

Drafting the Substance Materials of The Regional Regulation of Badung Regency on Public Service

Ni Luh Gede Astariyani¹, Made Nurmawati²

¹ Faculty of Law Udayana University
Jalan Pulau Bali No. 1
Denpasar, Bali, Indonesia
Email: astariyani99@yahoo.com

² Faculty of Law Udayana University
Jalan Pulau Bali No. 1
Denpasar, Bali, Indonesia
Email: made_unud@yahoo.com

Abstract The Government of Badung Regency provides public services, both in the forms of services and goods, to its community as part of its duty in performing governance. In the implementation, such public services are regulated in regulation which is derived from the existence of policy in the delegation of authority. The regional regulation as such is containing what so called the substance materials. The substance materials of Regency/City Regional Regulation mean that such regulation contains typical substance materials that are not contained in other Laws and Regulation both in the local and central level. The formulations of legal norms in the Regional Regulation are conducted by using the single and pairs formulations. The targets that will be realized, the scope of regulation and drafting direction of Regional of Badung Regency on Public Services, among others: scope of public services, integrated service system, guidelines for the standrad services preparation, the proportion of community groups and categories in a tiered services and community participation in performing the service.

Keywords: *Regional Regulations, the Public Service*

I. INTRODUCTION

Product of the government organization is actually what so called public service. Such service is given to fulfill the rights of people both in civil and public services in the form of services and goods. Service basically involves the fulfillment of the rights based on service commitments attached to any person, either individually or in groups (organizations), and carried out universally, "the right to the service is universal in nature which applies to anyone who is concerned over such rights and by any organization whose duties also carry out the service."

In relation to public complaints, the Regent of Badung has set Regent Regulation No. 50 of 2013 on Management Guidelines for Public Complaints in the Government of Badung Regency. These guidelines will become a reference for the complaint manager in managing and resolving public complaints. As for the

people, they will have clarity in procedures and flows to deliver their complaints specifically related to maladministration. Article 344 paragraph (1) of Law No. 23 of 2014 on Regional Government provides that the Regional Government shall ensure the implementation of public services based on the Government Affairs which become the regional authority.

Article 3 of Minister of Home Affairs Regulation No. 80 of 2015 on the Establishment of Regional Legal Products states that regional legal products are in the forms of regulations as referred to in Article 2 letter (a) which consist of: Regional Regulation, Head of Regional Regulation, Joint Regulation of the Head of Region and People's Legislative Council Regulation.

Article 5 of Law No. 25 of 2009 on Public Services (hereinafter referred to as the Public Service Law) is governing the basis authority on the establishment of a Regional Regulation. Legal matters on substance materials regulated under Article 8 are as follow:

- 1) The Implementation Organizer is obliged to organize public services in accordance with the purpose of the establishment.
- 2) The public service referred to in paragraph (1), at least shall include the following matters:
 - a. implementation services;
 - b. public complaints management;
 - c. information management;
 - d. Internal monitoring;
 - e. Dissemination to society; and
 - f. Consultation services.

- 3) The organizer and all parts of the implementation organizer are responsible for the inability, violations, and the failure of service delivery.

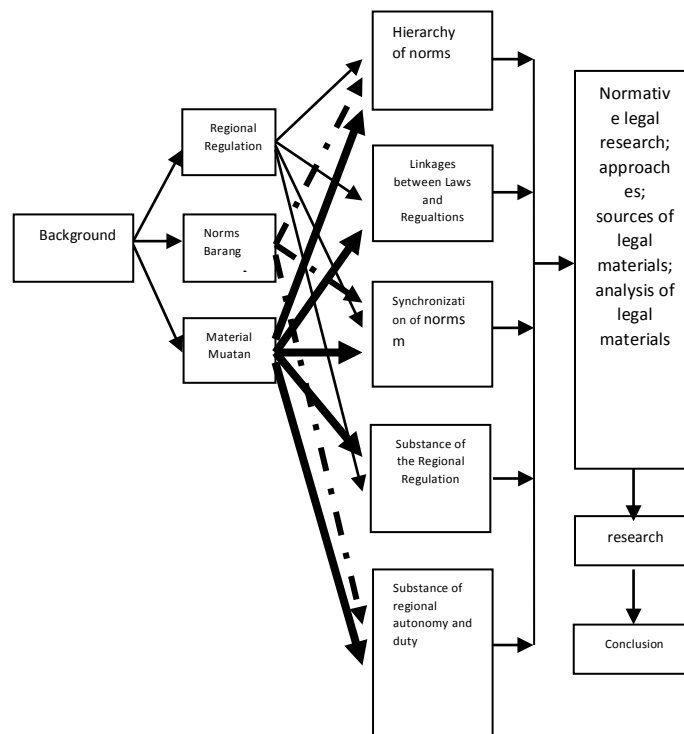
The above provisions are implemented in the Regional Regulation of Badung Regency No. 2 of 2008 on Government Affairs of Badung Regency. Based on Law No. 23 of 2014 and Law on Public Service Law, it is noted that Badung Regency has authority to regulate the substance materials in the form of Regional Regulation on Public Service. In accordance with the scope of identifying the problems as mentioned above, the purposes of the study on the drafting of the substance materials of the Regional Regulation of Badung Regency on public service are formulated as follows:

1. To get better understanding of the regulations on public services; and
2. To get better understanding of the target to be realized, the scope of the regulation, the range and the direction of the regulation in the Draft of Regulation of Badung Regency on Public Service.

This research conducts studies related to: the substance materials, Regional Regulations and public services. Understanding regarding the importance of the link between the forms and material substances constitute legal study in the field of Laws and Regulations. The link between the type and substance materials of these regulations is a series of legal norm validity which distinguishing one regional regulation to other regional regulation.

The main advantages in this research is the basic aspects of authority in the form of authority delegation to establish Regional Regulation which considering the division of authority at the central, provincial and regency level as the basis.

II. RESEARCH METHODOLOGY



In brief, the research groove is described in this below figure: This research is using normative legal research. In some types of research this study is also referred to as dogmatic research.⁹ In a normative legal research, primary, secondary and tertiary legal materials are used to examine the legal problems. Primary legal materials are consisted of Laws and Regulations while secondary legal materials are consisted of papers, books written by experts and tertiary legal materials are in the forms of legal dictionary and language dictionary.

III. RESULTS AND DISCUSSION

Services are given both in the form of private and public services to fulfill the rights of the society. This means that service basically involves the fulfillment of a right. Those are attached to everybody, both individually and in groups (organizations), and are done universally. As expressed by Moenir that "the right to the services is universal in nature, apply to anyone who is interested on the right, and by any organization whose duties also to carry out the services". The Government of Badung Regency in Bali continues to improve itself by increasing the human resources (HR) in order to improve public services. The Badung Regency's Visions and Missions of 2016-2021 are strengthening the

development in Badung based on Tri Hita Karana towards the Advanced, Peace and Prosperity Society, while the missions of Badung Regency Year 2016 – 2021 are:

1. Strengthening the harmony in social life in a tangle of diversity of customary, culture and Religion;
2. Strengthening the quality of public services by applying information and communication technology;
3. Strengthening the Governance by applying the principles of good governance and clean government;
4. Improving the implementation of family planning program (*Keluarga Berencana*) in the population management;
5. Strengthening the Micro, Small and Medium Enterprises (SMEs) as the pillar of economic democracy;
6. Creating a social life order which upholding law enforcement and human rights;
7. Improving the protection and management of natural resources and environment;
8. Strengthening regional competitiveness through quality improvement of human resources and regional infrastructure;
9. Strengthening the potential synergy of culture, agriculture and tourism in the broad sense.

Norm is a measurement or standard for a person to act and behave in society. Legal norm is one of the norms that exist in society. Legal norms can be established in writing or non-writing by the authorized institution

Referring to the Hierarchy of Norms from Hans Kelsen, the legal order is not a system of norms that only coordinated with each other, which stand parallel or equivalent, but a hierarchy of norms of different level.

Hans Nawiasky, one student of Hans Kelsen developed his teacher's theory on the hierarchy of norms related to state, namely: *Staatsfundamentalnorm* (State Fundamental Norms), *Staatsgrundgesetz* (Basic Rules of a State/a State Principle Rules), *Formell Gesetz* ("formal" Laws) and the *Verordnung & Autonome Satzung* (Subordinate and Autonomous Regulation). The theoretical framework of a hierarchy of Laws and Regulations refers to the hierarchy of norms theory by Hans Kelsen which can be mentioned as follows:

1. The law regulates its own establishment;
2. A norm is valid because it is made in the manner prescribed by other norms;

3. The relationship between norms can be expressed as the super and sub-ordinated relationships in an allegory on space;
4. Norms that determine the establishment of other norms are the higher norms, while the established norms as such are the lower norms;
5. Legal order is not a system of norms that only coordinated with each other, which stand parallel or equivalent, but a hierarchy of norms of different levels;
6. The unity of these norms are drafted by the fact that the establishment of a lower norm is determined by the higher norms, whose establishment is determined by the another higher norm, and this level is ended by the highest norm which is the basic norm that constitutes the main reason of validity of the whole legal system that forms a unity.

Based on the above theory on hierarchy of norms by Hans Kelsen, it is understood that the validity of a legal norm is obtained if the establishment is determined by the higher norms where such establishment includes the how to establish and the substance of legal norms. Thus, when a norm is established based on the higher norm, essentially such lower legal norm is implementing the higher legal norm. Authentically, the definition of the substance materials of Laws and Regulations is stipulated in Article 1 point 13 and related to the principle of the establishment of Laws and Regulations which is stated in Article 5 letter c of Law No. 12 of 2011. The term of "substance materials of Laws and Regulations" was introduced by A. Hamid S. Attamimi. He interpreted it as a typical substance materials of Laws (translation from Thorbecke's phrase "het eigenaardig onderwerp der wet"), which means a typical regulatory substance that is only and solely contained in the Laws and therefore becomes the substance of Laws. Article 1 number 13 of Law No. 12 of 2011 defines substance materials of the Laws and Regulation as materials contained in Laws and Regulations according to the type, function and hierarchy of Laws.

Regulations on the substance materials of the types of Laws and Regulations are spreading in several articles both in single and pairs norms. Since the services are given to fulfill the rights of societies both in civil and public services therefore services are essentially related to the fulfillment of rights. Service basically involves the fulfillment of the rights attached to any person, either individually or in groups (organizations), and carried out universally. As expressed by Moenir that "the right to the services is universal in nature, apply to anyone who is interested

on the right, and by any organization whose duties also to carry out the services".

The models of legal norms formulation in the Regional Regulation of Badung Regency No. 4 of 2015 are as follow:

1. Formulation of a single norm: legal norm that stands alone without being followed by other legal norms thus the substance is a command legal norm.

<p>CHAPTER III FACILITATOR AND PERSON IN CHARGE</p> <p>Article 7</p> <p>(1) Regent is the facilitator of the Implementation on Public Service in the Region.</p> <p>(2) Duties of the facilitator referred to in paragraph (1) shall include:</p> <ol style="list-style-type: none"> a. conduct training; b. supervision; and c. evaluation of the implementation of the duties of person in charge. <p>(3) The facilitator referred to in paragraph (1) shall report the development results of the public service performance to the People's Legislative Council and the Governor of Bali.</p>
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2. Legal norms in pairs
 - a. Primary legal norms: which contain provisions on how to act
For instance: Do not take other people's goods.
 - b. Secondary legal norms: which contain countermeasures procedures.
For instance: Taking other people's goods be sanctioned to 15 years imprisonment.
 - c. The combination of primary and secondary legal norms
For instance:

<p>CHAPTER V</p> <p>ORGANIZER COOPERATION</p> <p>Article 10</p> <p>(2) In the event that the Organizer who has the authority and duty on Public Service which cannot be conducted alone due to limited resources and/or in a state of emergency, the Organizer may request assistance to other Organizers who have inadequate capacity.</p>

IV. CONCLUSION

Norm is a measurement or standard for a person to act and behave in society. Legal norm is one of the norms that exist in society. Legal norms can be established in writing or non-writing by the authorized institutions. The term of substance materials of the Laws and Regulations was introduced by Addul

Hamid Saleh Attamimi as a substitute of the Dutch words "*het onderwerp*" in Thorbecke's expression of "*het eigenaartig onderwerp der wet*". Furthermore, such term defines as typical substance materials of Laws which is typical regulatory materials which only and solely contained in the specific Laws and Regulations therefore are not contained in other Laws and Regulations. If a substance material is contained in a Regional Regulation of the Regency/City it means such substance material is a typical material contained only in such Regional Regulation and not in other Laws and Regulations nor in the Regional Regulations or at the central Laws and Regulations. Article 1 number 13 of Law No. 12 of 2011 defines substance materials of the Laws and Regulation as materials contained in Laws and Regulations according to the type, function and hierarchy of Laws. There are two models of legal norms formulation in the Regional Regulation of Badung Regency No. 4 of 2015 namely: single norms and legal norms in pairs.

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