



Coherence of Regional Independence and Welfare of Regional Communities in the Perspective of the Welfare State

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ABSTRACT

Crucially, regional independence is an important part in creating welfare for regional communities which will be studied in the perspective of the welfare state. The research method used is normative juridical with a doctrinal approach. The results showed that there is a coherence between regional independence and the welfare of the people in the region that independent regional government will be able to optimize regional potential for regional needs.

INTRODUCTION

Authority regional autonomy leads to regional independence within the Unitary State, depends largely on the system and political will of the central government to provide local government independence. It's just that, no matter how much independence is granted, it cannot be interpreted that the local government carries it out absolutely when exercising its autonomy rights and functions according to its own will. Local governments must continue to pay attention to the existence of the central government and other local interests as a whole in the bonds of a unitary State.¹

Developed on the principle of autonomy (decentralization) and auxiliary tasks. Only applied in provincial and district/city areas that are not ready or have not fully implemented the principle of autonomy as specified in the Basic Law. Therefore, the idealized relationship between the central government and the provincial regions and between the provincial government and the local governments of districts and cities is a relationship that is not hierarchical. This is the coordination function in the context of fostering regional autonomy and solving problems between regions but is carried out by the central government and provincial governments as appropriate.²

The imperfectivity or imperfection of state financial law after the amendment of the 1945 Constitution has overridden the essence of legal entity independence and regional autonomy. This is because all finances in the APBD and BUMN and BUMD are referred to as state finances. Even though it is very clear and real from the point of view of the system and the provisions of laws and regulations, the management and accountability of finances are different from the state budget as state finances. Thus, strictly speaking, juridically, from its position and function is very different between state finances, regional finances and the finances of SOEs and BUMDs. This distinction also has juridical consequences for the scope and authority of the institutions and bodies that carry out financial supervision and examination management of them. However, this condition is actually concreted by Law Number 17 of 2003 concerning State Finance as an organic law article 23 of the 1945 Constitution which does not pay attention to the position and function of public finance of existing institutions or legal entities. This condition is because Article 23 of the third amendment to the 1945 Constitution does not provide definitions or signs that are juridically accountable. However, strangely, Law Number 17 of 2003 even formulates state finances erroneously and overrides legal entities and regional autonomy.³

THEORETICAL REVIEW

According to Hans Kelsen, that: "the so-called regional autonomy is a direct fusion of decentralized ideas with democratic ideas. The organs of the makers of regional norms are selected by the subjects of these norms". The principle of real autonomy is a duty, authority, and obligation to handle government affairs that are as real as they already exist and have the potential to grow and develop in accordance with the potential and characteristics of their respective regions. Thus, the content and types of regional autonomy for each region are not always the same as for other regions. Meanwhile, responsible autonomy is autonomy which in its implementation must be strictly in line with the purpose of granting autonomy which is basically to empower the regions including improving the welfare of the people. No matter how broad the autonomy possessed by a region, its implementation must remain within the framework of the Unitary State of the Republic of Indonesia. In addition, the implementation of autonomy must ensure a harmonious relationship between the community, local governments, and the DPRD. The performance of the implementation of regional autonomy, namely the Regional Government and the DPRD, must always be oriented towards improving welfare and services to the community by always paying attention to the interests and aspirations of the wider community.⁴

The existence of local government starts from a decentralization policy. Decentralization comes from latin, namely *de* means loose and *centrum* which means center. *Decentrum* means to remove from the center. Thus, the decentralization that comes from centralization that gets the beginning *de* means to let go or move away from centralization. Decentralization does not break at all with the center but only moves away from the center.⁵

METHODOLOGY

This type of research is normative juridical research, which deals with determining the correctness of coherence to determine whether there is a rule of law based on legal norms.⁶ The research design adopted in this study is evaluative, with the aim of providing a rationale for the research findings. The researcher will evaluate the findings of the study, determining whether the hypothesis derived from the suggested legal theory is accepted or rejected.⁷

A deductive approach is used in drawing conclusions, which involves the conclusion of a general object in order to draw certain conclusions.⁸ The research approach is with *a statute approach* by analyzing laws and regulations.⁹

DISCUSSION AND ANALYSIS

Partiality of Regional Independence in Indonesia

Connected with the existence of broad decentralization (political, functional and deconcentration for example) and narrow (solely political or territorial for example), the 1945 Constitution adheres to decentralization in the narrow sense that it only adheres to political or territorial decentralization. Autonomy is at the core of decentralization. In theory, there are three systems of autonomy or regional households, namely the formal autonomy system, material and real or real. The autonomy system is an order related to ways of dividing the authority, duties and responsibilities of regulating and managing government affairs between the central and regional governments. The three autonomy systems have different weights in terms of implementing the principle of consultative affairs in local government. The formal system of autonomy departs from the principle that there is no distinction between central and regional organized affairs, and therefore does not recognize the division of powers established in detail. Meanwhile, the system of material autonomy is precisely the opposite of the formal autonomy system, so that between the center and the regions there is a materially established division of powers (detailed). Meanwhile, real or real autonomy systems are more likely to take a middle ground between the two. Bahwa the elements of the formal autonomy system are more dominant than the material system. Because, in the formal autonomy system, there is flexibility in independence to realize the purpose of autonomy itself. In the formal autonomy system, the weight of the implementation of the principle of consultative affairs is broader than the system of material autonomy because the regions are given the freedom to consult all things that are their autonomy, while in the regional material autonomy system can only discuss matters that are limited to matters that have been materially handed over by the Center to the regions. On the turns out or ril of people's consultative activities and real things that the area is capable of doing.¹⁰

In the development since independence until the period of guided democracy, it is illustrated how the challenges faced by and the equality of regional autonomy and the broad principle of decentralization. The peak of the centralization of power system in the old order era was in the guided democracy era, namely until the outbreak of the PKI G30S rebellion in 1965. After the change of president in 1967, there was a renewed appreciation of the importance of the principle of regional autonomy and decentralization of government. This is clearly seen in the MPRS TAP dated July 5, 1966

Number XXI / MPRS / 1966 concerning the Granting of the Widest Autonomy to the Regions.¹¹

In principle, regional autonomy policy is carried out by decentralizing authority that has been centralized in the hands of the central government. In the process of decentralization, the power of the central government was transferred from the central level to regional government as it should be so that there was a shift of power from the center to the districts and cities throughout Indonesia. If in the original conditions the flow of government power moves from the regions to the central level, it is idealized that since the implementation of regional autonomy policy, the dynamics of power must move the other way around, namely from the center to the regions.¹²

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If regional autonomy policies are not accompanied by increased independence from community initiatives in the regions according to the demands of democracy, then power practices such as those experienced in the old centralized system will still emerge in the relationship between local governments and their communities. Even Iran's plane to the autonomy system of regional government can actually cause authoritarianism of local governments throughout Indonesia. In local officials who previously did not have much authority in a short time, suddenly gained enormous power and opportunity in a short time, it may not necessarily be controlled as it should be. In such circumstances, it is in accordance with Lord Acton's postulate that power tends to corrupt and absolute power corrupts absolutely. There are concerns that the climate of oppression and anti-democratic secrecy practices as well as lawlessness and abuse of authority that have occurred at the central level has shifted into local government practices throughout Indonesia. Therefore, regional autonomy must be understood in essence to also include the understanding of community autonomy in the regions in dealing with the regional government.¹³

Regional autonomy is sometimes only understood as a policy of a mere institutional nature that is only associated with the function of the power function of the organs of government. Therefore, the only concern is the transfer of government authority from the central level to the regional autonomy level, which is also related to the wave of democratization that is growing widely in the national life of our nation today. At the level of state superstructure as well as in the framework of structuring government management, regional autonomy policy is developed in line with the agenda and deconcentration of authority. If decentralization policy is the concept of vertical division of authority, then centralization economic policy is essentially a policy of horizontal division of government bureaucratic authority, both of which are limiting

power and play a very important role in order to create a climate of power more democratic and based on law.¹⁴

The values of Pancasila Democracy are as follows: Democracy with one Godhead. Democracy that upholds human rights. A democracy that prioritizes the sovereignty of the people. A democracy supported by the intelligence of citizens. Democracy that applies the principle of separation of powers Democracy that separates the concept of the rule of law. Democracy that guarantees the development of regional autonomy. Democracy that guarantees the implementation of a free, independent, and impartial judiciary. Democracy that fosters the welfare of the people. Social justice democracy.¹⁵

If studied philosophically, using epistemological paradigm approaches (idealization of direct democracy), ontological (the nature of direct democracy) and axiological (values and benefits of direct democracy), then the confusion in the contents of Law No. 32/2004 and PP No. 6 of 2005 experiences distortions and paradoxes from these philosophical values, as the main basis for making laws and regulations.¹⁶

Furthermore, in terms of decentralization and deconcentration, Moh Yamin said:¹⁷

“So the will or flow that wants to advance *the bonstaat* is so that Fulfill the advice to break the central power with the regions but Do not deny that the condition of deconcentration (division of power with the regions) can only be carried out in an Indonesian bonstaat, but can also be as it has also existed in Germany and carried out in a union state or *eenheidstaat*. So the conditions for deconcentration and decentralization can be implemented in a unitary state in the form of *an eenheidstaat*. All of that is in the country we recommend”.

Essence of autonomy according to Bagir Manan is independence to manage and take care of his own household affairs.¹⁸ The purpose of autonomy is to achieve effectiveness and efficiency in services to the community, develop regions in various fields, improve services to the community, foster regional independence, and increase regional competitiveness in the process of growth.¹⁹ Mahfud M.D who stated that there are at least 4 (four) aspects that are the goals of decentralization or regional autonomy in managing good governance, namely:²⁰

- a. In terms of politics; To include, channel the inspiration and aspirations of the community, both for the benefit of the region itself and to support national policies in the context of building the democratic process at the bottom.

- b. In terms of government management; To improve the efficiency and results for the administration of government, especially in providing services to the community by expanding the types of services in various fields of community needs.
- c. In terms of sociability; To increase participation and to foster community independence, by conducting community empowerment efforts, so that the community is more independent and less dependent on government gifts and has strong competitiveness in the growth process.
- d. In terms of development economics; To expedite the implementation of development programs in order to achieve increasing people's welfare.

The relationship of supervision of regional autonomy, "There is no autonomy without supervision and autonomy is not independence". Thus Bagir always reminds that the boundary of autonomy is the Unitary State of the Republic of Indonesia. In other words, surveillance is a "symbol of the unitary state against autonomous regions." Nevertheless, supervision should not narrow or even reduce the independence of the region in carrying out its domestic affairs. Therefore, it must be determined the boundaries as well as the scope of supervision. General supervision as once carried out by Law Number 5 of 1974, is one type of supervision that according to Bagir can affect regional independence. Currently, the general supervision institution is re-regulated in Law Number 23 of 2014.²¹

The institution for implementing local policies is the city government headed by the Mayor. The mayor has the position of the head of the city government. That is, the mayor is in charge of implementing the city's regional policies and other laws and regulations that are his obligations. So the mayor is a tool of the autonomous regions of the city. Along with the position of the regency and city regions as autonomous regions which means having freedom and independence, the regional authority of the districts and cities does not only come from laws, but it is also possible to have or obtain authority from higher organs of government, namely through delegation, or the original authority of the region concerned, not matters derived from laws or from higher officials.²²

The Policy in the Implementation of Regional Autonomy is intended to achieve independence, welfare and to encourage the growth of creativity of regional communities in empowering human potential and natural resources, as well as other resources. With a constitutional position. The relationship of national and local governments is clear and fair. Turmoil in various regions stemming from the failure to manage past governments can be avoided. The national integration that was once established through centralization and uniformization is in reality very fragile. We are of the opinion that the resettlement of the relationship between national government and local government, as set out in the Chapter on Local Government, is the right

answer to this nation. This is where the integrative function of the Constitution is translated. Our commitment to realizing democracy is shown by our faction, together with brothers and sisters of other factions in emphasizing the elaboration of the functions of the House of Representatives to uphold the principle of popular sovereignty and checks and balances.²³

It can be understood as a historical process of building a local government system as included in the constitution. The system does not need to be disputed because the goal is the same, which is to build Indonesian society. Indonesian society can be built as a whole through the process of community development in regions so that it has local independence based on the potential of the territory developed within the parameters of a democratic system of government and rooted in sovereign people's power.²⁴

The era of reform, accompanied by democratic discourse, making very rapid and drastic changes in the form of demands and hopes for independence needs to be responded to quickly and appropriately. The change fosters public awareness to demand rights and authority and participate in the administration of democratic and Autonomous government. For this reason, a Regional Head needs to know the basic main problems faced by the community in their respective regions and try to solve the main problems and not only the symptoms, because if they only solve the symptoms, the problem will not be able to be solved completely because it will always be repeated.²⁵

National law that will reflect just and beneficial laws to bring about the greatest prosperity and well-being for all people. This shows that the development of national law must emphasize a fair portion while providing the greatest benefit to all people. It should be avoided the construction of laws that only provide expediency to certain groups. The renewal of legal systems and rules (e.g. the legacy of colonial times) that caused legal differences for the Indonesian people. Although much integration has been carried out through legislation and legal practice (e.g. courts), these differences often cause '*conflict*' or '*tension*' when applied in concrete circumstances.²⁶

Political and legal must work together and strengthen each other to form a welfare law State (welfare resstaat). Indonesian legal politics or it can also be called national legal politics as we know as an effort to update the law emerged when on August 17, 1945 at that time Indonesia was proclaimed as an independent state based on Pancasila and the 1945 Constitution as its basic law. Indonesian legal politics is associated with a political configuration defined as the structure or constellation of political forces that are comoditically accommodated. More emphasis is placed on the configuration of democratic politics and should not be placed on the configuration of authoritarian politics if we really understand the content and meaning contained in

Pancasila and the 1945 Constitution. The configuration of democratic politics is the structure of the political system that opens up opportunities for the full participation of the people to actively participate in determining general policies. This participation is determined on the basis of a majority by the representatives of the people in periodic elections based on the principle of political equality and held in an atmosphere of political freedom. In a State that adheres to a democratic system or its configuration of democracy there is a plurality of organizations in which important organizations are relatively autonomous. Judging from the relationship between the government and people's representatives, in this democratic political configuration there is freedom for the people through their representatives to launch criticism of the government. Meanwhile, the authoritarian political configuration is the structure of the political system that allows the State to play a very active role and take almost all initiatives in making State policy. This configuration is characterized by the impulse of the power elite to impose unity, the abolition of open opposition, the domination of the State leadership to determine the wisdom of the State and the domination of political power by the eternal political elite and behind it all there is one doctrine that justifies the concentration of power. The role of Pancasila towards the welfare law state. In this case, Pancasila can be used as a handle and guideline for the government's discretion to make/make legal provisions, and implement legal provisions and socialize legal provisions in order to achieve the ideals and objectives of the State as stated in the preamble to the 1945 Constitution, taking into account the rights and obligations of citizens contained in the torso of the 1945 Constitution. The position of Pancasila in Indonesian legal politics, where Pancasila is seen as the basis of the Republic of Indonesia or the philosophical basis of Indonesia which has a very broad philosophical study in the political landscape of Indonesian law, both from its history and the formation of law that must reflect the noble values contained in Pancasila, and is inseparable from interfering with legal political wisdom.²⁷

Compared to Laos, the Arrangements regarding local government in Laos are set out in Laos's Constitution of 1991 with Amendments through 2003. As a country that is also in the form of a republic, Laos calls local government with local administration and the division of local government into provinces, districts, villages.

The State of the Philippines, which puts a good existence on the implementation of regional autonomy, guarantees expressly the necessity of implementing regional autonomy in its country. In contrast to Indonesia, which only divides its regions and has not actually guaranteed the autonomy of the region. In fact, it is important to guarantee regional autonomy because it concerns the fate of many people. The Indonesian people are scattered throughout the local government so that it is necessary to create a good system and climate starting from the movement of good *local*

governance for good state so that the achievement of the national goals of the Unitary State of the Republic of Indonesia in a fair and equitable manner.²⁸

CONCLUSION

The urgency of regional independence as a variable that can improve regional welfare will also impact general welfare. This coherence shows that regional flexibility in managing its government affairs in accordance with the needs of the community based on the principle of regional independence will have the potential to create conditions for the welfare state.

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