

The Legal Effect of Local Diversity Arrangement Related to the Correlation Pattern between Central and Local Governments

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Abstract

Long before freedom, in this archipelago has conducted its own governmental practice, it showed in the existence of big and small kingdoms and original society structure which still accepted till now. One of Indonesian purpose is to protect all Indonesian people and whole Indonesian homelands, including protecting all diversity available. In the era of New Order stated in the Statute No. 5 in 1974 on Local Government, there was effort of government to make uniformity of all society structures and the correlation pattern used was centralization. It resulted in losing cultural values as the Indonesian wealthy. After reformation, to accommodate the society claims and to keep safe the cultural value, the government issued Statute No. 23 in 2014 on Local Government, that all the diversity could be accommodated. In line with that, the research problem appears to be what the legal effect of formulating the word local diversity in act 18A (1) of the Constitution of Republic Indonesia in year 1945 related to the correlation pattern on authority between central and local governments. This study is normative one, using qualitative juridical method. The legal effect of formulating the word local diversity related to the correlation pattern on authority between central and local governments would be the possibility of un-uniformity in implementing authority correlation between central government and local government that has certain diversity. It showed in issuing the Statute No. 21 in 2001 on Special Autonomy for Papua Province and the Statute No.18 in 2001 on Special Autonomy for Province of Daerah Istimewa Aceh as Province Nanggroe Aceh Darussalam and the accepting of special authority for Yogyakarta.

Keywords: Law effect, Local Diversity, Correlation, Central Government, Local Government.

A. Background

Van Vollen Hoven stated in the beginning of his book *Staatsrecht Overzee* that:

“In 1596 when first ship of Nederland came to Indonesian islands, this area legally was not “wild” and “empty”. There were set of governmental and authority boards covered government by or of tribes, villages, village’s unity, republics, and kingdoms. Even more, Van Vollen Hoven stated that the “government” has local characteristic (*inheemsch gebleven*) although the influence of Hindu and Islam lived in society”.¹

Yamin agreed with this statement and stated that the Indonesian nation characteristic is still original, even nowadays it shows in everyday life such as villages in Java, Sumatera, and in other islands.² After freedom, all diversity come together in a unity country called Republic Indonesia. Although Indonesia is unity country, the founders of this country agreed that this country should accommodate all the diversity as stated in the Constitution of Republic Indonesia 1945.

One of pointed aspect in implementing local autonomy is the correlation between central and local. This correlation related to the correlations of authority, public service, resources utilization and others. These correlations result in administrative and areal relations between governmental structures.

Central and local governments have authority to implement governmental affairs because the area of central governmental authority covers local governments; therefore they share the same authority. The conflicts of interest between central and local governments often happened in line with delegation of authority. It results from the reason that central government always puts locals as subordinate and dependence. In addition, the natural differences in local cover geographical, demographical, and historical conditions proven to be diverse in Indonesia and needed some attention and different correlation pattern among one local to another’s. Thus, it needs appropriate planning that both have harmony correlation. However, it happens in different way.

Other problem in implementing decentralization is the wide gap of development between western and eastern Indonesia, it results in high social jealousy because the eastern areas feel ignored. Moreover, some claims appear from island areas asking for authority to develop maritime potential in their areas by statute planning on development acceleration of islands areas.

¹ A. Hamid S. Attamimi, *Peranan Keputusan Presdien Republik Indonesia dalam Penyelenggaraan Pemerintah Negara; Suatu Studi Analisis Mengenai Keputusan Presiden yang Berfungsi Pengaturan dalam Kurun Waktu Pelita I – Pelita IV*, Disertasi, (Jakarta, Universitas Indonesia) 1990, hlm. 92.

² H. Muh. Yamin, *Naskah Persiapan Undang-Undang Dasar 1945*, Jilid I, (Jakarta: Prapanca, 1959), Cetakan Kedua 1971, hlm. 110. Lihat juga A. Hamid S. Attamimi, *Op.Cit.*, hlm. 9.

Another problem reveals when the president Susilo Bambang Yudhoyono discusses on the specialty of Yogyakarta related to governor election in democratic way, with the reason that there is no monarch system in the Unity nation of Republic Indonesia. It is very disappointed that such statement comes up from a president who cannot understand appropriate on the country history that accepted Yogyakarta as special region and Indonesia is Republic with its decentralization system.

The rise of many claims on changing after the fall of the New Order government to separate from this unity country to be federal, according to Adnan,¹ result from the fact of distortion in “unitary” concept to be “integration and unitary”, closely to uniform. Therefore, various differences cannot be seen as various richness in line with diversity but seen as threat potential that should be cut down in “integration and unitary” toward centralization authority. This condition results in the failure of the country to develop governmental system using decentralization authority. In addition, Adnan stated:²

“The unitary nation should consider as *unitary*, it is unity that does not remove the diversity of integrated elements. Unity is where in it there are differences. It means confession on the difference and diversity, in reality (different local situation and condition) and concept (diversity of Indonesian people ideas in concerning their national destiny).”

Based on this background, the problem statement of this study reveals: what is the legal effect from arrangement of local diversity in act 18A (1) the Constitution of Republic Indonesia 1945 related to correlation pattern between central and local governments?

B. Research Purpose

This research purposes to find out the legal effect of arrangement local diversity in line with relation pattern between central and local governments.

C. Research Method

This legal research uses normative approach with purpose to evaluate positive law, in the meaning of collecting, describing, systemizing, analyzing, interpreting and valuating positive legal norms that regulating the legal effect on formulating the word local diversity in Act 18A (1) the Constitution of Republic Indonesia 1945 related to relation pattern between central and local governments. Even more, the primary legal in this study is the Constitution of Republic Indonesia 1945 and the Statute No.23 in 2014, on Local Government. The secondary legal used are literature, previous research finding and scientific journal. The research approach is statute approach. The analysis method used to resolve the problem is qualitative juridical.

D. Discussion

1. Legal Fundamental of Local Government Authority

The authority in country cannot be dominated by central government but it should be delegated to locals. It is in line with consideration of ability limitation on human resources, finance of central government because of claims and needs of widely country areas, and the diversity and specialty of each local needing different treatment.

In unity country, there is no fundamental of authority delegation strictly in its constitution. However, it does not mean that the authority is dominated by the central. But, the delegation to the local uses decentralization and deconcentration. The same opinion stated by Sjahrudin Rasul³, that besides the government confesses authority delegation in horizontal and vertical, the authority delegation in vertical way is related to decentralization and deconcentration systems.

The vertical authority delegation or territorial delegation is authority delegation among several levels governments in a country. As unity country, Indonesia has two levels of governments; central and local governments. The implementation of this rule is based on the Constitution of Republic Indonesia 1945 before the Indonesian amendment divide the country to be autonomy areas and administrative regions.

The consequence of autonomy and administrative areas reveals autonomy local governments and administrative regional government. These two governments become interpretation of implementing governmental function stated by central government. The delegation of authority from the central government to local government is not for the reason that it stated in constitution, but it is fundamental of unity country.⁴

2. Relation Pattern of Governmental Authority

The relation of authority is in line with ways of implementing home affairs. These ways reflect a limited or wide autonomy forms. It is considered as limited autonomy if:

¹ Adnan Buyung Nasution dkk, *Federalisme Untuk Indonesia*, (Jakarta, Kompas, 2000), hlm. 136-137.

² Adnan Buyung Nasution, *Arus Pemikiran Konstitusionalisme*, (Jakarta; Kata Hasta Pustaka, 2007), hlm. 131.

³ Sjahrudin Rasul, *Tinjauan Yuridis Akuntabilitas Penyelenggaraan Pemerintahan di Indonesia (Studi Kasus Korupsi di Indonesia dalam Era Orde Baru)*, Disertasi (Bandung, Pascasarjana Unpad, 2000), hlm. 25.

⁴ Sri Soemantri M, *Pengantar Perbandingan Antar Hukum Tata Negara*, (Jakarta: Rajawali, 1989), hlm. 53.

“1). the local home affairs are based on category and its development using certain way. 2). supervision and observation systems conducted in the same way, thus autonomy area loses its independence to decide freely the way to arrange and take care its home affairs. 3). the system of financial relation between central and local governments results in such as financial limitation of the local original ability that limits movement of local autonomy.”¹

The local government conducts widely autonomy, except governmental affairs stated in statute as central governmental affairs. The width of governmental affairs adding anytime appears as problem for autonomy. The local burden becomes greater that there is possibility local cannot implement it.² Therefore, it needs any supervision that decentralization system conducted would not lead to centralization. Based on the fact above, Bagir stated from aspect of central and local relation that supervision is a “bond” of unity in order to the idea of autonomy freedom would not run too far that it would decrease or threat the integration.³

The balance pattern between central and local in the Republic Indonesia is by decentralizing a part of affairs to locals and delegating wide authority to arrange its own area based on the society aspiration.⁴ In line with technique of authority sharing between central and local, there are some theories as follow.⁵

1. “Residue system. In general, it decides previously the central government authority, and the rest is local’s affairs. The advantage of this system is when new needs appear, the local governments can make decision and action they need, without waiting order or guide from the central.
2. Material system. In this system, the responsibility of local government is decided one by one in detail. The other task decided would be the affairs of central government. This way is less flexible because any change in local task and authority, in decreasing or increasing, should be conducted using old procedure.
3. Formal system. In this system, the affairs belong to local affairs are not apriority in statute. The local may arrange and conduct all the things considered important for its area, as long as it does not cover affairs of central government.
4. Local autonomy system. In this system, the autonomy delegation to local is based on real factor, based on local real needs and ability. The possibility is the affairs of central government can be delegate to local governments with considering the locals’ ability and necessity to arrange and conduct their own areas.
5. The real, dynamic and responsible autonomy principle. This principle is one of variation from real autonomy system.”

In line with correlation between central and local governments, there are generally four fundamental bases as guidance of correlation principle based on the Constitution of Republic Indonesia 1945 that are:⁶

1. “The correlation form between central and local governments should not limit the local society right to participate in implementing local governments;
2. The correlation form between central and local governments should not limit the local society right to give initiative and idea of arranging and taking care important affairs for locals;
3. The correlation form between central and local governments could be different from one local to another based on special condition of the area; and
4. The correlation form between central and local governments purposes to create social justice and welfare in locals.”

The effort to find out the ideal form of correlation between central and local governments in the unity country is not easy because it relates to the correlations of authority, finance; supervision and correlation appeared from governmental organization structure in local areas. The Model of correlation between central and local governments is divided into:⁷

“*First, the Relative Autonomy Model.* It gives great freedom to local governments with respecting still the existence of central government. The point is giving freedom of action for local governments in authority/task pattern, and responsibility formulated by regulation. *Second, the Agency Model.* This model is where the local governments have no important authority, thus their existence seems more of less as agents of central government that have responsible to implement the central government policy.

¹ Bagir Manan, *Menyongsong Fajar Otonomi Daerah*, (Yogyakarta: Pusat Study Hukum FH UII, 2001), hlm. 37.

² Bagir Manan, *Menyongsong... Op. Cit.*, hlm. 39.

³ Bagir Manan, *Hubungan Antara Pusat Dan Daerah*, (Jakarta: Pustaka Sinar Harapan, 1994), hlm. 181.

⁴ Nukhtoh Arfawie Kurde, *Peranan Desentralisasi Dan Otonomi Daerah Dalam Penguatan Integrasi NKRI (Analisis Konsep Desentralisasi Dan OTDA Berdasarkan UUD 1945)*. Disertasi, (Yogyakarta: Program Pascasarjana FH UII, 2006), hlm. 133-134.

⁵ Josef Riwu Kaho, *Prospek Otonomi Daerah di Negara RI*, (Jakarta, Rajawali Press, 1991), hlm. 14-19.

⁶ Bagir Manan, *Hubungan... Op. Cit.*, hlm. 255-256.

⁷ Richad Batley dan Gerry Stoker, *Local Government in Europe*, 1991, hlm. 5-6. Lihat juga J. B. Kristiadi, *Otonomi Daerah di Indonesia Dalam Perspektif Globalisasi*, (Jakarta, Dirjen POUUD Depdagri RI, 1997), hlm. 40.

Therefore, in this model, some detail guidance in the regulation of control mechanism is very dominant. In this model, the local original income is not necessary thing and the financial system is dominated by the central government. *Third, the Interaction Model.* This model is a model that the availability and role of local governments are in line with interaction between central and locals governments.”

Based on the three models of correlation between central and local governments, this correlation covers two groups. First, the government conducts all governmental affairs absolutely, without any decentralization. All of these governmental affairs become absolute authority of central government, in unity country or in federal country.¹ Second, though some other governmental affairs can be conducted using decentralization base, other governmental affairs never exclusively become local authority. Outside the governmental affairs that cannot be implemented by sub national government, Maddick explained that part of governmental affairs also becomes the governmental authority, while other parts are delegated.²

It needs to realize that these governmental affairs are dynamic. These affairs that cannot be decentralized, in other time they may able to be decentralized to autonomy locals. In other hands, the decentralized governmental affairs previously can be centralized in other time. There are many factors needed to consider in centralization and decentralization of governmental affairs, in the reason that it is related to correlation pattern applied in implementing the governmental correlation.

3. The Legal Effect of Local Diversity Arrangement

As plural country, each local area has different potential. Some locals have rich natural resources that they have financial ability, but have limitation in other elements such as limited human resources (quantity and/or quality). Other areas have appropriate human resources (quantity and/or quality) but less in natural resources, however they are able financially. Even, some areas have both natural and human resources or less both of them.

Some local areas have special and unique status, areas that have special area and many others, thus it forces the government to treat different correlation to the areas with diversity and position as special or unique areas. If it is not covered nationally, it may result in imbalance among the locals that prevent the achievement of national purpose. For the locals that want to have status of special or unique areas, the government should make strict regulation on the requirement and procedures on it.

Because each local has different potential, the local of course has different priority from one area to another in its effort to create society welfare. It called asymmetric approach meaning that although the locals are given the same widely autonomy, the priority of governmental affairs conducted would be different for one local to another. To face this fact, the government should have national policy as guidance for all locals including central government. Bagir Manan states that attention of the difference and specialty forces the different service and the way of implementing government.³ In line with the fact, Jimly pointed:⁴

“that new regulation in act 18, Act 18A and act 18B, have changed the form of our country from ‘strict’ unity country to be ‘dynamic’ unity country. In dynamic of the Unity country of republic Indonesia based on act 18, Act 18A and act 18B the Constitution of Republic Indonesia 1945, *first*, it is possible to conduct federal regulations in the correlation of central and local governments. *Second*, in dynamic of correlation between central and local’s governments, it is possible to develop plural autonomy policy, meaning that for each local, it can be applied different autonomy pattern. The diversity of this correlation pattern has proven with acceptance of special autonomy principle for Province Nangroe Aceh Darussalam and province Papua that both have different governmental formats from other local governments in general.”

According to Bagir⁵, the meaning of locals specialty and diversity stated in (act 18 A, verse (1) the Constitution of Republic Indonesia 1945) is that the form and content of local autonomy should not be uniform (*uniformity*). These form and content of local’s autonomy are decided based on many special conditions and diversity in each area.

“*The local specialty and diversity* (act 18A, verse (1)). These principles have meaning that the form and content of the local’s autonomy should not be uniform (*uniformity*). The form and content of local autonomy are decided by several special conditions and diversity in each area. The autonomy for farming areas could be different from the industrial areas, or between beach areas and remote areas, and many others. It also happens in differences of locals’ potential that should be fundamental in deciding the autonomy form and content.”

To accommodate the local diversity stated in act 18A (1) the Constitution of Republic Indonesia 1945, it is issued the Statute No. 21 in 2001 on Special Autonomy For Province of Papua and the Statute No.18 in

¹ Dennis A. Rondinelli, *Decentralization, Terretorial Power and the State; A Critical Response dalam Development and change*, (London; Newbury Park and New Delhi, Vol. 1, 1990), p. 429.

² Henry Maddick, *Democracy, Decentralization and Development*, (London; Asia publishing House Bombay, 1996), p. 39.

³ Bagir Manan, *Hubungan..., Op. Cit.*, hlm. 17.

⁴ Jimly Asshiddiqie, *Konsitusidan..., Op. Cit.*, hlm. 275.

⁵ Bagir Manan, *Hubungan..., hlm. 12.*

2001 on Special Autonomy for Province of Special Regional of Aceh as Province Nanggroe Aceh Darussalam, and Yogyakarta as special area.

E. Summary

Although Indonesia is unity country, in its implementation, autonomy is given widely guarantee to locals to develop related to potential and wealthy they have. In its implementation, it is possible to appear and develop diversity among the locals. The arrangement of local diversity in act 18A (1) the Constitution of Republic Indonesia 1945 is interpretation of nation purpose, thus implementation of the correlation pattern between central and local governments with different diversity would be different from locals that have no diversity potential.

Based on the above fact, the legal effect of formulating the word local diversity related to correlation pattern between central and local's governments would be possibility of un-uniformity in implementing local's governments. In short, all locals should have the same responsibility and right, task and authority for whole Indonesia. However, for certain areas with different historical, politic and economic backgrounds, it can be applied special policy as additional characteristic on general autonomy applied in all areas. Yet, the diversity of implementing local government should have certain limitation that strictly stated in statute, with characteristic that strengthen Indonesian base, improve the people welfare and support welfare for all Indonesian people.

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