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“Legal Reconstruction in Indonesia Based on Human Right”

IMAM AS SYAFEI BUILDING

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

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Political Law Of Regional Autonomy As The Management Of Local Government

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Abstract

The principle of decentralization or regional autonomy as stipulated in Article 18 of the 1945 Constitution of the Republic of Indonesia, is more explicit in its explanation, which reads: (1) Because the Indonesian State is an "eenheidstaat", Indonesia will not have any regions within environment which is staat in nature as well as the territory of Indonesia will be divided into provinces and provincial areas will also be divided into smaller regions. In regions that are autonomous in nature (streek and locale rechts gemenschappen) or regions that are merely administrative in nature, all according to the rules to be stipulated by law. The current politics of implementing regional government are regulated by Law Number 23 of 2014 concerning Regional Government.

Keywords: Political Law, Regional Autonomy, Regional Government.

A. INTRODUCTION

Since its inception, the Republic of Indonesia was designed by the founders of the country as a Unitary State in the form of a Republic, in which the power of government is held by the President. However, due to the heterogeneity of the Indonesian nation, in terms of social, economic, cultural conditions, and the diversity of the level of education of the people, the distribution of authority from the central government needs to flow to autonomous regions. Theoretically, the implementation of regional autonomy is a step to improve services to the community in the regions, so that the needs of the people in the regions can be met. Thus regional autonomy is not a goal but an instrument to achieve goals.¹

From the time of independence to the present, the distribution of power or authority from the central government to regional governments has always moved at a different balance point. This difference is very clearly visible by using the concept of a pendulum which always moves systematically on two sides, namely the center and the region. In

other words, that at one time the weight of power rests with the central government, at other times the weight of power lies with the regional government.

This is because regional government laws from the time of independence to the present have always been changing, and also because of differences in interpretation and implementation of regional government laws due to the interests of the authorities during the enactment of regional government laws. The development of the Indonesian state administration, the autonomy granted to the regions has experienced ups and downs, with the formula of "real and responsible autonomy" as regulated in Law no. 5 of 1974, "the widest possible autonomy" in Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia and Law No. 32 of 2004.² The implementation of regional autonomy or decentralization in Indonesia is intended to be able to maintain the heterogeneity of the nation and to improve services to the community. The Republic of Indonesia was then demanded to carry out the widest possible autonomy, but still limit the

¹ J. Kaloh, 2007, *Mencari bentuk Otonomi Daerah Suatu Solusi dalam Menjawab Kebutuhan Lokal dan Tantangan Global*, PT. Rineka Cipta, Jakarta, p. 10.

² Jimly Asshiddiqie dan Para Pakar Hukum, 2007, *Konstitusi dan Ketatanegaraan Indonesia Kontemporer*, (Cetakan Pertama) The Biography Institute, Bekasi, p. 269.

authority to autonomous regions which were further regulated by law.

According to Nasroen, this regional autonomy issue apart from our constitutional problems and techniques is also a matter of "practisen belheid" because there are many conditions that must be met, so that the right to take care of a household is not a mere fantasy.³ Then Amrah Muslimin, argued that regarding the extent of autonomy in each field of work assignments. It depends on the history of the formation of each country, whether that autonomy develops from below and by the central government on the basis of deliberation then given a formal juridical basis.⁴ This requires us to see the notion of autonomy more openly, not to close the meaning of autonomy according to historical developments and to always see autonomy in context.⁵

Apart from the historical background, the implementation of autonomy is also determined by the legal politics adopted by the country concerned. Juniarto stated more clearly that the extent of the functions entrusted to a local government which has the right to regulate and manage its own household, depends on the political law adopted at that time, as outlined in positive law.⁶ Therefore, it is impossible for us to talk about regional autonomy from the statutory provisions concerning governance in the regions that are currently in force.

B. PROBLEM FORMULATION

Based on the background description of the problem above, it is concluded that a problem formulation is in the form of:

- 1) What is the principle of regional autonomy in Indonesia?

- 2) What is the form of regional autonomy law politics in regional government administration?

C. DISCUSSION

1. Principles of Regional Autonomy in Indonesia

Indonesia is a country that was formed on August 17, 1945 which has a very large area divided into islands and can be united into the archipelago, with the motto Unity in Diversity, all of its people can be united, as said Soepomo, in a BPUPKI or Dokuritul / Dokuritsu session. Zyumbi Tjoosakai on May 31, 1945, that the State is an integral structure of society, all groups, all walks of life, all members are closely related to one another, and constitute an organic community unit.

Indonesia is a unitary State, which has been formed since its singularity on August 18, 1945, as stipulated in Article 1 paragraph (1) of the 1945 Constitution which reads: "The State of Indonesia is a Unitary State, which is in the form of a Republic". And the explanation stipulates that the form of a unitary State and the Republic contains the main contents of the thought of people's sovereignty, also in Pancasila it is clearly stated in the third principle which reads: "Indonesian Unity". This means that the form of the Unitary State of Indonesia has been unanimously and constitutionally stated in the foundations of the Indonesian State, namely the 1945 Constitution of the Republic of Indonesia and Pancasila, which are expected to unite the entire archipelago, which is vast and divided into islands and ethnic groups.

The principle of "Unitary State" of the Republic of Indonesia is contained in Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which remains unchanged until now, even though the 1945 Constitution has undergone amendments / amendments for the 4th (four) times, it still contains the provision that "Indonesia (Republic of Indonesia) is a Unitary State in the form of a Republic"; has the meaning of a monocentric (one-centered) single state,

³ M. Nasroen, 1951 *Masalah Sekitar Otonomi*, J.B. Woeters, Groningan, Jakarta, p. 9

⁴ Amrah Muslimah, 1978, *Aspek-Aspek Hukum Otonomi Daerah*, Alumni, Bandung, p. 17

⁵ Danuredjo, 1967, *Otonomi di Indonesia Ditinjau dalam Rangka Kedaulatan*, Lores, Jakarta, p. 10

⁶ Juniarto, 1967, *Perkembangan Pemerintah Lokal*, Alumni, Bandung, p. 30

consisting of only one State, one government, one head of state, one legislative body that applies to all regions in the territory of the State concerned, in carrying out activities outside and inside are managed by a single government is a unitary step, both central and local governments.⁷

Due to the vast territory of the Republic of Indonesia, and divided into islands and regions in running the government, the principle of the Unitary State of the Republic of Indonesia cannot be separated from the principle of decentralization or regional autonomy based on Article 18 of the 1945 Constitution before the amendment. Which reads: "The division of the Indonesian Region on the basis of large and small with the form of the structure of the government is stipulated by law by observing and living the basis of deliberation in the State government system and the rights of origin in special regions".

The principle of decentralization or regional autonomy as stipulated in Article 18 of the 1945 Constitution of the Republic of Indonesia, is more explicitly stated in its explanation, which reads: (1) Since the Indonesian State is an "eenheidstaat", Indonesia will not have any regions within it. environment which is staat in nature as well as the territory of Indonesia will be divided into provinces and provincial areas will also be divided into smaller regions. In regions that are autonomous in nature (streek and locale rechts gemenschappen) or regions that are merely administrative in nature, all according to the rules to be stipulated by law. In autonomous regions, a Regional Representative Body will be held, therefore in the regions the government will join forces on the basis of deliberation; and (2) Within the Indonesian Territory there are approximately 250 zelfbesturende landshappen and volksgemeenschappen, such as villages in Java and Bali, countries in Minangkabau, hamlets and residents in Palembang and so on. These regions have an original

composition, and therefore can be considered as special regions. The State of Indonesia respects the position of special regions and all regulations of the State owning these areas will remember the rights of the origin of the area.

Then regarding regional autonomy this is strengthened and described again in detail in the amendments to the 1945 NRI Constitution, relating to the principles of the Unitary State and the principles of Regional Autonomy which cannot be separated between Article 1 paragraph (1) of the 1945 NRI Constitution and Article 18 of the 1945 NRI Constitution. Before and after the amendment, it can be concluded, among others, "In the framework of the unitary State of the Republic of Indonesia and paying attention to the purpose of granting autonomy to the Regions, the implementation of regional autonomy by the regional government is a sub system of the State government system, especially the executive government is carried out by the central government, the government. regions to village governments, with a system of power sharing in accordance with their authority."⁸

2. Political Forms of Regional Autonomy Law in the Implementation of Regional Government

The current politics of implementing regional government are regulated by Law Number 23 of 2014 concerning Regional Government. In his general explanation it is said, among other things, that the granting of the widest possible autonomy to the regions is carried out based on:

- a) The principle of the unitary state. In a unitary state, the sovereignty only exists in the state government or national government and there is no sovereignty in the Region. Therefore, no matter how wide the autonomy is granted to the Regions, the final responsibility for the administration of

⁷ Budi Sudjiono dan Dedy Rudianto, 2003, *Manajemen Pemerintahan Federal Perspektif Indonesia Masa Depan*, Citra Indah Pratama, Jakarta, p. 1

⁸ M. Agus Santoso, *Otonomi Daerah di Negara Kesatuan Republik Indonesia*, Jurnal Hukum, Vol.6 No.4, 2009, p. 420

- the Regional Government will remain with the Central Government. For this reason, Regional Government in a unitary state is an integral part of the National Government;
- b) Policies made and implemented by regions are an integral part of national policies. The differentiator lies in how to utilize the wisdom, potential, innovation, competitiveness and creativity of the Region to achieve these national goals at the local level which in turn will support the achievement of the overall national goals;
 - c) A region as a legal community unit that has autonomy has the authority to regulate and administer its area according to the aspirations and interests of its people as long as it does not conflict with the national legal order and public interest;
 - d) In order to provide wider space for regions to regulate and manage the lives of their citizens, the Central Government in forming policies must pay attention to local wisdom and vice versa when forming regional policies in the form of Regional Regulations and other policies, they should also pay attention to national interests. Thus a balance will be created between synergistic national interests and still paying attention to conditions, peculiarities, and local wisdom in the overall administration of government;
 - e) Government affairs that are transferred to the Regions come from the governmental power that is in the hands of the President. The consequence of the unitary state is that the ultimate responsibility for government is in the hands of the President. In order for the implementation of Government Affairs transferred to the regions to run in accordance with national policies, the President is obliged to provide guidance and supervision to

the implementation of Regional Government.⁹

Through this law, an affirmative arrangement is carried out starting from the mapping of government affairs which will become regional priorities in the implementation of the broadest possible autonomy. This mapping will create a synergy between ministries or non-ministerial government agencies whose government affairs are decentralized to the regions. The synergy of government affairs will create institutional synergies between the central and regional governments, because each ministry / non-ministerial government agency will know who the stakeholders of the ministry or non-ministerial institution are at the provincial and district or city levels nationally.

Mapping or classification of Government Affairs, namely by mapping between central and regional government affairs regulated in Article 9 to Article 26, namely as follows:

- a) Absolute government affairs are Government Affairs which fully fall under the authority of the Central Government;
- b) Concurrent governmental affairs are governmental affairs that are divided between the central government and provincial regions and regency / city regions. Concurrent governmental affairs submitted to the Regions are the basis for the implementation of Regional Autonomy;
- c) General government affairs are Government Affairs which fall under the authority of the President as head of government.

One of the articles which is quite crucial is Article 5 paragraph (1) of the Regional Government Law which regulates the Establishment of Regions must meet administrative, technical and physical requirements of the region. What is meant by (i) Administrative Requirements, namely for

⁹ Sri Kusriyah, *Politik Hukum Penyelenggaraan Otonomi Daerah Dalam Perspektif Negara Kesatuan Republik Indonesia*, Unissula, Jurnal Pembaharuan Hukum, Vol.III No.1, Januari-April 2016, p. 3

the province includes the approval of the Regency / city DPRD and the Regent or Mayor which will become the scope of the province, the approval of the main provincial DPRD and the Governor and recommendation from the Minister of Home Affairs. Meanwhile, regencies / municipalities include the approval of the district / city DPRD and the regent or mayor concerned, the approval of the Provincial DPRD and the Governor and the recommendation of the Minister of Home Affairs; (ii) Technical Requirements, covering factors that form the basis of regional formation, including factors of economic capacity, regional potential, socio-culture, socio-politics, population, area size.¹⁰

as a legal community unit that have autonomy have the authority to regulate and administer their regions accordingly. aspirations and interests of the people, In order to provide wider space for the regions to regulate and manage the lives of their citizens, and Government Affairs that are transferred to the Regions come from the governmental power that is in the hands of the President.

D. CONCLUSION

1. The principle of decentralization or regional autonomy as stipulated in Article 18 of the 1945 Constitution of the Republic of Indonesia, is more explicitly stated in its explanation, which reads: (1) Since the Indonesian State is an "eenheidstaat", Indonesia will not have any regions within it. environment which is staat in nature as well as the territory of Indonesia will be divided into provinces and provincial areas will also be divided into smaller regions. In regions that are autonomous in nature (streek and locale rechts gemenschappen) or regions that are purely administrative in nature, all according to the rules that will be stipulated by law;
2. The current politics of implementing regional government are regulated by Law Number 23 of 2014 concerning Regional Government. In the general explanation it is said, among other things, that the granting of the widest possible autonomy to the regions is carried out based on the principle of a unitary state, policies made and implemented by the regions are an integral part of national policies, regions

¹⁰ Titis Anindyajati, *Politik Hukum Pemekaran Daerah berdasarkan UUD 1945 Analisis Putusan-Putusan Mahkamah Konstitusi Terkait Pemekaran Daerah*, Jurnal Hukum, Vol.18 No.3, September 2013, p. 183

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