

ABSTRACT

The dissertation takes title, “The Position of Provincial and District/Municipality Governments in the Formation of Regional Regulation”. The dissertation is concerned: (1) “Ratio legis” drafting the hierarchy of legislation associated with autonomous systems; (2) The substance of Provincial Regulation and the substance of District/Municipality Regulation; and (3) The legal effect on the position of Provincial Regulation to District/Municipality Regulation. This research is a type of normative legal research by using statute approach, a historical approach and the conceptual approach. This dissertation concludes that the formation of Law No. 12 of 2011 denotes the implementation of Article 1 paragraph (1) and Article 18 paragraph (1) on the Constitution of the Republic of Indonesia Year 1945 because the hierarchy of legislation follows “structural hierarchy” principle which Provincial Regulation placed higher than the District/Municipality Regulation so Provincial Government as the framer of Provincial Regulation placed higher than the District/Municipality Government as the framer of the District/Municipality Regulation. This is emphasize the tiered or stratified regional government which Law No. 32 of 2004 only arrange the hierarchy between the District/Municipality Government and Governor as Deputy of Central Government on the implementation of deconcentration principle whereas on the translation of decentralization principle on Law No. 32 of 2004, there isn’t tiered or stratified relationship between the Provincial Government and the District/Municipality Government. It is also concluded that Article 18 paragraph (1) on the Constitution of the Republic of Indonesia Year 1945 requires the implementation of autonomy within the scope of executive power in stages starting from the Central Government, Provincial Government through the District/Municipality Government. Provincial Administration which implemented by Provincial Regulation shall be based deconcentration by placing position as Deputy of Central Government that the Provincial Government do the control, guidance and supervision of the implementation of the District/Municipality Government and perform aspiration from the District/Municipality Government as a policy formulation by the Central Government. The governance of District/Municipality Government which implemented by the District/Municipality Regulation is based on decentralization mechanism, in which the Central Government through the Provincial Government as Deputy of Central Government give powers to conduct the affairs of government are providing services directly to the public. So Provincial Regulation substance has more general character than the District/Municipality Regulation and give guidance for the District/Municipality Government to implement the government affairs which is technically implementing in the District/Municipality Regulation. It is also conclude that in order to refer Article 18 paragraph (1) on the Constitution of the Republic of Indonesia Year 1945, the implementation of the regional government must be translated in tiered or stratified relationship which placed Provincial Government higher than the District/Municipality Government and analog with it, the hierarchy of legislation on Law No. 12 of 2011 placed Provincial Regulation higher than the District/Municipality Regulation so Provincial Regulation must become guidance and implemented by the District/Municipality Regulation.

Key words: Unitary state, the hierarchy of the legislation, the system of autonomy, Provincial Regulation, District/Municipality Regulation