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Paradox of The Authorities of Regional Governments in The Legal Politics of Regional Autonomy After The Enactment of Law Number 23 of 2014

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ABSTRACT

This study aims to determine the problems of regional autonomy after the enactment of Law No. 23 of 2014 which describes the paradox of the application of regional autonomy in Indonesia. The method used in this research is a statutory approach. The results of this study indicate that the main characteristic of implementing the principle of regional autonomy is the authority of local governments to manage their household affairs without intervention from the central government. The authority is in the form of independence and freedom possessed by the regional government. However, after the enactment of Law No 23 of 2014 there has been shift in the legal politics of regional autonomy. Previously, the legal politics that inclined to decentralization shifted to centralization, namely by withdrawing a number of regional authorities to the central government. The implication of this shift is the loss of regional independence and freedom to manage their household affairs.

Keywords*: Paradox; Regional Government; Legal Politic; Regional Autonomy.*

INTRODUCTION

A unitary state is a state whose power is spread over the regions through the granting of autonomy or the granting of authority to regions to manage and regulate their households through decentralization or the concentration. This means that the regions receive rights that come from, or are granted by the central government based on law and based on the constitution. Meanwhile, the federal-state is a state that consists of states that are independent

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inward, but the sovereignty for the outside (international relationship) is the authority of the central government based on the submission of powers granted by the states as stipulated in the constitution.[1]

In the state administration system that adheres to the principle of vertical dispersal of power, it is known as decentralization, which is to divide authority to subordinate regional governments in the form of handing over of authority. The application of this principle embodies a model of regional government which requires autonomy in the exercise of authority. In this system, the state administration is divided between the central government and the regional governments. The system of separation of powers in the context of handing over the authority for regional autonomy, between one country and another is not the same, including Indonesia which adheres to a unitary state system.[2]

The implementation of regional autonomy has been entered a new era after the government and The House of Representatives agreed to pass Law number 32 of 2004 concerning Regional Government and Law number 33 of 2004 concerning Financial Balance between Central Government and Regional Government. In line with that law, the regional government administration entitled with wider, real, and responsible autonomy.[3] After implementation of the regional autonomy, every province and regency/city has authority to regulate and manage their region in accordance with the characteristics.[4] However, Republic Indonesia passed Law No. 23 of 2014 on Regional Government. Law No. 23 of 2014 changed the concept of regional autonomy from the Regency/City Regional Government (according to Law No. 32 of 2004) transferred to the Provincial government (Law No. 23 of 2014). Although this displacement did not directly state, Law 23/2014 entitle broad powers to governors to supervise district/city governments, namely the right to approve the Regional Revenue and Expenditure Budget (APBD) proposed by the Regent/Mayor, the authority to cancel district/city regulation, the authority to impeach the regent/mayor from his position. This situation can eradicate the essence of regional autonomy, the obligation of the regent/mayor to follow the instructions of the governor will eradicate the regional freedom to run the government. Therefore, it can be said explicitly that there has been a shift in the concept of regional autonomy. This raises several legal and philosophical problems. Philosophically, the one that makes direct interactions with the community in the area is not the Provincial Government but the City/Regency Government. It is the City/Regency Government that understands the real conditions and needs of each region and directly becomes a place for political education

[1] Mahfud MD. (2006). *Membangun Politik Hukum, Menegakkan Konstitusi*, Cetakan Pertama, Jakarta: Pustaka LP3S Indonesia, p. 222.
[2] *Ibid.,*p.65.
[3] Sani Safitri. (2016). Sejarah Perkembangan Otonomi Daerah di Indonesia, *Jurnal Criksetra, Volume 5, No 9,*p. 79.
[4] M Galang Asmara, Gatot Dwi Hendro Wibowo, RR.Cahyowati. (2018). The Authority of Formation Regional Regulation (Perda) Shari', *ULREV, Volume 2, Issue 2,* https://doi.org/10.29303/ulrev.v2i2.49,p.181.

where political values (justice, equality, and tolerance) are taught. Meanwhile, juridically, the Provincial Government is an extension of the central government. The simple logic is how is it possible for the local government to carry out the widest possible autonomy if it is still closely tied to central interests. Therefore, we argue that this law has shifted the meaning of regional autonomy, and even seems to return to a centralistic concept.

METHOD

This research uses a doctrinal method, which examines the laws and regulations on regional governance using a statutory approach and a conceptual approach. The data used is secondary data collected by literature study. The analysis was carried out in a descriptive qualitative manner.

DISCUSSION

The Paradox of Local Autonomy after Law Number 23 Year 2014

In this article, the author will discuss some of the problems of regional autonomy after the passage of Law No. 23 of 2014 which describes the paradox of the application of regional autonomy in Indonesia. Some of the problems are as follows:

Inconsistency of Political Configuration with Character of Legal Products

According to Mahfud MD, through research in his dissertation in 1993, that politics is determinant of law so that law is a political product. Politics as the independent variable is differentiated into democratic politics and authoritarian politics, while law as the dependent variable is differentiated into responsive law and orthodox law. A democratic political configuration will produce responsive laws, while an authoritarian political configuration will produce orthodox or conservative laws. Mahfud MD's research results show how the political influence on law from the New Order era to the Old Order period. In the early days of Soekarno's administration, it could be categorized as a democratic political configuration, thus giving birth to responsive legal products. Likewise, the old order government after the presidential decree on July 5 of 1945, and the New Order government were categorized as a centralized model of government, this condition had an impact on the character of orthodox legal products.[5]

Then what about the post-reform regional autonomy law politics? After examining the character of a democratic political configuration, namely the existence of a strong political party and parliament, determining the direction or policy of the state, the executive (government)

[5] Moh. Mahfud MD, *Op.Cit*.,p.65

is neutral, a free press without censorship and bans. So it can be concluded that Indonesia's post-reform political configuration is a democratic political configuration. The strong and large influence of political parties and parliaments was felt after the amendments to the 1945 Constitution. Many people even considered the current model of the Indonesian government to be a heavy legislative. On the other hand, executive authority is eased, even in many fields, it must first obtain approval from the legislature. Press freedom has also been very different from the New Order era, Article 28 of the 1945 Constitution has guaranteed the human rights of every citizen so that anyone can have freedom of thinking, have opinions and organize.

However, despite the recent background by a democratic political configuration, it turns out that the character of the legal product is not always responsive, even most of it is even orthodox or conservative. This inconsistency between political configuration and the character of legal products occurs in several regulatory fields, for example, the research conducted by Suparman Marzuki, which shows how the character of post-reform human rights law products is very volatile. It can be said that the reign of President Abdurrahman Wahid and President Megawati Soekarno Putri produced democratic legal products. Meanwhile, President Soesilo Bambang Yudhoyono's reign was categorized as an orthodox or conservative legal product.[6]

According to Suparman Marzuki,[7] the inconsistency between the political configuration and the character of post-reform legal products was caused by the transitional model that took place in Indonesia in 1998. Indonesia's democratic transition in 1998 was driven by two groups whose both have powers with very different ideologies. First, the realists, namely those who think that reform does not need to be carried out comprehensively and impacted all aspects of the state, but it is sufficient to be carried out in stages, starting with transformation in certain fields first. This group is driven by people who pro with the status quo, but they still have considerable strength due to their strategic position in the state (for example, the bureaucracy, legislature, and judiciary). Second, the idealists, namely those who contend that reforms must be carried out comprehensively and fundamentally, impacted all states' lines without exception. If the changes do not impact the fundamentals of the constitutional state, the democratic state as a reformation dream will not be realized. This group is driven by the reformists; most of who only emerged after Soeharto fell from office.

The transition that occurred in Indonesia at that time was the result of the compromise of these two groups. Even in broad terms, it can be said that the realists have won the battle, meaning that the reforms in 1998 as a whole can be said to have failed. The real implication of this condition is that the output of the democratic transition period in 1998 was colored more by political interests so that the law enforcement cannot perceive. Including the amendments

[6] Suparman Marzuki. (2014). *Politik Hukum Hak Asasi Manusia,* Cetakan Kesatu, Jakarta: Erlangga, p.45
[7] *Ibid.,*p.76.

to the 1945 Constitution from 1999 to 2002, the compromise between the two groups was very strong, so that the results were heavily influenced by political interests. In this regard, it is reasonable that the post-reform law is only colored by elite political interests, in the sense that it has not shown signs of the emergence of a democratic legal product.

According to Moh Mahfud MD,[8] the inconsistency of the political configuration with the character of the legal product is caused by the current political configuration in Indonesia which cannot be said to be a democratic political configuration. However, it has only arrived at the stage of an autocratic political configuration, namely the control of the government by certain groups of people who have the capacity. This can be proven by the pile of power which is currently still controlled by certain groups, which of course are only oriented towards the interests of the group. Likewise with the media, which, although the tap of freedom has been opened as widely as possible, the media is only controlled by certain people who are also political actors of certain groups, so it is only natural that the independence of the media often does not work properly. On the other hand, the media have instead become the object of the image of certain political actors. According to Mahfud MD, the conditions above have caused the character of legal products in post-reform Indonesia to not define responsive legal products.

According to the author, Mahfud MD's dichotomy between democratic political configurations inevitably produces responsive legal products, on the other hand, authoritarian political configurations will produce orthodox or conservative legal products, in today's modern state conception it can no longer be maintained. Because the legal product passed by a country is influenced by many factors, it is possible that an authoritarian country may produce highly responsive regulations while on the other hand, a country that claims to be democratic produces orthodox legal products. For example, Singapore and China are known internationally as authoritarian countries, but the legal products produced by these two countries are very responsive. Compare this with Indonesia, which claims to be a country that upholds democracy, but its legal products are orthodox or conservative.

The inconsistency of the law towards the mandate of the 1945 Constitution of the Republic of Indonesia

The 1945 Constitution of the Republic of Indonesia is the legal umbrella for the existing laws and regulations, particularly statutory regulations. The Constitution has the highest position in the hierarchy of statutory regulations, therefore, all laws and regulations downward the constitution must rely on and not in conflict with the Constitution. If there is a law that is passed by the government and the House of Representatives but violates the provisions in the Constitution, then ideally that law becomes null and void and has no binding power.

[8] Moh. Mahfud MD, *Op.Cit*.,p.65

Parties who get a disadvantage by the issuance of this law can submit a judicial review to the Constitutional Court. Concerning relation among central and regional government, the Constitution has established the foundations that are used as the basis for its regulation in the form of statutory norms. There are several principles adopted by the Constitution to regulate relations between central and regional government in Indonesia, these principles include:

1. The principle that regional government regulates and manages government affairs by itself according to the principle of autonomy and the principle of assistance (Article 18 paragraph (2)
2. The principle of exercising the widest possible autonomy (Article 18 paragraph (5)
3. The principle of regional specificity and diversity (Article 18 paragraph (1)
4. The principle of recognizing and respecting the unity of indigenous peoples and their traditional rights (Article 18B paragraph (2)
5. The principle of recognizing and respecting regional governments that are special in nature (Article 18B paragraph (1)
6. The principle of representative bodies is directly elected in a general election (Article 18 paragraph (3)
7. The principle of central and regional relations must be implemented in a harmonious and fair manner (Article 18A paragraph (2).

The seven principles above serve as guidelines in regulating central and regional relations at the statutory level, meaning that any norms formulated in the regional government law should refer to these principles and should not be in conflict. Based on this, the results of the author's research show that:

First, Law No. 22 of 1999, this law was passed in 1999, while the amendments to the new Constitution conducted from 1999 to 2002. This means that the formulation of Law No. 22 of 1999 did not refer to the provisions of the post-amended Constitution; conversely the Law No. 22 of 1999 is a reference in amending the Constitution. Therefore, the substance contained in Law No. 22/1999 is consistent with the mandate or principles stipulated in the Constitution. For example, Law No. 22 of 1999 entitles regional governments' broad powers to manage their household affairs, the responsibility of regional heads government to the Regional House of Representative, and the standing of provincial governments as administrative region. Law No. 22 of 1999 not only grants autonomy to regional governments, but also recognizes the widest possible autonomy.

Second, law No 32 of 2004, refers to Valina Singka Subekti's opinion that legal politics which is the spirit of constitutional amendment is to give complete autonomy to district/city governments, while provincial governments exercise limited autonomy because they also act as representatives of the central government. However, Law No. 32 of 2004 was found inconsistencies. The authority that has been given to the district/city governments

be withdrawn to the provincial government. The governor is entitled to a great authority to supervise the running of government at the district/city level, including in the field of taxation. The provincial government is given a tax object with a higher income than the district/city government, even though the one directly responsible for community services is the district/city government. Previously, the Regional House of Representatives had significant authority as people's representatives at the regional level to supervise the running of the government. After the enactment of Law Number 32 of 2004, the Regional House of Representatives is part of the regional government or regional government partners. The widest possible autonomy and the principle of justice mandated by the Constitution are not implemented, the space for regional governments is very limited, especially with the issuance of various sectoral laws and regulations that further strengthen the grip of the center over the regions.

Third, **Law No. 23 of 2014;** Law No. 23 of 2014 is formally and materially defect. Formally, its formation was undemocratic and has very strong political nuances. Meanwhile, materially, many articles in this law deny the constitutional mandate. The principle of the widest possible autonomy mandated by Article 18 of the Constitution, should be at a practical level, namely by giving independence and freedom to regional governments to manage their government, concerning matters that have been the authority of the regional government. These independence and freedom are important, considering that regional government having direct legitimacy from the people, and the needs between each region in Indonesia cannot be generalized. However, the norms stipulated in Law No. 23 of 2014 are the opposite. This law eliminates the independence and freedom that are the main characteristics of broad autonomy, this can be seen from the authority of the central government to make standards, criteria, norms, and procedures for the implementation of regional government affairs. Including the supervision of the central government which is restrictive in the implementation of autonomy. Furthermore, the norms that determine the central authority to impeach regional heads government if the regional heads do not perform a national strategic program, this provision violates the principle of decentralization and also denies the principle of the people's sovereignty.

The Problem of Shifting the Emphasis of Autonomy

As explained in the previous sub-chapter, which based on the analysis of Law No. 23 of 2014, it seems as if there has been a shift in the core of autonomy that was previously in the district/city government, transferred to the provincial government. The province government is the implementer of broad and complete autonomy due to several factors, including:[9]

1) The amount of authority given to the provincial government, for example, the authority concerning the management of the sea and archipelago areas.

[9] Bagir Manan. (2004). *Perkembangan UUD 1945,* Yogyakarta: FH UII Press, p. 59-60

2) Supervision of the provincial government towards district/city government, both in the implementation of government affairs and in making regional regulations, the governor can abrogate the regional regulation made by the district/city government.
3) The authority of the governor to impose sanctions on the regent/mayor if the regent/mayor does not follow the governor's instructions.
4) The authority of the governor to dismiss the regent/mayor from his term of office if he does not run a national strategic program.
5) The regent/mayor is obliged to propose an accountability report for the running of government to the governor.
6) The authority of the governor to accept or reject the Regional Budget submitted by the district/city government.

However, if we read Law No. 23 of 2014 as a whole and comprehensively, actually the shift is not to the provincial government but to the central government. This means that there has been a withdrawal of authority previously held by the regional government transferred to the central government. The core of autonomy in the form of independence and freedom is no longer found in this law, all policies issued by the regional government must be guided by provisions previously made by the central government. Some indications that show that the regional autonomy is being withdrawn back to the central government are as follows:[10]

1) Every policy to be issued by the provincial government must comply with the provisions stipulated by the central government.
2) Natural resources and human resources at the regional level are still fully controlled by the central government, so that local governments are dependent on transfer funds provided by the central government.
3) All government affairs that fall under the authority of the provincial government are not free from the supervision of the central government; indeed some of the affairs must first obtain approval from the central government.
4) The authority of the central government to dismiss the governor from his position if the governor does not implement a national strategic program.
5) The position of the provincial government as an administrative area and the representative of the central government in the regions shows that the provincial government is the representative of the central government which does not have autonomous authority.
6) The governor should submit an accountability report on the implementation of government affairs under his authority.

[10] Ridwan. (2011). *Hukum Administrasi Negara,* Cetakan Keenam, Jakarta: Rajawali Pers, p. 102

Therefore the district/city government and the provincial government both no longer have the free and independent authority to carry out government affairs in the context of realizing people's welfare. All the affairs must follow the provisions stipulated by the central government in advance. Concerning regional autonomy, the existence of administrative regions and representatives of the central government is irrelevant. Indonesia is a country that upholds the sovereignty of the people, not the sovereignty of the state. Regional heads, both Governors and Regents/Mayors, are a form of exercising people's sovereignty (in the sense of people's representatives) at the regional level.

Because their legitimacy comes from the people, even the president on behalf of the state cannot act arbitrarily against them by neglecting the principle of people's sovereignty. Those provisions showed a conflict between the principle of people's sovereignty and the sovereignty of the state, namely as follows.[11]

1) The position as a representative of the government or administrative region or implementer of the principle of de concentration has caused a regional head to be subordinate to the central government. In the structure of Indonesia's political culture, this situation results in regional heads being easily steered.
2) The responsibility of the regional head is not to the Regional House of Representatives, which is the people's voice fighters at the regional level, but to the president. In this case, we have to review the Indonesian political system which laid the state to be more sovereign than the people.
3) The existence of arrangements regarding the procedures for exercising authority and accountability through a guideline from the central government has at least reflected a half-hearted decentralization.

The Idea of Future Regional Autonomy

The discussion on the ideal form of regional autonomy in Indonesia has been widely discussed by experts, whether legal experts, political experts, academics, or practitioners. On the one hand, it is positive because it indicates the concern of many parties related to central and regional relations within the Unitary State of the Republic of Indonesia, but on the other hand, it also indicates the failure of the government to formulate good regional government laws for the Republic of Indonesia, as evidenced by the continued emergence of criticism from various parties against the new regional government law that is passed by the government. Indeed every new law passed by the government is often inversely proportional to the proposal submitted by the community (apart from Law No. 22 of 1999).

[11] J.B.J.M. ten Berge, et.al., (1992). *Verklarend Woordenboek Openbaar Bestuur,* Samsom HD. Tjeenk Willink, Alphen aan den Rijn, p.45

That reality is at least caused by two matters; first, there is no political will from the government to wholeheartedly regulate the ideal format of the relationship between the central and regional governments. This is due to the concern of the central government that the implementation of broad autonomy will have a negative impact on the integrity of the Republic of Indonesia. Moreover, the ideal broad autonomy will detrimental to the central government because it reduces the authority and finances of the central government. Second, the proposed format for central and regional relations has not yet been found the ideal format. According to the author's opinion, the first condition that is currently happening, because many offers from experts concerning the ideal format for central and regional relation have been submitted but not responded to by the central government.

Many experts in Indonesia have proposed the format of central and regional relations in Indonesia, some offer the widest possible autonomy as the ideal format for central and regional relations in Indonesia, this format is offered by Bagir Manan. According to him, the phrase autonomy as broadly as possible has been misinterpreted by many parties so that it seems as if the broad application of the concept of autonomy will threaten the integrity of the Republic of Indonesia. Whereas the true meaning of the phrase "broadest autonomy" does not refer to the vast quantity of authority entitled to regional governments, but rather refers to the large responsibilities of local governments to provide welfare for their local communities.

The next offer was initiated by Ni'matul Huda, namely asymmetric autonomy. Asymmetric autonomy means the delegation of authority from the center to regional governments that are not the same and not congruent, this is adjusted to the potential of a region, then the task of the central government is to support the development of this potential either in the form of distribution of authority or budget. Asymmetric autonomy does not depart from the comprehensive delegation of authority to all regions but departs from the multicultural conditions of Indonesian people so that the needs of one region are certainly different from the needs of other regions. Therefore, given autonomy among regions is different from other regions.

The most radical offer came from Amien Rais and Syahda Guruh Lintas Samudra. These two experts have different opinions regarding the format of the relationship between local government and central government. Departing from the history of regulating central and regional relations which often leaves problems, as well as the current social, economic, political, and geographic conditions of Indonesia, according to them the choice to become a federal state is the best way for Indonesia. The dark history of central and regional relations

that often lead to "rebellion" from several regions to liberate themselves from the Republic of Indonesia is one sign that autonomy arrangements are not suitable to be applied in a very pluralistic Indonesia. Therefore, the idea of a federalist state deserves a place to be discussed as a solution for Indonesia's current multidimensional crisis.

The three offers above depart from their logic with their respective plus and minus values. The formulation of an effective and efficient format for central and regional relations must continue to be discussed and then followed up with concrete actions in the form of regulations. This is because, for Indonesia, state regional autonomy is a necessity. This necessity is based both on sociological, juridical, and philosophical conditions, as well as based on the dark history of the format of regulating central and regional relations. The format of regulating the central and regional relations is very vulnerable to conflicts within the Republic of Indonesia. History has recorded that many regions seek to liberate themselves from the Republic of Indonesia by committing acts of violence, this is due to the injustice of the central government in positioning local governments within the Republic of Indonesia.

Base on the above conditions, the author tries to offer ideas regarding the format of the relationship between the central and local governments in the context of the Unitary State of the Republic of Indonesia.[12] Although the authors acknowledge that the offer to make Indonesia a federal state as initiated by several experts also deserves a place to continue to be discussed. However, at this time, we must admit that Indonesia is not ready to become a federal state. Nation-states that have not been well-formed and the absence of a detailed regulatory format for the form of a federal state to be applied is a condition that indicates that the implementation of a federal state is not yet possible.

CONCLUSION

The main characteristic of implementing the principle of regional autonomy is the authority of local governments to manage their household affairs without intervention from the central government. The authority in question is in the form of independence and freedom entitled to the regional government. However, after the enactment of Law No 23 of 2014 there has been shift in the legal politics of regional autonomy. Previously, the legal politics that inclined to decentralization shifted to centralization, namely by withdrawing a number of regional authorities to the central government. The implication of this shift is the loss of regional independence and freedom to manage their household affairs.

[12] Suparman Marzuki,*Op.Cit.*, p.67

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