

THE AUTHORITY OF THE LOCAL GOVERNMENT IN COLLECTING LOCAL TAXES

Daryanto

ABSTRACT

The purpose of the Indonesian state is to protect, advance public welfare, educate the nation's life. To realize this purpose by giving authority to local governments to manage their regions to empower, prosper, increase competitiveness and bringing public services closer to the local people. The purpose of this study is to analyze local government policy in carrying out its authority to collect taxes through local regulations and regional head regulations based on applicable regulations. This research uses doctrinal legal research with a statue approach. In implementing local autonomy, local governments have the freedom to obtain income, including through taxes and levies. According to Article 23A of the 1945 Constitution and Law No. 28 of 2009 that taxation or other levies must be regulated in law. Local governments in collecting taxes must be in accordance with applicable regulations. This means that the tax collection authority carried out through local regulations and regional head regulations must be in accordance with the general principles of good governance and the principles of good making rules.

Keywords: local government, tax, authority, local head regulation, policy.

INTRODUCTION

Authority delegation from the central government to regional governments to regulate and manage their households is stipulated in Art 18 (2) of the 1945 Constitution. Local autonomy not only guarantees the efficiency of government administration but also as the basis for expanding the implementation of democracy and as an instrument of realizing public welfare through the transfer of authority from the central government to the local governments.

Through decentralization, local governments have the authority to regulate and manage their households, including the authority to set regulations to organize local governments, both through local Regulations and Regional Head Regulations. One of the local government authorities regulated in a local Regulation is the local Tax. Local tax is an instrument of the local Government in the framework of regional autonomy to realize local autonomy for the welfare of the people. Without tax, the local government will not be able to independently manage their household, including carrying out development unless they have sufficient natural resources to run the government.

The main characteristic that shows that local government can be categorized as autonomous lies in its financial capacity. This means that local government must have the authority and ability to explore their own financial resources, while financial dependence on the central government must be as minimal as possible. Therefore local Revenue must be the largest share of financial resources supported by distribution policies as a basic prerequisite for the state government system. The regulation on local Taxes is stipulated in Law No. 28 of 2009 concerning local Taxes and Levies. The regulation orders the formation of local regulations and the establishment of five regional head regulations which are attributive authority because they are instructed directly by Art 98 of Law No. 28 of 2009. In 2016 the government issued Government Regulation No. 55 of 2016 concerning General Provisions and Procedures for Collection Local tax. Art 36 of the Government Regulation states that the implementing regulations of this Government Regulation must be determined no later than one year from the enactment. Government Regulation No. 55 of 2016 mandates regional heads (Regents/Mayors) to issue two Regional Head Regulations and the Minister of Finance form four Minister of Finance Regulations out of 5 five articles ordered by Government Regulation No 55 of 2016, which is delegative authority.

Local government policy through local regulations and regional head regulations must meet the provisions in Law No. 12 of 2011 concerning the formation of regulations and the general principles of good governance so that the policies taken are correct, appropriate and beneficial. Based on Art 243 (3) of Law No. 23 of 2014, the Minister of Home Affairs established the Minister of Home Affairs Regulation No. 120 of 2018 which is a change from the Minister of Home Affairs Regulation No. 80 of 2015 concerning the Establishment of local Legal Products by local government. Through this regulation, it is expected that preventive supervision of Regional Regulation and Regional Head Regulation Draft, as well as repressive supervision of Regional Head Regulation will be tightened and improved, so that there are no conflicting Regional Law Products with existing provisions. Therefore, this paper will examine the use of local government authority in collecting taxes and levies through regional and regional head regulations.

LOCAL GOVERNMENT DISCRETION IN TAX COLLECTION

Government officials in Indonesia may make a discretion or freisermessen. considering the basic objectives of the formation of the Indonesian state as stipulated in the paragraph four 1945 Constitution of Republic Indonesia is to advance public welfare, develop the intellectual life of the nation and create social justice. Based on this, it can be interpreted that Indonesia adheres to the basic principles of the welfare state, thus allowing Government officials to use their authority freely through discretion or freisermessen.

In practice, the use of free authority (discretion / freis ermessen) by government officials cannot be used unless stated in the form of Policy Regulations (beleidregels/policy rule), such as statutory regulations (regelingen), decree (beschikkingen), policy lines (beleidslijnen), instructions (aanschrijvingen), announcements (bekenmakingen). According to H.R. Ridwan, the policy regulations issued by government officials in principle only function as part of the operational implementation of

government tasks, therefore they cannot change or distort laws and regulations. This regulation is called pseudo-wetgeving or spigelsrecht.

In the case of collecting local taxes, the use of discretion is still possible to be used by local governments for several reasons, including:

- 1) The concept of local autonomy with the principle of decentralization in the administration of local governments, causes the role of local governments to be broad, not only the administrative part of the central government in the regions related to taxation, but the local government can become a tax authority directly in accordance with the purpose of tax collection used directly for the welfare of the local people;
- 2) Taxes are a source of Local Revenue based on Art 285 (1) (a) Law No. 23 of 2014 concerning Local Government;
- 3) Mandate of Art 2 (4) Jo. Art 95 Law No. 28 of 1999 concerning local Taxes and Levies, which in principle states the collection of local taxes is determined through a local Regulation.

In addition, the legal basis of local government uses discretion in the collection of regional taxes regulated in Art 1 no. 9 of Law 30 of 2014 which explains that discretion is a decision and/or action determined and/or carried out by Government Officials to overcome concrete problems encountered in the administration government in terms of laws and regulations that provide choice, not regulate, incomplete or unclear, and/or government stagnation.

Article 22 (2) of Law No. 30 of 2014 explains several reasons or objectives of a government administrative body or official to use the discretion, namely; (a) Streamlining the administration of government, (b) Filling the legal vacuum, (c) Providing legal certainty; and (d) Overcoming the stagnation of government in certain circumstances for the benefit and public interest. The provisions of Article 22 paragraph (2) are alternative, meaning that it is sufficient to choose one of the reasons among the 4 (four) reasons above, then the government administrative body or official may use the discretion. One reason government agencies or government officials always use discretion is because there is a legal vacuum. This legal vacuum arises because legal norms in legislation that have a higher hierarchy usually do not regulate concrete matters regarding a policy implementation, so it is necessary discretion of government administrative bodies or officials as outlined in the form of policy regulations (beleidregels) which contains concrete matters concerning a policy implementation. Therefore, discretion must also be set forth in policy regulations (beleidregels / policy rules), such as legislation (regulation), decree (beschikkingen), policy lines (beleidslijnen), instructions (aanschrijvingen), and announcements (bepalingen).

As a government administration official, the Regional Head has the authority to use his discretion as stipulated in Law No. 30 of 2014. However, if the discretion is related to local tax collection, then the discretion is limited, because Law No. 28 of 2009 concerning local Taxes and levies has clearly regulated what matters are under the discretion of the Regional Government, and one them is the authority to determine regional tax rates.

Tariff determination in Law No. 28 of 2009, the Government indirectly has the authority to determine the amount of tariffs from the lowest to the "maximum". In practice, local governments often use maximum tariffs, considering that local taxes are a significant source of revenue for local governments, to maximize local revenues used for local (community) interests, tax must be levied to taxpayers to the maximum. Then, the determination of the tariffs that are carried out by the local Government may not necessarily be carried out, bearing in mind that according to the Act it is obligatory to be stipulated in a regional regulation. Therefore, even though the Regional Government has the authority to determine regional tax rates based on the Law, as long as it is not stipulated in the Perda, the implementation of tax collection carried out at the specified rate is considered invalid.

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Tariff determination in Law No. 28 of 2009, the Government indirectly has the authority to determine the amount of tariffs from the lowest to the "maximum". In practice, local governments often use maximum tariffs because taxes are a large source of revenue for local governments that can be used to maximize local government revenues. Then, the determination of the tariffs that are carried out by the Regional Government may not necessarily be carried out, because based on the Law, it must be stipulated in a regional regulation. Therefore, although the Regional Government has the authority to determine regional tax rates based on the Law, as long as they are not stipulated in local regulations, the implementation of tax collection carried out at the specified tariff is considered invalid.

Law No. 28 of 2009, in addition to regulating tariffs, also provides other authorities that can be carried out by local governments in the context of exercising their authority in collecting local taxes. The discretion that according to the Act can be implemented by the local Government as long as it is regulated in a regional head regulation, including:

- 1) Art. 92 (2): Reporting procedures relating to the making of a deed or brochure for the Acquisition of Land and/or Buildings;
- 2) Art. 99 (1): The procedure for issuing SKPD or other documents which are equivalent to SPTPD, SKPDKB, and SKPDKBT as referred to in Art 96 (3) and (5);

- 3) Art. 99 (2): Further provisions regarding the procedure for filling out and submitting SKPD or other similar documents, SPTPD, SKPDKB, and SKPDKBT as referred to in Art 96 (3) and (5);
- 4) Art. 107 (3): Further provisions regarding procedures for reducing or eliminating administrative sanctions and reducing or canceling tax assessments;
- 5) Art. 165 (5): Procedure for returning excess tax payments or levies.

Although the discretion stipulated in the form of a local regulation has a legal basis, but in the implementation of making the local Regulation has many shortcomings namely the absence of implementing regulations of Law No. 28 of 2009 such as Government Regulations governing the terms or mechanisms that must be regulated in the local Regulation as long as it is related by collecting local taxes that are regulated in Art 91 (2), Art 99 (1) and (2), Art 107 (1), Art 156 (8) and Art 165 (5). Therefore many regional head regulations were formed based on their initiative and without a legal basis, so that many regional head regulations are in conflict with higher regulations.

In 2010 the Central Government issued Government Regulation No. 91 of 2010 as an implementing regulation of Law No. 28 of 2009. However, this Government Regulation only regulates the types of local taxes that are levied based on the determination of regional heads regulation or paid by taxpayers themselves. So that related to the conditions or mechanisms that must be regulated in a regional head regulation relating to the implementation of local tax collection regulated in Art 91 (2), Art 99 (1) and (2), Art 107 (1), and Art 165 (5) Law 28 of 2009 does not have a legal basis which causes a legal vacuum. With the existence of the legal vacuum, the local Government has discretion to determine the procedures, conditions or mechanisms related to the implementation of local tax collection in the Regional head Regulation in accordance with what is understood under Law No. 28 of 2009, which only regulates general procedures related to local tax collection.

Due to the absence of government regulation as an implementing regulation relating to local tax collection, the regional regulation regarding tax collection made by the Regional Head based on Art 91 (2), Art 99 (1) and (2), Art 107 (1), and Art 165 (5) of Law 28 of 2009 has the potential to be inconsistent with the higher laws and regulations. Therefore, the government should, after the enactment of Law No. 28 of 2009, immediately review the rules and make implementing regulations that accommodate all the articles contained in Law 28 of 2009.

In 2016 the Government issued a policy through government regulation No. 55 of 2016 concerning General Provisions on the Procedure for Collecting Regional Taxes that regulate technical matters related to the regulation of local tax collection procedures used as a legal reference in making discretions outlined in the form of a Regional Regulation. Through this regulation, the potential for Regional head regulation, which contradict with higher regulations, can be minimized. Even though government regulation no. 55 of 2016 has been enacted, there is the local Government through policies that contradict with higher regulations. Regional Head Regulations which are considered not in accordance with higher regulations are as follows:

- 1) DKI Jakarta Governor Regulation No. 59 of 2017 concerning Guidelines for Implementing Motorized Tax Collection;
- 2) Gorontalo Governor Regulation No. 10 of 2017 concerning Procedures for Collection, Use and Supervision of Cigarette Taxes;
- 3) Maluku Governor Regulation No. 52 of 2017 concerning Basic Calculation of Imposition of Motorized Vehicle Tax and 2017 Transfer Fee of Motorized Vehicle in Maluku;
- 4) Bangka Belitung Governor Regulation No. 33 of 2018 concerning Basic Calculation of Tax and Transfer of Motorized Vehicle Title Fee;
- 5) Central Java governor regulation No. 44 of 2017 concerning Procedures for Exemption of Transfer of Motor Vehicle Title Fees for Motor Vehicles in and Outside the Province of Central Java and Exemption of Administrative Sanctions on Motorized Vehicles;
- 6) Central Kalimantan Governor Regulation No. 32 of 2017 concerning the Elimination of Administrative Sanctions for Registered Motor Vehicles in Central Kalimantan;
- 7) West Sulawesi governor Regulation No. 19 of 2017 concerning the Special Regional Tax on Surface Water Tax.
- 8) Sleman Regent Regulation No. 11 of 2016 concerning Procedures for Collecting Regional Taxes;
- 9) Bulungan Regent Regulation No. 31 of 2016 concerning Procedures for Write Off Regional Tax Receivables;
- 10) Bandung Regent Regulation No. 6 of 2018 concerning Technical Guidelines for the Implementation of Parking Taxes;
- 11) Buol Regent Regulation No. 16 Year 2017 concerning Mechanisms and Procedures for Collecting Regional Taxes;
- 12) Bone regent regulation No. 5 of 2017 concerning PBB PBB Collection System and Procedure;
- 13) Kutai Barat Regent Regulation No. 3 Year 2017 concerning the Elimination of Land and Building Sector Land and Building Taxes;
- 14) Central Maluku Regent Regulation No. 1 of 2018 concerning Billboard Taxes;
- 15) Serdang Begadai Regent Regulation No. 40 of 2018 concerning Procedures for Local Tax Examination.
- 16) Bandung Mayor Regulation No. 239 of 2017 concerning Procedures for Collecting Tax Advertisements;
- 17) Semarang Mayor Regulation No. 12 of 2018 concerning Reporting, Payment, Supervision of Regional Taxes through the Electronic System;
- 18) South Tangerang Mayor Regulation No. 37 of 2016 concerning Reduction and Elimination of PBB Administrative Sanctions P2;
- 19) Makasar Mayor Regulation No. 52 of 2018 concerning the Elimination of UN Administrative Sanctions;
- 20) Ambon Mayor Regulation No. 28 of 2018 concerning Determination of Selling Value of UN Objects. P2 in Ambon City in 2018;
- 21) Balikpapan Mayor Regulation No. 27 of 2017 concerning Hotel Tax Implementation Guidelines;
- 22) Batam Mayor Regulation No. 55 of 2018 concerning Procedures for Corrections, Cancellations, Reductions in Resolutions and the Elimination or Reduction of UN Administrative Sanctions;

- 23) Yogyakarta Mayor Regulation No. 84 of 2017 concerning Implementation Guidelines for Yogyakarta City Regional Regulation No. 1 of 2017 concerning Regional Taxes;
- 24) Surabaya Mayor Regulation Number 1 of 2018 concerning Classification and Amount of Selling Value of UN Objects. P2 of 2018 in the city of Surabaya.

All the regional head regulations above do not use Government Regulation No. 55 of 2016 as a legal basis and still use Government Regulation No. 91 of 2010 as a legal basis, so these regulations do not comply with Art 35 Government Regulation No. 55 of 2016 which confirms that Government Regulation No. 91 of 2010 is no longer valid and cannot be used as a legal basis. If it is associated with the principle of discretion contained in the regulations, are as follows:

- 1) Discretion is made by authorized officials in the form of Policy Regulations (Beleidregels);
- 2) Discretion is made based on the purpose of the discretion itself;
- 3) Discretion Based on Applicable Laws;
- 4) Discretion in accordance with General Principles of Good Governance (AAUPB);
- 5) Discretion based on objective reasons, does not have a conflict of interest and good faith.

Based on the above principles, there are two discretionary principles that are violated by the Regional Government in implementing regional tax collection arrangements, namely:

1. Discretions do not comply with applicable regulations

To find out whether the discretions comply with applicable laws, it is necessary to review it using a hierarchy of regulations stipulated in Art 7 (1) of Law 12 of 2011, including:

- 1) The 1945 Constitution of the Republic of Indonesia;
- 2) Decree of the People's Consultative Assembly;
- 3) Government regulation in lieu of Law;
- 4) Government Regulations;
- 5) Presidential Regulation;
- 6) Provincial Regulations;
- 7) Regency/City Regulations.

In Art 7 (1), regional head regulations are not included in the hierarchy of regulations, but when referring to Art 8 (1), regional head regulations are still recognized as one type of statutory regulation insofar as they are based on the laws and authority. Related to the collection of local taxes, based on the two articles above, the hierarchy of regulations that must be used by local governments in making a discretion policy as outlined in the form of regional head regulations can be described as follows:

- a) Art 23 dan Art 18 The 1945 Constitution of the Republic of Indonesia

The 1945 Constitution does not explicitly mention who is authorized to carry out local tax collection. However Article 23A only mentions that the implementation of tax collection is regulated by law. This means that because the Act was made by the central Government and the Parliament, the central government has the authority to collect taxes through the Minister of Finance. Art 18 of the 1945 Constitution in principle asserts that the Regional Government is also part of the Central Government in the regions that can carry out government affairs based on the principle of autonomy and co-administration, therefore the local Government can also have the authority to carry out tax collection as long as it is also regulated in the regulation.

- b) Law no. 23 of 2014 and Law no. 28 of 2009 concerning local Taxes and Levies.

Based on Art 23A and Art 18 (2) of the 1945 Constitution, the government promulgates Law No. 23 of 2014 and Law No. 28 of 2009. According to Law no 28 of 2009, the local government as the owner of the authority to carry out local tax collection cannot freely form a discretion policy, unless the discretion policy is regulated in a local Regulation and Regional head Regulation. Discretionary policies that can be implemented in a local regulation are related to tariff determination, meaning that Law No. 28 of 2009 only determines the maximum tax rate that is the authority of the Regional Government. Therefore, the local government through local regulations can determine the minimum tariff up to the maximum amount. The discretionary policy restriction specified in Law No. 28 of 2009 cannot be separated from the principles of the rule of law adopted in Indonesia. This means that discretion still has limits in order to minimize the potential for violations of laws. According to Law No. 28 of 2009, regional governments cannot use their discretion if it is not related to the provisions in Art 91 (2), Art 99 (1) and (2), Art 107 (1), and Art 165 (5)) Law No. 28 of 2009.

- c) Government Regulation No. 55 of 2016 concerning General Provisions and Procedures for local Tax Collection

Government Regulation No. 55 of 2016 is inseparable from the discretionary authority of the President who wants implementing regulations from Law no 28 of 2009. In addition, Government Regulation No. 91 of 2010 is considered ineffective because it cannot accommodate all procedures, conditions and mechanisms in making the local regulation relates to the collection of local taxes based on Art 91 (1), (2), Art 99 (1) and (2), Art 107 (1), and Art 165 (5) of Law no 28 of 2009.

In addition, there are still many difficulties faced by local governments in making technical regulations related to local tax collection, and this is due to the absence of legislation governing the technical aspects of local tax collection. Then, in practice, there are many different interpretations by the local Government in determining the tax period, taxpayers determination, tax research and tax collection. The amendment of Law No. 32 of 2004 to Law No. 23 of 2014 concerning Local Government

has caused the spirit of regional autonomy was determined more by the central government, the existence of Government Regulation no 55 of 2016 strongly related to Law no 23 of 2014.

d) The Minister of Finance Regulation related to local Tax Collection

According to Art 7 (1) Law No. 12 of 2011, the regulation of the finance minister is not included in the hierarchical structure of the legislation. However, based on Art 8 (1) and (2), the types are still recognized as long as they are instructed directly by law or carried out based on authority. The regulation of the Minister of Finance is a form of discretion set forth in the form of a policy regulation (*beleidregel*) which in this case is in the context of implementing the Act, especially Law No. 28 of 2009 concerning local Taxes and levies, so that the regulation of the Minister of Finance can be referred as one of the Regulations Implementation and Autonomous Regulation (*Verordnung und Autonome Satzung*) as in Stufentheorie theory.

Government Regulation No. 55 of 2016 shows the role of the Minister of Finance who has discretionary authority in forming policy regulations (*beleidregels*). These provisions include:

- 1) Art 21 (3) sets out the Provisions regarding Billing guidelines;
- 2) Art 28 (4) mentions Provisions regarding the Audit guidelines;
- 3) Art 30 (6) states further Provisions regarding the assessment referred to in paragraph (5);
- 4) Art 31 (9) states further Provisions regarding the procedure for paying taxes paid by the Government as referred to in paragraph (1).
- 5) Art 32 (4) states further provisions concerning the procedure for collection and depositing cigarette taxes.

The role of the minister of finance regulation is very important, especially in terms of harmonizing regional regulations and regional head regulations related to collection of local taxes made by the local government with regulations made by the Minister of Finance, because the Ministry of Finance based on its authority regulated in the Act has the authority to collect central government taxes, while the local Government has the authority to collect local taxes based on the authorities also regulated in the Act. Therefore, to harmonize the tax collection regulations between the central government and the local Government, the local Government has the obligation to make policy regulations (*beleidregels*) relating to local tax collection in accordance with regulations made by the Minister of Finance. Regulation of the minister of finance that has a stronger position than the local regulation or Regional Regulation made by the local government, therefore the local regulation or regional head regulation enacted must be based on the Minister of Finance Regulation.

Art 36 Government Regulation No. 55 of 2016 states that this implementing regulation must be established no later than one year from the enactment of this Government Regulation. This means that the Minister of Finance Regulation must exist within one year after the enactment of the Government Regulation No. 55 of 2016, however, the facts that occur are the minister of finance regulation based on the instruction of Art 21 (3), Art 28 (4), Art 30 (6), Art 31 (9) Government Regulation No. 55 of 2016 is only enacted more than 1 (one) year after government regulation legislated, so that many are found regional head regulation which was formed not based on the minister of finance regulation. The minister of finance regulation made more than 1 (one) year after the promulgation of PP No. 55 of 2016 are as follows:

- 1) Minister of Finance Regulation No. 207/PMK.07/2018 concerning Guidelines for Billing Examination and Regional Tax Examination;
- 2) Minister of Finance Regulation No. 208/PMK.07/2018 concerning UN Guidelines P2;
- 3) Minister of Finance Regulation No. 195/PMK.02/2017 concerning Procedures for Paying Surface Water Tax, Groundwater Tax, and Road Lighting Tax for Upstream Oil and Gas Business Activities Paid by the Central Government.

However, not all articles in Government Regulation No. 55 of 2016 are implemented, as in Art 31 (4) concerning the order to make the procedure for collecting and depositing cigarette taxes is regulated by a the regulation of Minister of Finance. Until now the ministerial regulation has not been made and is still based on the Regulation of Minister of Finance No. 102/PMK.07/2015 concerning Amendments to the Minister of Finance Regulation No. 115/PMK.07/2013 concerning Procedures for Collection and Collection of Cigarette Taxes. Therefore, it is important for the Minister of Finance to comply with Art 36 Government Regulation No. 55 of 2016 to immediately form possible finance minister regulations relating to local taxes. It is related to the authority of the Regional Government in forming the Regional Head Regulation, but it must refer to the regulation of minister of finance, so that there is no legal conflict between the Regional head Regulation that was made and the regulation of minister of finance that has been enacted.

e) Local Regulation

One of the important authorities of the local Government is to regulate and manage their households based on Art 18 (2) of the 1945 Constitution. In the context of carrying out the principle of autonomy and co-administration, the local government authority is regulated in Law no 23 of 2014. Local government authority related to authority in making local regulations is stipulated in Art 236 of Law no 23 of 2014.

According to Stufentheorie theory, local regulations are included in policy regulations (*beleidregels*) made to carry out higher laws or as autonomous regulations made based on authority (*Verordnung und Autonome Satzung*) so that in terms of types of regulations have similarities with government regulations made by the President and finance minister regulations made by the Minister of Finance. According to the regulations hierarchy, local regulations have the lowest hierarchy based on Art 7 (1) of Law 12 of 2011, so that a local Regulation established by a local Government may not conflict with the laws above.

The role of the local Government in forming a Regional Regulation is very strategic, according to Art 95 (1) Law 28 of 2009 states that regional governments can use the tax collection authority if it is regulated in a local Regulation, meaning that the region cannot collect local taxes without a Local Regulation.

Art 95 (3) of Law No. 28 of 2009 stipulates what content will be contained in the Local regulation related to the collection of local taxes, including but not limited to (a) name, object and tax subject; (b) the basis for imposition, tariffs and method of calculating taxes; (c) the area of collection; (d) Tax Period; (e) determination; (f) payment and billing procedures; (g) expired; (h) administrative sanctions; and (i) the date of entry into force. based on paragraph (4) mentioned in the local Regulation also regulates the provisions regarding: (a) granting reduction, relief, and exemption in certain cases on the principal of tax and / or sanctions; (b) procedures for writing off expired tax receivables; and/or (c) the reciprocity principle, in the form of granting reduction, relief and tax exemption to embassies, consulates and representatives of foreign countries in accordance with international custom. the limitations stipulated in the local government related to the tax collection, this indicates the system of implementing local tax collection is limited, meaning that the local Government is not only limited to collecting local taxes other than stipulated in the Act, but also limited in determining legal norms to be included in the law.

Not all regional government authority in local tax collection is limited. Local governments have the authority to determine tariffs up to the maximum limit as stipulated in the law. In addition, the local government have authority to make regional head regulations which are implementing regulations of the local Regulation, meaning technical matters relating to local tax collection that are not regulated in the Regional Regulation, will be regulated in the Regional head Regulation. Therefore, it is important for the Regional head Regulation to be in accordance with local regulations or other regulations that have a higher hierarchy.

Regional regulations established by local governments as implementing regulations of local regulations must comply with the provisions stipulated in Law no. 28 of 2009 relating to matters that should be regulated in local regulations. Local governments must have discretionary space because each region has different characteristics and its collection procedures cannot be compared. Local governments have discretionary authority as long as the policy is also based on the general principles of good governance

2. Discretion Inconsistence with the General Principles of Good Governance

The Regional Head in making a discretion as outlined in the form of policy regulations (*beleidregels*) like the Regional Head Regulation must be based on statutory regulations and in accordance with the general principle of good governance known as *Algemene Beginselen van Behoorlijke Bestuur*. This principle is an effort to increase legal protection (*rechtsbecherming*) for the people against unlawful act by the government and to maintain the creation of legitimate and clean government actions (*bestuurs handelingen*). If there is a discretion that is not based on the general principles of good governance, then it can be concluded that the action is unlawful act and has the potential to not provide protection for the people. In practice, the general principle of good governance can function as an unwritten norm that must be adhered to by every government administration official who issues a discretionary policy.

According to Art 24 (c) of Law No. 30 of 2014 concerning Government Administration, one of the requirements that must be met in making discretionary policies is based on the general principles of good governance. The general principles of good governance that must be obeyed by local governments in making discretion regarding local tax collection are as follows:

- 1) The principle of legal certainty;
- 2) The principle of expediency;
- 3) The principle of impartiality;
- 4) The accuracy Principle;
- 5) The principle does not abuse authority.
- 6) The openness Principle;
- 7) The principle of public interest;
- 8) The principle of good service

The general principle of good governance are the principles relating to formal aspects and material aspects that need to be considered in making a discretion related to local tax collection through the Regional Head Regulation.

There are twenty-four local regulations that do not meet the principle of legal certainty because the making of these local regulations are not based on the provisions of the applicable regulations, namely government regulation No. 55 of 2016. The legal certainty principle must be considered carefully by the local Government in forming a discretion set forth in the form of a local Regulation, if the legal certainty principle is used as the basis for its establishment, then the guarantee that the law or legislation must be implemented properly and appropriately has been carried out properly and appropriately has been carried out so that the legal objective has been achieved, by providing certainty, expediency, and justice.

The large number of regional head regulations that conflict with applicable regulations and general principles of good governance because the central government in preparing Government Regulation No. 55 of 2016 does not apply the "principle of openness" provided for in Article 5 of Law 12 of 2011 concerning the Formation of Legislation. The principle of openness means that in the formation of regulations ranging from planning, drafting, discussion, ratification or enactment, and legislation is transparent and open. Transparent and open means that the parties affected by the regulations made should be able to provide input opinions before promulgation. Then, after promulgation it should be well socialized, so that every party affected by the legislation can implement it.

The principle of openness is very important because it is a prerequisite for a democratic system of government. The principle of openness should be able to translate significantly in various aspects of governance, including in the formation of

legislation. The consistent application of the principle of openness in the process of forming regulations will produce effective and efficient laws and regulations. It is clear that the principle of openness in the process of forming laws and regulations has an important role and function for the production of a responsive legislative product.

In addition, the importance of openness in the formation of regulations is because: first, it provides a better basis for public policy making in creating good governance; secondly, ensuring more effective implementation because citizens know and are involved in public policy making; third, increasing citizens' trust in the executive and legislative branches; and fourth, resource efficiency, because with the involvement of the public in making public policies and knowing public policies, the resources used in public policy socialization can be saved.

The formation of Government Regulation No. 55 of 2016 does not implement the principles of openness. Regional Head Regulations that do not use Government Regulation No. 55 of 2016 as a legal basis are caused by the central government not socializing these regulations either before they were enacted to be given input or after they were enacted. In making Government Regulation No. 55 of 2016 the government should pay attention to two things, namely:

1) The Role of Community Participation

The role of the community is important in drafting a regulation related to tax collection, because the implementation of tax collection will be in contact with the community as a taxpayer. Therefore, the role of the community in the formation of regulations includes 3 (three) things, namely: First, Provide input in public hearing meetings. Second, Provide input to legislative or executive members. Third, attend the seminar in the context of conducting studies or following up on various studies to prepare a Regulation Draft.

2) The Role of Local Government Participation.

Government Regulation No. 55 of 2016 is a regulation related to the procedure for collecting local taxes which will be technically implemented later by the local government through local regulations or regional head regulations. Therefore, it is important for the President to include the local government to provide input.

There are several important reasons for involving local government, among others; first, the Local Government is the representation of regional communities. Second, the implementation of regional autonomy currently adheres to the concept of regional autonomy which is based on decentralization. Third, the regional government is the party affected by the Government Regulation, which is a legal subject that will later levy local taxes to taxpayers. Fourth, the local government that will follow up the government regulation into local regulations or regional head regulations. Fifth, maintain relations between the central government and local governments to be more harmonious & minimize problems.

CONCLUSION

Local government policies (local head regulation) regarding tax collection do not meet the general principles of good governance and the principle of good Making Rules as regulated in Law No. 12 of 2011.

REFERENCES

Books:

- Abdul, H. (2004). Bunga Rampai Manajemen Keuangan Daerah. *Edisi Kedua, UPP AMP YKPN, Yogyakarta*.
- Asshiddiqie, J. (2006). *Perihal undang-undang*. Konstitusi Pers.
- Astawa, I. G. P. (2008). *Problematika hukum otonomi daerah di Indonesia*. Alumni.
- Budisetyowati, D. A. (2009). *Hukum otonomi daerah di negara kesatuan Republik Indonesia*. Roda Inti Media.
- Ekatjahjana, W., & Sudaryanto, T. (2001). Sumber Hukum Tata Negara Formal di Indonesia. *Citra Aditya Bhakti, Bandung*.
- Ismail, T. (2005). *Pengaturan Pajak Daerah di Indonesia*, Departemen Keuangan Republik Indonesia Badan Pengkajian Ekonomi Keuangan dan Kerjasama Internasional Pusat Evaluasi Pajak dan Retribusi Daerah. *PT Yellow Mediatama, Jakarta*.
- Manan, B. (2001). *Menyongsong fajar otonomi daerah*. Pusat Studi Hukum, Fakultas Hukum, Universitas Islam Indonesia.
- Marbun, B. N. (2010). *Otonomi daerah 1945-2010: proses realita: [perkembangan Otda, sejak zaman kolonial sampai saat ini]*. Pustaka Sinar Harapan.
- Ridwan, H. R. (2011). *Hukum Administrasi Negara Edisi Revisi*. Jakarta: Rajawali Pers.
- Suprin, N. A. (2004). *Perda dalam Perspektif Ilmu Perundang-Undangan*.
- Syafrudin, A. (2006). *Mengarungi Dua Samudera, Setengah Abad Pemikiran Seorang Pamongpraja & Ilmuwan Hukum Tata Pemerintahan*. Bandung: Sayagatama.
- Josef, K. R. (2005). *Prospek Otonomi Daerah di Negara Republik Indonesia (Identifikasi Faktor-Faktor Yang Mempengaruhi Penyelenggaraan Otonomi Daerah)*. Jakarta: Raja Grafindo Persada.

Journal:

- Asyari, H. (2017). *Asas Keterbukaan Dalam Pembentukan Peraturan Daerah (Study Kasus di Kabupaten Lombok Tengah)*. Refleksi Hukum: Jurnal Ilmu Hukum, 2(1), 81-96.
- Nurmayani. (2004). "Wewenang Pemerintah Daerah Meningkatkan PDA dari Sektor Pajak dan Retribusi Daerah dalam Pelaksanaan Otda" (Studi di Kota Bandar Lampung). *Jurnal Hukum*.

Regulations:

- UUD 1945
- UU No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan
- UU No. 30 Tahun 2014 tentang Administrasi Pemerintahan

UU No. 28 Tahun 2009 tentang Pajak Daerah dan Retribusi Daerah
UU No. 23 Tahun 2014 tentang Pemerintahan Daerah
PP No. 55 Tahun 2016 tentang Ketentuan Umum dan Tata Cara Pemungutan Pajak Daerah
PP No. 91 Tahun 2010 tentang Jenis Pajak Daerah Yang Dipungut Berdasarkan Penetapan Kepala Daerah Atau Dibayar Sendiri Oleh Wajib Pajak

Daryanto
Law Faculty, Universitas Jayabaya
Jakarta, Indonesia
Email : yanto_skh@yahoo.com