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The Existence of Proportional Authority of Regional Governments in the Management of Oil and Gas Mining

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Abstract:
Proportional distribution of authority arrangements in the management of Oil and Gas mining based on decentralization is needed to be able to optimize results and be of maximum benefit to the prosperity and welfare of the people both regionally and nationally. This research aims to: analyze the reasons for regulating mining authority for oil and gas management given to the Central Government Article 14 paragraph (3) of Law no. 23 of 2014 concerning Regional Government. The approach used is the statutory approach, the conceptual approach, and the philosophical approach. The results of this study show that there is no proportional distribution of authority in the management of decentralized oil and gas mining. Therefore, it is necessary to arrange the proportional distribution of authority between the central government and regional governments producing oil and gas.The act no. 23 of 2014 concerning Regional Government divides government affairs into 3 namely, absolute government affairs, concurrent government affairs, and general government affairs. Based on the Regional Autonomy Theory, the fields of energy and mineral resources are concurrent government affairs. Thus the affairs of energy and mineral resources including oil and gas mining are essentially authority which must be shared between the central government, provincial and district/city governments.
Keywords: concurrent, proportional, central government, provincial and district/city governments.
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1. INTRODUCTION

Local Government is given authority and authority according to the provisions of Act No. 23 of 2014 concerning the Regional Government as amended by Act No. 9 of 2015 concerning the Regional Government to achieve the goals of the Indonesian state. The goals of the Republic of Indonesia are contained in paragraph IV of the 1945 Constitution of the Republic of Indonesia. The aim is to protect all Indonesians and all Indonesian blood to promote public welfare, educate the nation's life and participate in carrying out world order based on freedom, eternal peace, and social justice.

Indonesia as one of the 20 largest mining producing countries in the world, has to pay attention to the Big Sector Impact of mining. The authority regarding mining in Law No. 23 of 2014 concerning Regional Government in the Field of Energy and Mineral Resources divides mining into 2 namely oil and gas & mineral and coal mining.

The Regional Government both provincial and district/city governments have the authority and responsibility for managing natural resources in their own regions. Useful, certain and fair arrangements between the central government, provincial governments, and district/city governments are needed in the management of oil and gas mining.

Proportional authority arrangements between the Central Government, Provincial Governments and municipality Governments play an important role in maximizing results or benefits. Proportional authority arrangement aims to create justice, certainty, and benefit, as much as possible in the natural resources controlled by the state for the prosperity of the people of the region in special and the prosperity of the people of Indonesia in particular.

To accelerate the prosperity of all people, "the Unitary State of the Republic of Indonesia is divided into provincial regions and provincial regions divided into regencies and cities, which each province, district, and the city has regional administration, which regulates by law". As a decision of the decentralized system, not all government affairs are carried out solely by the central government. Various governments can be organized or carried out with the assistance of lower government units in the form of autonomy or assistance tasks (*medebewind*). The composition of the central government level in the 1945 Constitution of the Republic of Indonesia and in various other laws and regulations (such as the stipulation of the People's Consultative Assembly, the Law, or the decision of the regional government as a lower government unit in managing the government that requests the central government or assisting central government affairs).

Regional Governments have freedom (*verijheid*) to regulate and manage their regions. Government affairs which are left to the regions become the affairs of regional households. This freedom does not mean independence (*onafhankelijk*) because of the supervision of the central government or higher-level government.

Each government unit has the authority to regulate and manage its own household (autonomous region), and

it is possible to form units as central government officials in the region[1]. Decentralization, deconcentration, and co-administration are principles of governance in the framework of the Unitary State of the Republic of Indonesia,

The proportional division of authority between the central government and regional governments (provincial and municipality) to manage the oil and gas mining is carried out in synergy to create optimal results so that they can be utilized for the greatest prosperity and welfare of the people.

The existing of absence of proportional authority arrangements between the central government and regional governments both provincial and municipality governments in terms of management of Oil and Gas mining (upstream business activities and downstream business activities) creates injustice for the people of Indonesia in this case the reginal community / oil and gas producing city. The injustice in question is the regional government which in essence has the authority to take care of selected governmental affairs that are concurrent (other than absolute government affairs and general government affairs)

I. LEGAL MATERIALS AND METHODS

According to Peter Mahmud Marzuki, legal researchis discovering the truth of coherence, the norm that a command or prohibition is in line with the principle of law, and whether the action (act) someone after the law (not only in accordance with the law) or legal principles.

This type of research is legal research by examining norms both with primary and secondary legal materials, to analyze the Existence of Proportional Authority of Regional Governments in the Management of Oil and Gas Mining.

According to Peter Mahmud Marzuki, in legal research, there are several approaches. The approach used in the study of law is the approach of the law (statute approach), the historical approach (historical approach), a comparative approach (comparative approach), and the conceptual approach (conceptual approach).

In this study, the author will use the method of approach to the law (statute approach) and the conceptual approach.

Approach on legislation (statute approach) is done by examining all the legislation and regulation that has to do with legal issues being dealt with. The conceptual approach depart from the views and doctrines that developed in the jurisprudence. By studying the views and doctrines in the law, authors would find the ideas ofthe Existence of Proportional Authority of Regional Governments in the Management of Oil and Gas Mining.

II. RESULT AND DISCUSSION

a. The Importance of Regional Importance on Natural Resources in Article 18A paragraph (2) of the NRI Constitution of 1945 (before Amandemen)

Before the 1945 Constitution was enacted, Muhammad Hatta had a desire to divide the country in the form of autonomous regions, even regions to villages. Muhammad Hatta as quoted in Bagir Manan in his writings stated the need to give autonomy rights and assistance tasks to cities, villages or regions to exercise the sovereignty of the people and for the needs of the region concerned[2].

On May 29, 1945, BPUPKI meeting discussing local government, Muhammad Yamin conveyed, among others[3]:

"*The country, villages and all customary law alliances which are renewed by way of rationalism and the renewal of the times, are made at the bottom of the foot structure. Between the top and the bottom, the middle part is formed as the regional government to carry out the governance of internal affairs, pangreh praja* "

As one of the working committees of the 1945 Constitution designer, M. Yamin in the BPUPKI session, put the provisions regarding the regional government in Article 17 which states[4]:

"The division of Indonesian regions into large and small regions, with the form of government structure, is determined by law by looking at and remembering the basis of deliberation of the state government system, and the rights of the origin of special regions"

Soepomo, Ahmad Soebardjo, and Maramis, regarding the regulation of regional government in the draft 1945 Constitution formulated*:*

The current division of Indonesian regional land in provinces and other regions such as gemeente-gemeente, regeenschap-regenschap, gropgemeente-gropgemeente and other state associations, is determined but all councils from the province, regencschap, gemeente and others are abolished. The power which, according to the Dutch East Indies laws and regulations, was in the hands of these councils, was left to the heads of government in the regions above.

Agreeing with Amir and Ratulangi's statement, Supomo stated:

[1]Philipus M. Hadjon,dll, ***PengantarHukumAdministrasi Indonesia (introduction to the Indonesia administration law)***, (Yogyakarta: Gajah Mada University Press, 2011), p. 79-80
[2]Bagir Manan, ***PerjalananHistorisPasal 18 UUD 1945***, Karawang: Uniska, 1993, p. 9.
[3]M. Yamin, ***NaskahPersiapan UUD 1945,*** Jilid I, (Jakarta; Siguntang, 1971), p, 100.
[4]M. Yamin, ***Naskah…..,*** Ibid, p 266.

"Our agency must accept as a basis, that household affairs must be left to the regions. Then, if we form a law on regional government, we must respect the wishes of the meeting, that household affairs must be left to the regional government. There are some exceptions, but basically, they must be submitted to the regions".

Based on the above meanings, the provisions of article 18 containsome principles:

1. The principle of territorial decentralization of the territory of the Republic of Indonesia will be divided into government units arranged in large and small regions (grondgebied). Therefore the 1945 Constitution does not regulate functional decentralization.
2. Orders to the legislators (the President and the Parliament) to regulate the territorial decentralization in the law (organic law).
3. Orders to legislators in drafting laws on territorial decentralization must:
   a. Look at and remember the basis of deliberation in the state government system.
   b. Look at and remember the rights of origin in special regions.

The first and third principles are prerequisites that cannot be distorted or exceeded by the legislators. The first principle contains orders that the legislators in implementing the provisions of article 18 may only regulate territorial decentralization. The administrative area must avoid several things, including:

a. The presence of an administrative administrative region must not shift the autonomous government unit which is one of the constitutional system joints according to the 1945 Constitution.
b. The presence of administrative administrative regions should not lead to dualism in the administration of regional government.
c. The presence of administrative government areas should not lead to confusion of authority, duties, and responsibilities with autonomous government units which will affect the influence of service to the community.

b. <u>The Importance of Regional Importance on Natural Resources in Article 18A paragraph (2) of the NRI Constitution of 1945 (afterAmandement)</u>

Several principles become a reference in the administration of regional government. This was clearly stated by the People's Consultative Assembly (MPR) in its official publication regarding the guidance in promoting the 1945 Constitution of the Republic of Indonesia stating that 7 principles are the paradigm and political direction that underlies Article 18, 18A and Article 18B of the 1945 NRI Constitution, namely:

1. The principle in the administration of government, the region regulates and manages its government affairs according to the principle of autonomy and assistance tasks {Article 18 paragraph (2)},
2. The principle of carrying out the broadest autonomy {Article 18 paragraph (5)},
3. The principle of regional specificity and diversity {Article 18A paragraph (1)},
4. The principle of recognizing and respecting the unity of customary law communities and their traditional rights {Article ISB paragraph (2)},
5. The principle of recognizing and respecting special and special regional government {Article ISB paragraph (1)},
6. The principle of the representative body is directly elected in a general election (Article 18 paragraph (3)},
7. The principle of central and regional relations is carried out in harmony and fair {Article 18A paragraph (2)} ".

In this regard, Philip M. Hadjon states that 4 principles underlie the provisions of Article 18 of the 1945 Constitution, namely:

1) The principle of hierarchical division of regions in Paragraph (1);
2) The principle of autonomy and the task of assisting in paragraph (2);
3) The principles of democracy in Paragraph (3) and Paragraph (4); and
4) The principle of autonomy to the fullest extent in Paragraph (5)".

In the principle of regional self-regulating and managing government affairs according to the principle of autonomy and the task of assistance implies that regional government in Indonesia is based on the principle of autonomy and assistance tasks. Syaukani AR said that the provisions of article 18 of the 1945 Constitution] the 1945 year was increasingly confirmed that the Indonesian regional government system adopted the principle of autonomy or decentralization.

Article 18 of the 1945 Constitution of the Republic of Indonesia after the amendment is more detailed than Article 18 before the amendment. Also, the explanation of the 1945 Constitution of the Republic of Indonesia which has been part of the 1945 Constitution of the Republic of Indonesia has been deleted. In this connection, Bagir Manan said[1]:

"Amendments to Article 18 of the 1945 Constitution of the Republic of Indonesia, both structurally and

[1]Bagir Manan, Menyongsong... Op. Cit, p. 7

substantially, these changes are very basic. Structurally, Article 18 (old) is completely replaced. Elucidation of article 18 of the 1945 Constitution of the Republic of Indonesia is a form of "peculiarity", "confusion" and even "anomaly" for article 18 itself. So that with the abolition of the provisions of Article 18 of the 1945 Constitution of the Republic of Indonesia NRI, the only constitutional source of regional government in Article 18, Article 18A and Article 18B of the 1945 Constitution of the Republic of Indonesia".

The opinion of Bagir Manan, Jimly Ashiddiqie said that the new provisions of Article 18, Article 18A and Article 18B, had changed the format of the "rigid" form of the Indonesian State to a more "dynamic" form of the Homeland. The dynamism was further conveyed. It can be seen from the implementation of different arrangements between one region and another so that the relationship between the central government and the regional government is different from one another.

Laica Marzuki said"So that in the future there will be no improper interpretations of the broadest definition of autonomy as our system of state administration, it is appropriate that in the regional government law a legal provision is formulated that gives a valid definition, that administers and regulates the widest possible autonomy household. encompasses everything related to the public interest (openbare belangen) of the community and region, as long as they are not included or drawn into the management of the central government or the regions above "[1].

According to Nasroen, regional autonomy means autonomy within the state. Regional autonomy must not divide the unitary state. The granting of the right to autonomy to the fullest extent must have limits outlined in the law. Regarding broadest autonomy, Nasroen more clearly stated[2]:

"Do not be limited to the limitatieve summary, but the limit will be determined by the real situation of the autonomous region concerned, in terms of the ability to accept the rights and obligations of the functions to be submitted. Autonomy is as broad as possible, and restrictions are practical and central government matters, but that must be stated in the law. The reality of one province is different from other provinces, as well as other regencies and autonomous regions ".

In the provisions of Article 18 of the 1945 Constitution of the Republic of Indonesia, among other things, it is emphasized that regional governments at all levels regulate and manage government affairs in their regions based on the principle of autonomy and assistance tasks. This regulation is the legal basis for the administration of regional government to run the government more freely to accommodate the diversity in the region and by the needs, conditions and characteristics of their respective regions, except for governmental affairs declared by law as central government affairs.

"However, even though regions are given the right to form regional regulations and other regulations in the context of implementing regional autonomy Article 18 paragraph (6), that does not mean that regions may make regulations that contradict the principles of the unitary state. For this reason, the rights of the regional government are closely related to the provisions of Article 33 and Article 34 of the 1945 Constitution, namely regarding the national economy and social welfare. Among other things with an understanding that the national resources in the area. Therefore, paragraph (7) of Article 18 is held "[3]

In the provisions of Article 18 of the 1945 Constitution of the Republic of Indonesia, among other things, it is emphasized that regional governments at all levels regulate and manage government affairs in their regions based on the principle of autonomy and assistance tasks. This regulation is the legal basis for the administration of regional government to run the government more freely to accommodate the diversity in the region and by the needs, conditions and characteristics of their respective regions, except for governmental affairs declared by law as central government affairs.

An explanation in which the position of the administration of government in regional government has been contained in the 1945 Constitution of the Republic of Indonesia. In the previous period, despite the desire to divide the state into the form of regional government (large and small), it was not explained where the position for the administration of the regional government was. Even Muhammad Yamin only suggested the existence of a middle section between the top and the bottom as a position to run (Pangreh Praja) regional government. Maybe, the country, the village and all customary law associations can be considered as the lower part of the government structure, but where is the position of the middle part? Therefore, in Article 18 paragraph (1) above, it is said that the position of the administration of regional government is in the provinces, regencies and cities, hereinafter referred to as provincial, regency and city government[4].

The dynamics of regional government continues to be debated starting from the formation of the 1945 Constitution of the Republic of Indonesia in the first time formulated by the founders of the country until the fourth amendment. Following, the details of the discussion presented in the 1945 amendments to the NRI Constitution regarding regional governance.

Rosniar further explained the scope of regional autonomy arrangements in the constitution based on the above

[1]LaicaMarzuki, ***Berjalan***.., Op. ca., p 170.
[2]M. Nasroen, ***MasalahSekitarOtonomi***. (Jakarta; J.B. Wolters, 1951), p. 40.
[3]MPR RI. ***Panduan***... Op. Cit., p. 105.
[4]Bagir Manan, Hubungan...,Op.Cit.., p 161.

input, as follows:

"The scope of regional autonomy arrangements in the constitution, according to the above input, the articles on regional autonomy must regulate: (a) Limitation of central or regional power on the one hand and guarantee of protection for the rights of the people of the region including local identity on the other. (b) The scope of sharing of power of sharing between the national government and the central or central government on the one hand and the people of the region through regional governments elected through elections on the other hand. (c) Mechanisms of dialogue and deliberation between the central and regional governments and clear boundaries of the possibility of interference between the two parties. (d) The focus of regional autonomy is implemented flexibly and does not have to be uniform, but rather is oriented to the potential and capability of each region. Or broad autonomy at the district and provincial level."

Specific discussion of Chapter VI on regional governance was conducted at the 36th PAH I BP MPR meeting, May 29, 2000, chaired by Jakob Tobing, with the agenda of describing the attitudes and views of changes to Article 18. F-UG through its spokesman ValinaSingkaSubekti revealed four the principles underlying the relationship between the center and the regions, complete the four principles as follows.

1. "Referring to the principle of decentralization that autonomy is given to the regions.
2. Decentralization remains within the framework of the unitary state. Therefore, it is indeed our collective agreement to maintain a unitary state but by giving autonomy to the regions.
3. The principle of division of authority between the center and the regions and cooperation between the center and the regions which refers to the principle of justice and balance. So, in the implementation of decentralization there is strict authority between the center and the regions but also cooperation between the center and the regions which refers to justice and balance.
4. For this reason, it is necessary to establish strict basic rules regarding the division of authority between the center and the regions and cooperation between the center and the regions in our constitution."

The discussion on regional government was then continued at the MPR Commission A lobby meeting, August 14, 2000, which was chaired alternately by Jakob Tobing and Slamet Effendy Yusuf. To add to the reference regarding regional government, an expert on state administration law, Bagir Manan, presented some matters relating to amendments to Article 18 concerning regional governance. The complete explanation of Bagir Manan is as follows. Regarding the formulation of authority paragraph (7) regarding the relationship of authority between the provincial government and municipality areas, Bagir Manan suggests as follows:

"Because they are nouns. The relationship of authority between the provincial government, city district or other regional government units, between the central government is actually ... or ... so this is, the relationship of authority between the government, between the central government, yes, with the government, this is lacking this, maybe a typo again, the relationship of authority between the central government and the provincial government, city district or other regional government units or between the province and the city district or other regional government units is regulated by law by taking into account regional specificity and diversity. If the center is the government, sir, therefore the relationship between the central government is yes, yes, if the government is a provincial government, so the relationship is good and complete, regencies, provinces, regencies, cities or other regional government units are regulated by law by taking into account regional specificities and diversity. Financial relationships, the utilization of natural resources, and other resources between the center and the regions are regulated and carried out fairly and in harmony based on or according to the law. So that... yes. Financial relations, utilization of other resources between the central government and regional governments are regulated. ... yes, regional government ... yes, it is regulated and implemented..., fairly and harmoniously based on or according to the statute. "

Based on Act No. 23 of 2014 concerning to Regional Government, the authority of regional governments (provincial and municipality) in the field of energy and natural resources (including oil and gas mining) is a concurrent governmental affair which means to be shared jointly between the central and regional governments(municipality and city).

III.CONCLUSSION AND SUGGESTION

The weakening of the authority of the regional government (municipality) in the laws of the regional government resulted in the weakening of the development of the region to be independent and accountable by the Indonesian constitution. In reality, the lack of authority of the regional government (central and municipality) results in the regional government being unable to be independent and responsible for the natural resources in its area to be managed jointly with the central government. Thus there is no justice for local governments to manage oil and gas mines. Ideally, the authority to manage oil and gas mining is managed proportionally between the central government and regional governments (municipality and city)

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