

The Parameter Arrangement of the Local Financial Capability on the Local Government Proliferation Program Based on the Law No. 23 of 2014 on the Local Government

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Abstract:

The implementation of local government is based on the mandate of UUD NRI 1945 that the government run legal political policy toward local government. The local government must be able to manage authority accepted effectively and efficiently for the development and empowerment of local society. By implementing the Law No. 23 of 2014 on the Local Government, the requirement and mechanism to formulating new autonomy region becomes more detail and strict. In the regulation Act 36 verse (1) letter f and the explanation of the Law on the parameter of "Local Financial" is clear, but what parameter of "Local Financial" mean is not clear. The unavailability of parameter nominal as the local financial ability that should be fulfilled as the basic requirement of local capacity to develop in achieving social welfare as the purpose of Formulation New Autonomy Region.

Key terms: Parameter, Local Financial, Local Government Proliferation

1. Introduction

The implementation of local government is purposed to achieve social welfare through increasing of social service, empowerment, and participation, also local competition power by considering the principles of democracy, even distribution, justice and local specialty in the system of Unity State of Republic Indonesia. By conducting the local government, it is possible to run government effectively. That, it continues happening based on the governmental policy in form of formulating a new autonomy region (DOB)

In line with the mandate of UUD N RI 1945, the Law on the Local Government has appeared, in which one of its provision states that Desentralisation refers to delegation of the Governmental affair by central government to autonomy region, based on autonomy bases, to arrange and manage all governmental affairs.

In the context of welfare state (I Dewa Gede, Almadja Sutra Press, Malang 2012) according to Piet Thoenes : *the elite in welfare state quoted from state science: The welfare state is a form of society characterized by a system of democratic, government sponsored welfare placed on a new footing an othering a guarantee of collectiv social care its citizens, concurrently with the maintenance of a capitalist system of production* meaning that the state guaranting the achievement of social welfare.

The local government has important role in order to achieve welfare in a governmental region, in developing government and new local government and planning government, where the local government know well benefit and disadvantage its region. The rule Act 36 verse (1) letter f and the explanation of the Law on the parameter of "Local Financial" has stated clearly, but what means by the parameter of "Local Financial" is not clear.

The unavailability of parameter nominal as the local financial ability that should be fulfilled as the basic requirement of local capacity to develop in achieving social welfare as the purpose of Formulation New Autonomy Region. The unclearness related to parameter of "local financial" results in various interpretation.

The philosophical problem consists of ontological ones: asking that the local can be new autonomy region based on the law No 23 of 2014. Epistemology or how the formulating arrangement of new autonomy region will not fail and far from political elite interest. Axiology, the result of vagueness of norm are many local government proliferation fail, and its effect makes the society suffer and loss of trust to the local government because there is no legal certainty.

There is norm vagueness in judicial problem of the Law Number 23 of 2014 Act 36 verse (1) letter (f) on the local government, that related to parameter of local financial capability. Moreover, it needs clarification to not arrange clearly the minimum local income considered appropriate to be new autonomy region, because the local asset/natural resources refer to fund sources to give life for local needs that cannot be separated from the governmental policy or the local government in estimating previously the availability of its asset as the support of local income, also the missing Law arranging on sanction toward the Governmental Officer and the Independent Research Team that do not conduct their supervising duty on field data of local candidate going to be proliferated by the Home Affairs (Depdagri) and the Committee of Local Autonomy Consideration

(DPOD).

2. Research Method

This study refers to normative legal research estimating the legal rules, legal concepts, philosophical ideas or legal principles as the background and there has to any guaranty analyzing logical ratio of arranging local government proliferation in the Law Number 23 of 2014.

Why the program of local government proliferation in Act 36 verse (1) letter (f) of the Law Number 23 of 2014 on the Local Government, was not arranged clearly related to the financial parameter. Thus, the legal reconstruction on the parameter arrangement of local financial capability in the Law Number 23 of 2014 on the Local Government is found. The study focuses on the statute approach, conceptual approach, and case approach. The legal materials collected are calculated and analyzed prescriptively.

3. Discussion

3.1 The Legal Ratio On The Arrangement Of Local Government Proliferation In The Law Number 23 Of 2014

The appearing of local government proliferation idea principlely can be seen in two sides, that : 1) its causing factors, including (a) the supporting factor of proliferation existing in local internal environment going to proliferate such as history, governmental gaps, the width of control space, and not accomodating political representative, and (b) supporting factor resulting from external environment, such as fund resources from the centra. 2) The factors facilitating the proliferation appearance, such as the preparation of proliferation, political crafting by elite, political condition, security of border areas. The legal fundamental of implementing proliferation refers to the Law Number 23 of 2014 arranging the Governmental Implementation Principle. The Act 58 explains, (1) the governmental implementation based on the General Principle of State Conduction that consists of: a) legal certainty; b) order state conduction; c) general interest; d) transparancy; e) proportionality; f) personality; g) accountabiliy; h) efficiency; and i) effectivity. (2) In conducting the government, the government uses decentralisation principle, delegating task, and deconcentration based on the regulation. (3) In conducting local government, the local uses autonomic principle and delegating task. The explanation of Act 58 of the Law Number 23 of 2014 states that, verse (1) on the General Principle of State Conduction based on the Law Number 28 of 1999 on the Clean and Free State Conduction from Collution, Corruption and Nepotism as well as the principles of efficiency and effectivity.

The Governmental Rule Number 7 of 2008 on the Deconcentration and Delegation task in the Chapter II arranges the Implementing Principle. The Act 12 decides: (1) The government conducts some affairs of its authority in local based on deconsentration and delegation task principles. (2) The deconcentration implementation is conducted through delegation some of governmental affairs as the ministry/institution authority. (3) The implementation of delegation task is run by giving task of some governmental affairs as the authority of delegation giver from the Government to local and/village, from the province government to regency/ciry, and/village, also from regional/city government to village. (4) The ministry/institution decides norms, standards, procedures, and criteria of implementing deconcentration and delegation activities. The Act 3 PP No. 7/2008 states that (1) the implementation of delegating some of governmental affairs from the Government to vertical institution in local is supported through ministry/institution budget. (2) The implementation of delegating some of governmental affairs from the Government to governor and delegation from government to local government and/or village government get fund from ministry/institution budget. (3) The budget management to implement delegation of some governmental affairs and to implement task should be conducted in order, followed the regulation, efficient, economical, effective, trasparent, and responsible by focusing on sense of justice and appropriatness.

3.2 The Local Government Proliferation Program In Act 36 Verse (1) Letter F Of The Law Number 23 Of 2014 On The Local Government Not Arranging Clearly On The Parameter Of Local Financial Capability

The Law Number 23 of 2014 decides that in implementing decentralization local structure applied. Act 31 verse (3) the Law Number 23 of 2014 decides that the local structure consists of local formulation and appropriatness. The purposes of local structuring refer to achieve effectivity of local governmental construction, to accelerate the social welfare increasing, to accelerate the increasing of public service, to increase quality of governmental governance, to increase the local and national competition power, and to keep the unique of local custom, tradition, and culture.

The Act 32 of the Law No. 23 of 2014 decides that the local construction in form of local government proliferation and merger. Based on the act, it shows that formulation of region can be conducted by local formulation through local government proliferation, and locals merger. In line with the local government proliferation, the Act 33 verse (1) of the Law number 23 of 2014 has decided that local government proliferation

in form of deviding province or regency/city areas into two new regions or more or merger regional parts of close area in one province becoming one area.

The formulation of new autonomic area must fulfill 2 basic requirements covering: regional and capacity basic requirements. The basic requirement of local capacity is the local ability to develop in achieving the social welfare. Act 36 verse 1 letter a to g of the Law Number 23 of 2004 on Local Government arranges the parameter of local capacity, however it needs to focused and fulfilled seriously on its area by formulating the new autonomic region, specially act 36 verse (1) letters f/ g, whereas, the regulation as the basic requirement has the following parameters: (a) Geography, (b) Demography, (c) Security (d) Social politic, custom and tradition, (e) Economic potential, (f) Local finance; and (g) The ability to conducting government.

The local finance, as steted in explanantion of act 156 verse 1 of the Law number 32 of 2004 on the Local Government, refers to: the local finance covers all local right and responsbility that can be valued by money and anything in form of money and property that can be own by the local related to implementation of the right and responsbilty. Generally, the local income sources include: (1). Local Real Income (PAD), (2) Balancing fund (3). Local Loan (4) Other official incomes.

The regulation of Act 36 verse (1) letter (f) on “Local Finance” does not explain clearly on the parameter of Local Financial capability as the basic requirement of Local capacity. Thus, many unready locals suggesting for the proliferation has been forced to do so only for the political elite interests.

The local government proliferation may bring one opinion that the government wants to help bureaucracy (the regional and city principals) being close to the society, regency and city. When all the social problems resolved through province bureaucracy, they will be unfinished/posponed. The local government proliferation refers to product of decentralization, using local autonomy, the society arranges its own affairs, and the authorities from the central given to the local. In fact, the authorities have existed for a long time in local and no need to given, however, the acknowledgment from the central government is needed.

The other side of local government proliferation refers to there is worry if all locals start to think that they can live consumtively (unnecessary needs) without giving priority on emergency one, thus the money is wasted. Therefore, to arrange the finance, each local needs smart and creative leader (governor, regional and city principlas) in line with Good Corporate Governance. The Good governance as a form of social, law and governmental project, including state, people and market, covering regulation that arranges the relation among the governmental elements, when the government manages a local and government.

In line with the research findings, the conduct of local government proliferation in Act 36 verse (1) letter f of the Law Number 23 of 2014 on the Local Government do not arrange clearly the parameter of local financial capability. In its explanation, the Law has stated in Act 36 verse (1) clearly, however the parameter of sucessing level of a local is decided by the local finance. The decision of local government proliferation requirement, related to local finance, should be arranged more specifictly and there must be any minimum percentage on the local finance in this case the income of local as the candidate of proliferation preparation understood as the parameter for the local becoming proliferation preparation region.

One of values in *Good Governance* principle according to bappenas is Efficiency and effectiveness, in which the Government must always give efford to obtaint optimum result by making use of available fund and other resources efficiently in order to increase work ethic and achieving output appropriate to the society needs. By taking use of the fund and other resources, the Local Government has to able to provide cost for all the governmental activities, development and society as the implementation of arrangement and management its own affairs. Thus, the local financial capability must be able to support the cost of governmental, developmental and social activities that welfare will be achieved.

3.3 The Legal Reconstruction On The Parameter Arrangement Of The Local Financial Capability In The Law Number 23 Of 2014

As already understood, the conduction of government and development refers to continuing process with different intensity and achievement characters based on the apparatus capability and the resources availability. The Law number 23 of 2014 was formulated based on strong society demand on the need of the local to arrange and manage its own affairs, as the negative effect of long centralization process in the New Orde.

As the result of emergency demand and the need of quick response, the government and DPR-RI have decided the Law. However, in line with its emergency process, the content and substance have many weaknesses and need to be anticipated by the locals. In a whole, the Law number 23 of 2014 shows some worries from the central of lossing its income sources, that it does not showed yet the central seriousness to place regency/city as the autonomic focus.

The Act 36 verse (1) letter f of the Law Number 23 of 2014 on the Local Government was not arranged clearly on local finance. The Law explanantion stated clearly, meanwhile the parameter of achievement level of a local was decided by local finance. Together with great financial delegation, great amount of money is given, consequentially, the money in the central government decrease that it needs restructurization of the central

government, that bureaucracy must be cut and made short as well as the budget.

In its implementation, the local government proliferation too suppress on obtaining the Local real Income (PAD) that it burdens the society with various taxes. It is phenomenon happening today, however, it is not PAD increased if the society being burden but *Product Domestic Regional Bruto* (PRDB) or number of additional value on the goods or service resulting from all economic activities in certain year or period.

The appearing of the Law number 23 of 2014 on the Local Government principle is the correction of the weaknesses of the Law number 32 of 2004 by stricten the requirements of proliferation. However, in its implementation, the Law number 23 of 2014 has no implementing rule, that it does not run effective for there happens interest politization, making the proliferation being uncontrol and having no purpose as what happened lately.

4. Conclusion

The implementation of the Local Government Proliferation in Act 36 verse (1) letter f of the Law number 23 of 2014 on the Local Government was not arranged clearly on the capability of local finance, because the Law was formulated based on the strong social demand on the need of Local to arrange and manage its own affairs. Because of its emergency process, the content and substance have many weaknesses and need to be anticipated by locals. Thus, many locals of unready proliferation suggestion are forced to proliferated only for political elite interest and fail to focus on the parameter of its local financial capability.

The District Langowan, Minahasa regency, Province of Sulawesi Utara as the preparation locale to become DOB of Langowan city, in the writers point of view, is only adding list of fail DOB because based on the research from cultural and economic sectors the District Langowan considered unable, for the sectors necessary to support the Local Real Income that DOB of Langowan city able to stand independently.

The legal reconstruction on the local financial arrangement in the Law number 23 of 2014 hopefully able to create condusive condition and stable governmental system. However, because the proliferation tend to be forced give effect on complicated proliferation problem in various regions of Indonesia. In line with the District Langowan, the Regency of Minahasa, Province North Sulawesi as the preparation area to be DOB Langowan city, in the writers point of view, is only adding list of fail DOB because based on the research from cultural and economic sectors the District Langowan considered unable, for the sectors necessary to support the Local Real Income that DOB of Langowan city able to stand independently.

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