

HARMONIZATION OF REGULATIONS ON RECIPIENTS OF GRANTS AND SOCIAL ASSISTANCE BASED ON LOCAL AUTONOMY IN THE CITY OF SURABAYA

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Abstract

Regulations concerning grants and social assistance, particularly at the Surabaya City level, still lack legal certainty. The regulations contained in Surabaya Mayor Regulation No. 25 of 2016 and its amendments are inconsistent with higher-level regulations, one of which is Minister of Home Affairs Regulation No. 77 of 2020. In this situation, harmonization of regulations is needed to provide legal certainty that is fair. Using a normative juridical method, with a regulatory and conceptual approach. The findings of this study indicate the need for regulatory harmonization from a philosophical, sociological, and juridical perspective. Grants and social assistance are highly relevant to the state's goal of improving the welfare of its people, so access to them must be based on clear regulations. This will ultimately provide equitable benefits to the community. In addition, harmonization is directed at material regulatory changes. Several aspects of the regulations include the target recipients, use, and duration. Furthermore, it needs to be reconstructed, especially with regard to the duties or authorities of the administrators. One of the findings is the strengthening of the Regional Work Unit in managing Social Assistance.

Keywords: Harmonization; Grant Funds; Social Assistance; Regional Autonomy.

I. INTRODUCTION

One of the objectives of the state, as stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), is to promote general welfare. Since Indonesia's independence, the Government has been committed to building a civil society. The existence of Regional Governments, as constitutionally based on Article 18 of the 1945 Constitution, is one manifestation of this commitment to build integrated and sustainable relationships between the Government and the community. This is intended to build effectiveness in improving the welfare of the community.¹

¹ Junaedi Junaedi and Agus Dimiyati, "Hakikat Dan Fungsi Negara: Telaah Atas Persoalan Kebangsaan Di Indonesia," *Logika: Journal of Multidisciplinary Studies* 11, no. 01 (2020): 37, <https://doi.org/10.25134/logika.v11i01.2717>.

Given that Indonesia is a country based on the rule of law, all forms of government efforts to improve the welfare of its people are always based on legislation.² One of the government's efforts to improve the welfare of the community is through the restructuring of the role of local government, with the provision of grants and social assistance to the community.³ In order to provide a basis for legal certainty, several regulations have been established to serve as guidelines for implementation. The Ministry of Home Affairs, as one of the sectors responsible for the implementation of local government affairs, has established Minister of Home Affairs Regulation No. 77 of 2020 concerning Technical Guidelines for Local Financial Management. Philosophically, this regulation was established to provide legal certainty and legal reform in the context of granting grants and social assistance. Its enactment explicitly revokes and declares invalid Minister of Home Affairs Regulation No. 32 of 2011 concerning Guidelines for Granting Grants and Social Assistance from the Regional Revenue and Expenditure Budget (along with its amendments up to 2019).⁴

The Surabaya City Government, as an autonomous regional government unit, is supervised and monitored by the Minister of Home Affairs.⁵ Consequently, all regulations in the Surabaya City area related to the provision of grants and social assistance must be adjusted to comply with Minister of Home Affairs Regulation No. 77 of 2020. Upon examination, Mayor Regulation No. 25 of 2016 concerning Procedures for the Provision and Accountability of Grants and Social Assistance, as amended by Mayor Regulation No. 56 of 2017 concerning Amendments to Mayor Regulation No. 25 of 2016 concerning Procedures for the Provision and Accountability of Grants and Social Assistance (hereinafter referred to as Surabaya Mayor Regulation No. 25 of 2016 and its amendments), it does have provisions that differ from Minister of Home Affairs Regulation No. 77 of 2020, such as changes in definitions and the addition of grant recipients. These differences cannot be ignored, as they can lead to legal disharmony, legal uncertainty, and implications for disorderly governance. Therefore, it is crucial to conduct a comprehensive research study on regulatory harmonization to find consistency and provide fair legal certainty.

² Lora M. Levett and Adina M. Thompson, "Law and Society," *International Encyclopedia of the Social & Behavioral Sciences: Second Edition*, no. November (2015): 509–14, <https://doi.org/10.1016/B978-0-08-097086-8.45065-8>.

³ Didik Supriyanto and Lia. Wulandari, *Bantuan Keuangan Partai Politik : Metode Penetapan Besaran, Transparansi, Dan Akuntabilitas Pengelolaan* (Jakarta: Yayasan Perludem, 2012).

⁴ See Article 4 of the Minister of Home Affairs Regulation No. 77 of 2020.

⁵ Taufik H. Simatupang, "Mendudukkan Konsep Executive Review Dalam Sistem Hukum Ketatanegaraan Indonesia," *Jurnal Penelitian Hukum De Jure* 19, no. 2 (2019): 217, <https://doi.org/10.30641/dejure.2019.v19.217-229>.

II. RESEARCH METHOD

This research uses a normative juridical method⁶ that focuses on the study of international positive legal norms. The approach used is a *statute approach* and a *case approach* with an in-depth literature study of national regulation, local government regulation, scientific articles, and any official report from the government.⁷ Primary legal source is use The 1945 Constitution of the Republic of Indonesia, Law No. 23 of 2014, Regulation of the Minister of Home Affairs No. 77 of 2020, and Regulation of the Mayor of Surabaya No. 25 of 2016. The aims of this research is to develop the normative idea about the government grant recipient, especially in city of Surabaya based on local autonomy.

III. ANALYSIS AND DISCUSSION

The Urgency of Harmonizing Surabaya Mayor Regulation No. 25 of 2016 and its Amendments with Minister of Home Affairs Regulation No. 77 of 2020

Law, understood as written regulations (statutory regulations), has an ideal form, namely the realization of harmony and consistency between statutory regulations. This is in line with the philosophical basis of the ideal of law to create order in society.⁸ Logically, order cannot be created if the law itself is in a state of disharmony. Allowing the law to remain in a state of disharmony is tantamount to allowing the country to slowly die.

Philosophically, the harmonization of legislation is a series of efforts to find harmony, balance, and unity between norms in a legal system, both vertically and horizontally.⁹ Indonesia is a country based on the rule of law, so harmonization is absolutely essential. The large number of legal products in Indonesia, from the central to the regional level, makes it highly likely that there will be overlaps or conflicting norms. The impact of this problem is legal uncertainty. Considering the opinion of Idlir Peçi¹⁰, which states "*The principle of legal certainty as a fundamental principle of criminal law requires that legislation is drafted with sufficient precision.*" This leads to the understanding that legal certainty is a fundamental element. Its absence can lead to crime or corruption that harms society. In addition, it can also give rise to sectoral issues between institutions. This greatly disrupts the stability of government

⁶ Johnny Ibrahim, "Normative Law Research Theory and Methodology," 2006, <https://lib.ui.ac.id.>

⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2008).

⁸ Bernard L. Tanya and Et.al., *Teori Hukum Strategi Tertib Manusia Lintas Ruang Dan Generasi* (Yogyakarta: Genta Publishing, 2010).

⁹ Sapto Budoyo, "Konsep Langkah Sistemik Harmonisasi Hukum Dalam Pembentukan Peraturan Perundang-Undangan," *Jurnal Ilmiah CIVIS* 4, no. 2 (2014).

¹⁰ Idlir Peçi and Eelke Sikkema, "Corruption And Legal Certainty; The Case of Albania and The Netherlands Implementation of The Criminal Law Convention on Corruption in a Transitional And Consolidated Democracy," *Utrecht Law Review* 6, no. 1 (2010).

administration. Moreover, in the current context, the issue of sectoral ego is still quite prevalent, so steps are needed in the form of legal harmonization.¹¹

Essentially, efforts to harmonize legislation include vertical and horizontal harmonization of formal and material aspects.¹² Vertical harmonization is understood as the harmonization of laws and regulations at different levels. Horizontal harmonization is understood as an effort to align laws and regulations of equal standing. The harmonization of laws and regulations also includes synchronization efforts, which are related to formal and material aspects.¹³ The existence of Surabaya Mayor Regulation No. 25 of 2016 and its amendments, which are currently in force, shows that there is a discrepancy with the enactment of Minister of Home Affairs Regulation No. 77 of 2020. This discrepancy, specifically in terms of material aspects, ranges from the regulations that form the legal basis to the provisions of the articles. Upon examination, this inconsistency can have philosophical, juridical, and sociological implications.

Philosophically, the essence of a grant is to give something for free that is actually one's right to another person, with or without conditions. The grantor may not withdraw the object of the grant for any reason.¹⁴ This means that grants are given based on noble intentions, with noble goals, in other words, to bring glory to others or to those receiving the grants. However, these noble goals are not achieved when the regulations that form the basis for the granting of grants by the Surabaya City Government actually contradict higher regulations. This also applies to social assistance, which is essentially a form of voluntary giving to improve the standard of living of those receiving assistance. Both grants and social assistance are highly relevant to the state's goal of improving the welfare of its people, as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia. It is inconsistent if this is not followed by adjustments to the regulations governing it.

Legally, the hierarchy of laws and regulations as stipulated in Law No. 12 of 2011 concerning the Formation of Laws and Regulations has emphasized the requirement that every law and regulation formed must not contradict one another. This means that the inconsistency in the provisions of Surabaya Mayor Regulation No. 25 of 2016 and its amendments not only causes a conflict with Minister of Home Affairs

¹¹ Handoyo Prasetyo and Wicipo Setiadi, "Reformasi Regulasi Melalui Uu Cipta Kerja Sebagai Landasan Sinergitas Nasional Dalam Upaya Mengantisipasi Resesi Global," *Jurnal Legislasi Indonesia* 20, no. 1 (2023): 152–65.

¹² Soegiyono, "Pentingnya Harmonisasi Pembentukan Peraturan Perundang-Undangan," *Kajian Kebijakan Dan Hukum Kedirgantaraan*, 2015.

¹³ Ibnu Sina Chandranegara, "Bentuk-Bentuk Perampungan Dan Harmonisasi Regulasi," *Jurnal Hukum Ius Quia Iustum* 26, no. 3 (2019): 435–57, <https://doi.org/10.20885/iustum.vol26.iss3.art1>.

¹⁴ Wimmy Haliim and Iqbal Fajar Dwiranda, "Problematika Kebijakan Dana Hibah Dan Bantuan Sosial Sumber APBD: Relasi Korupsi Terhadap Kekuasaan, Kepemimpinan, Dan Perilaku Elit," *Inovasi* 17, no. 1 (2020).

Regulation No. 77 of 2020. Conflicts may also arise with other regulations, such as Law No. 23 of 2014 concerning Regional Government (and its amendments) or Government Regulation No. 12 of 2019 concerning Regional Financial Management. Given that, hierarchically, Surabaya City Mayor Regulation No. 25 of 2016 and its amendments have a lower status, if there are no changes and adjustments to the new provisions, they may be revoked and instead create a regulatory vacuum regarding grants and social assistance in the Surabaya City area.

In addition, from the perspective of the principle of legal inconsistency, it may conflict with the principle of *lex superior*, *derogate legi inferior*. The consequence of the hierarchy theory is that higher-level regulations become the source and must be followed by the formulation of lower-level regulations. Content that is inconsistent and considered to be in conflict with higher-level regulations must be set aside.¹⁵ Sociologically, relevant to the nature of grants and social assistance, when Surabaya Mayor Regulation No. 25 of 2016 contains material that is inconsistent or contradictory to Minister of Home Affairs Regulation No. 77 of 2020, grants and social assistance become impossible to implement. This renders the concept of social justice, which is one of the pillars underpinning the creation of grant and social assistance programs by local governments, unfulfilled. After all, one of the objectives of grant and social assistance programs is to assist the community. This situation also indicates ineffective governance and contradicts the principles of good governance.¹⁶ Given the potential impact of neglecting the inconsistencies in the content of Surabaya Mayor Regulation No. 25 of 2016 and its amendments, vertical harmonization efforts, with an emphasis on material aspects, are absolutely essential.

Adjustment of Content Regarding Grants and Social Assistance in Mayor Regulations

A critical review of Surabaya Mayor Regulation No. 25 of 2016 and its amendments, along with Minister of Home Affairs Regulation No. 77 of 2020, points to several components that need to be adjusted in order to amend Surabaya Mayor Regulation No. 25 of 2016 and its amendments. It should also be understood that the term "grant" in the regulation refers to grant expenditure. This is related to Articles 55 to 63 of Government Regulation No. 12 of 2019 concerning Regional Financial Management, which also forms the basis for the formation of Minister of Home Affairs Regulation No. 77 of 2020.

Regarding the regulations on Grants, first, there is a change in the target recipients of grants as stipulated in Minister of Home Affairs Regulation No. 77 of 2020, namely that grants are also intended for Political Parties and Cooperatives. It should be

¹⁵ Nurfaqih Irfani, "Asas Lex Superior, Lex Specialis, Dan Lex Posterior," *Jurnal Legislasi Indonesia* 16, no. 3 (2020): 305–25.

¹⁶ Sedarmayanti, *Good Governance (Kepemerintahan Yang Baik)*, Bagian Kedua, Membangun Sistem Manajemen Kinerja Guna Meningkatkan Produktivitas Menuju Good Governance (Kepemerintahan Yang Baik) (Bandung: Mandar Maju, 2004).

understood that Political Parties cannot be equated absolutely with Community Organizations. Second, they have different legal bases. Political parties are regulated in Law No. 2 of 2008 concerning Political Parties (and its amendments), while Community Organizations are regulated in Law No. 17 of 2013 concerning Community Organizations (and its amendments). Political parties are directly involved in general election activities, including participating in general elections. Community organizations are prohibited from participating in political activities. In fact, Article 59 of Law Number 17 of 2013 and its amendments prohibits community organizations from collecting funds for political parties.¹⁷

Based on this understanding, it is necessary to expand the meaning, which will be regulated in the amendment to Surabaya Mayor Regulation No. 25 of 2016 and its amendments. This expansion also requires caution, because if we only look at the formulation of the Grant Expenditure section in the Minister of Home Affairs Regulation No. 77 of 2020, it could lead to a similarity in meaning. This is because the formulation emphasizes that "Grant expenditures are given to the Central Government, other Regional Governments, state-owned enterprises, Regionally-owned Enterprises, and/or agencies and institutions, as well as community organizations that are legal entities in Indonesia." Although it has its own consequences, the formulation of Grants to Political Parties must be carried out while adhering to legal principles and the essence of grants. It should also be noted that Surabaya Mayor Regulation No. 25 of 2016 and its amendments have never regulated the provision of Grants to Political Parties.

Second, stipulated in Minister of Home Affairs Regulation No. 77 of 2020, regarding the addition of special provisions for the use of grant funds intended for the Central Government. Specifically, it is stated that "Work units within the Ministry of Home Affairs that are in charge of government affairs in the field of Population Administration can obtain grants from local governments for the provision of blank electronic identity cards." Such a regulation is not yet stipulated in Surabaya Mayor Regulation No. 25 of 2016 and its current amendments, so it needs to be adjusted. However, it also needs to be formulated carefully, because there should be no overlap in funding between the Regional Revenue and Expenditure Budget and the State Revenue and Expenditure Budget.

Third, there has been a change in the duration or period of grant provision as stipulated in Regulation of the Minister of Home Affairs No. 77 of 2020. Basically, grant spending is not carried out continuously every fiscal year to the same recipient.

¹⁷ Suci Monawati Sukma, "Problematika Kenaikan Bantuan Keuangan Partaiiproblematika Kenaikan Bantuan Keuangan Partai Politik Yang Bersumber Dari Anggaran Pendapatanpolitik Yang Bersumber Dari Anggaran Pendapatan Dan Belanja Negara (APBN)Dan Belanja Negara (APBN)," *Dharmasiswa* 1, no. 3 (2021).

However, exceptions are made for (a) the central government, (b) agencies and institutions established by the government or local government based on the provisions of laws and regulations, (c) political parties, or (d) other entities specified by laws and regulations. Minister of Home Affairs Regulation No. 77 of 2020 clearly and explicitly states that political parties are allowed to receive grant funds every fiscal year. In the current regulations, particularly in Surabaya Mayor Regulation No. 25 of 2016 and its amendments, there is no such provision.¹⁸

Even though the purpose of this grant is to promote public welfare, its implementation is still legally based on the principle of greater benefit to the administration of local government. This means that the grant is not only beneficial to one party, but also to various parties. This is also the basis for the regulation of grants, particularly in the city of Surabaya, which continues to be based on the General Principles of Good Governance. It should also be noted that Minister of Home Affairs Regulation No. 77 of 2020 emphasizes that grants are intended to support the functioning of government, development, and society.

With regard to regulations on social assistance, there have not been any significant changes. Minister of Home Affairs Regulation No. 77 of 2020 stipulates that social assistance funding that cannot be planned in advance must first be formulated in the "Unexpected Expenditures" section during discussions on the Regional Revenue and Expenditure Budget for Social Assistance Expenditures. Unlike what is currently in effect in Surabaya Mayor Regulation No. 25 and its amendments, there is no clarity on the source of funds from the Regional Revenue and Expenditure Budget used for unexpected social assistance, as stipulated in Articles 25, 26, and 29 of Surabaya Mayor Regulation No. 25 of 2016. If interpreted, the purpose of Minister of Home Affairs Regulation No. 77 of 2020 is to provide legal certainty by formulating and confirming the allocation of the "Unexpected Expenditure" plan, so that its use for Social Assistance can be more optimal. Considering also that in recent years, particularly in 2020, there have been many natural and non-natural disasters (such as the Covid-19 pandemic), a special budget allocation is needed to address these issues. This avoids the inappropriate use of the budget and clarifies the form of accountability.¹⁹

The Social Assistance Expenditure formulated in Minister of Home Affairs Regulation No. 77 of 2020 continues to prioritize the objectives of social assistance, which include social rehabilitation, social protection, social empowerment, social security, poverty alleviation, and disaster management. This regulation is also legally relevant to Law No. 11 of 2009 on Social Welfare, which philosophically aims to guide people towards

¹⁸ see specifically Articles 4 and 5 of the Mayor's Regulation .

¹⁹ Ministry of National Development Planning, "Pedoman Teknis Penyusunan Rencana Aksi - Edisi II Tujuan Pembangunan Berkelanjutan/ Sustainable Development Goals (TPB/SDGs)," Kementerian PPN, 2020.

a decent life and enable them to develop themselves. In theory, this social assistance is also highly relevant to the objectives of the welfare state. There is an opinion from Friedlander:²⁰ *"Sosial welfare is the organized system of social services and institutions, designed to aid individuals and groups to attain satisfying standards of life and health, and personal and social relationship that permit them to develop their full capacities and to promote their well being in harmony with the needs of their families and the community."*

With regard to the authority of the agency specifically responsible for management, there is essentially no change, because Minister of Home Affairs Regulation No. 77 of 2020 maintains the authority to manage grant and social assistance expenditures with the Regional Financial Management Work Unit and/or Regional Apparatus Work Unit. Given that the phrase "and/or" has an alternative/cumulative meaning, if it is only carried out by one agency/unit, it does not conflict with Minister of Home Affairs Regulation No. 77 of 2020. However, it needs to be reconstructed, especially with regard to the duties or authority of the manager. One of the findings is the strengthening of Regional Apparatus Work Units in managing Social Assistance, particularly for social assistance that cannot be planned.²¹

IV. CONCLUSION

The dynamics of regulation in the Indonesian legal system are inevitable. Change is part of adapting to the times and conditions in order to survive and thrive. Minister of Home Affairs Regulation No. 77 of 2020 serves as the basis and source for drafting the Surabaya Mayor Regulation concerning Grants and Social Assistance. Surabaya Mayor Regulation No. 25 of 2016 and its current amendments must be immediately adjusted to Minister of Home Affairs Regulation No. 77 of 2020. Several components that must be adjusted include the subjects receiving grants, namely political parties and cooperatives, the expansion of meaning as a consequence of Political Parties being recipients of Grants from the Regional Revenue and Expenditure Budget, the period/term of grant provision for each fiscal year to Political Parties, the confirmation of the allocation of "Unexpected Expenditures" in Social Assistance, and the strengthening of the authority of Regional Work Units, particularly in Social Assistance.

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²⁰ Adi Fahrudin, *Pengantar Kesejahteraan Sosial* (Jakarta: Refika Aditama, 2014).

²¹ See the attachment to Regulation of the Minister of Home Affairs No. 77 of 2020, letter "f" concerning Social Expenditure, p.49.

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