside. Legislative regulations apply externally and are addressed to the general public (*naarbeuten werbend tat leen reder gerecht*), as well as policy regulations that apply externally and are addressed to the general public concerned (*jegeus de bunger*). 3). It is a regulatory authority of a general nature (public). Laws and regulations and policy regulations are both determined by institutions or officials who have general (public) authority.

Some Differences between Legislation and Policy Regulations

The differences between legislation and policy regulations are: 1). The formation of laws and regulations is a function of the state. Power in the field of statutory regulations or legislative power is only given to an institution specifically for that purpose, namely the legislative body. If due to a consideration the authority has to be handed over to institutions in other fields, for example government institutions in a narrow sense or administrative (executive institution), then this must be done firmly and clearly, either through the creation of authority or delegation; 2). The function of forming policy regulations lies with the government in a narrow sense (executive). Government authority in a narrow or administrative sense (executive authority) also contains the authority to form regulations in the context of carrying out its functions. Therefore, the authority to formulate policy regulations that aim to further regulate the administration of government can always be exercised by every government institution

that has the authority to administer government; 3). The material content of the legislation is different from the material policy regulatory content. Policy regulations contain content related to the authority to form decisions in the sense of *beschikkingen*, the authority to act in the field of private law and the powers to make plans (*plannen*) that do exist in government institutions. While the material content of the legislation regulates the order of people's lives that are much more basic, such as holding orders and prohibitions to do or not to do, which if necessary is also accompanied by criminal sanctions (coercive sanctions). 4). Sanctions on laws and regulations and on policy regulations. Criminal sanctions or coercive sanctions that clearly reduce and limit the human rights of citizens and residents can only be stated in a law whose formation must be carried out with the consent of the people or the approval of their representatives. Other lower laws and regulations can only include criminal sanctions for violations of their provisions if they are expressly attributed by law. Meanwhile, policy regulations can only include administrative sanctions for violations of their provisions.

CONCLUSION

The essence of development in the Republic of Indonesia today, both long-term development and short-term development, is the will to achieve state goals as stated in the 1945 Constitution. Furthermore, development itself is essentially a manifestation of the practice of Pancasila. Then how to view the development from the point of view of legislation and policy regulations? As a state based on modern law (*rechtstaats*), the Republic of Indonesia consciously wills, strives and strives to achieve its goals. For this reason, it is necessary to make modifications (changes) in the lives of the people. These social changes are carried out by preparing a well-detailed plan, followed by the implementation of development, based on laws, statutory regulations, and also supported by policy regulations. Thus, for development that is being carried out, which is nothing but the practice of Pancasila into reality, it is necessary to strengthen, know, and properly understand the laws and regulations and policy regulations. For this reason, knowledge in the field of legislation needs to be continuously developed and taught to the wider community.

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