

ABSTRACT

Delegated legislation has been studied by some scholars at some countries mainly focus on three issues namely: the urgent need of delegated legislation, relationship between delegated legislation and democracy, restriction of delegated legislation itself.

The aims of the research are: (1).To discover basic norms and position of delegated legislation,(2). To discover relationship between delegated legislation and democracy in the law making process(3).To invent restriction on delegated legislation both restriction within the system and repressive restriction.

The research is a legal research which use wide approaches such as statute approach, case approach,historical approach,conceptual approach as well as comparative approach. However, this research mainly focused on government regulation and did not include attribution or mandate. More over this research completed with interview guide, meanwhile it use qualitative juridical as main analysis.

The result of the research shows that: (1).Delegated legislation has been recognized in Indonesia as well as it has strong constitutional ground. The existence of delegated legislation can be seen through juridical and non juridical perspectives. Based on juridical perspective, article 5 sub section (2) constitution is state clearly as basic norm and legal position of delegated legislation. Whereas, based on non juridical perspective shows that due to lack of skill, lack of time as well as lack of concrete problem solving of the House of Representative members. More over, there is a philosophical factors and division of powers and substantive legislation can create delegated legislation. (2).There is no conflict between delegated legislation with democracy in the law making process. In fact delegated legislation has important role to realize democracy in Indonesia. In addition, it shows that Indonesia has its own system. (3). This research shows that restriction on delegated legislation can be done by preventive and repressive restrictions, however, in Indonesia is only repressive restriction is available.

Some remarkable recommendations can be offered as follow: (1).Delegating must be planned carefully by the government and the House of Representative and it must be evaluated and monitored by the House of Representative. (2). Formulating regulation must involve public participation greatly. (3). Repressive restriction must be combined with preventive restriction, meanwhile delegating authority on judicial review from Supreme Court can be done by the High Court efficient and effectively.

ABSTRAK

Pengkajian peraturan delegasi oleh banyak pakar di berbagai negara, yang terpenting diantaranya tiga hal yaitu: kebutuhan terhadap peraturan delegasi, relasi antara peraturan delegasi dengan demokrasi, dan pembatasan terhadap peraturan delegasi.

Tujuan Penelitian ini: (1). Menemukan dasar-dasar dan kedudukan peraturan delegasi. (2). Menemukan hubungan antara peraturan delegasi dengan demokrasi dalam pembentukan peraturan perundang-undangan, dan (3). Menemukan pembatasan peraturan delegasi, baik (a). Pembatasan dalam sistem dan (b). Pembatasan represif

Penelitian hukum ini menggunakan *statute approach, case approach, historical approach, conceptual approach, dan comparative approach*. Penelitian ini menggunakan pendekatan yuridis normatif. Peraturan delegasi yang diteliti hanya Peraturan Pemerintah, tidak mengkaji atribusi atau mandat. Bahan hukum meliputi bahan hukum primer, sekunder, dan tersier. Selain itu dilengkapi dengan wawancara. Analisis menggunakan teknik analisis yuridis kualitatif

Kesimpulan penelitian: (1). Adanya peraturan delegasi telah lama diakui di Indonesia, dan memiliki landasan konstitusional yang kuat. Adanya peraturan delegasi dapat dilihat dari dua sisi, pertama dari perspektif yuridis dan kedua dari perspektif non-yuridis. Dari perspektif yuridis dasar hukumnya merupakan atribusi langsung dari UUD 1945. Pasal 5 ayat (2) merupakan dasar hukum peraturan delegasi sekaligus kedudukannya. Dari perspektif non-yuridis adanya peraturan delegasi karena DPR kurang waktu, DPR kurang cakap, dan pemecahan masalah konkrit. Selain itu karena faktor filosofis dan pemencaran kekuasaan. Terakhir dapat dilihat dari perspektif materi muatan peraturan. (2). Hubungan antara peraturan delegasi dengan demokrasi dalam pembentukan peraturan perundang-undangan di Indonesia nyata tidak ada pertentangan. Ia bukan saja tidak bertentangan dengan demokrasi namun sebaliknya peraturan delegasi telah berperan sebagai instrumen mewujudkan demokrasi dan demokratisasi di Indonesia. Hal ini menunjukkan bahwa Indonesia memiliki sistem sendiri. (3). Pembatasan peraturan delegasi secara sistem dapat dilakukan melalui pembatasan preventif dan pembatasan represif. Di Indonesia pembatasan peraturan delegasi masih sebatas pembatasan represif.

Saran (1). Pendelegasian harus direncanakan secara matang oleh Pemerintah maupun DPR. Pendelegasian harus dipantau dan diawasi oleh DPR. (2). Dalam pembentukan peraturan delegasi harus diupayakan peningkatan partisipasi masyarakat (3). Pembatasan represif yang hingga kini berlaku tidak memadai. Pembatasan represif harus dikombinasikan dengan pembatasan preventif. Sudah saatnya kewenangan menangani hak uji materiil oleh Mahkamah Agung didelegasikan ke Pengadilan Tinggi agar efektif dan efisien.