

## Regional Autonomy Perspective on Government Affairs Division for Transportation Connectivity

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### Abstract

The management of type B/C road transportation passenger terminal and operation/closure of weighing equipment permanently by the central government after the enactment of Act Number 23 of 2014 on Local Government is not in accordance with the principle of regional autonomy. Regarding the Provincial and district governments, according to the 1945 Constitution of the Republic of Indonesia, it is stipulated that regional governments regulate and administer government affairs themselves according to the principles of autonomy and co-administration. The division of government authority for the management of the type B/C road transportation passenger terminal has been shared by the central government to local governments. Handover of personnel, funding, facilities and infrastructure, as well as documents due to the division of Government affairs between the central, provincial and regional governments, there found regions that have not carried out the handover of government affairs as regulated by the Act Number 23 of 2014, for there are road transportation passenger terminals that the status are downgraded. As for the operation and closure of the weighing equipment permanently, namely weigh bridges, several weighing devices are still available and have not functioned regularly by the central government, especially in East Java Province. Thus this case creates legal uncertainty on the implementation of government affairs and causes society disobedience on transportation order and smoothness as a means for a city/regency for the progress and development of infrastructure. Moreover, transportation can increase the accessibility of relations among one region and another.

**Keywords:** Division of government affairs authority, Regional Autonomy, and transportation

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### INTRODUCTION

The geographic of Indonesia as an archipelago greatly influences the Indonesian governance mechanism. This geographical condition causes difficulties for the government to coordinate the local government spread in some regions. To facilitate the arrangement of government, a government system is required in order that it can run efficiently and independently, and it is easily supervised by the central government.

Local governments were born to facilitate the rural community to experience the welfare of life under one government system to achieve the goal and ideal as stated in the fourth paragraph of the preamble of the 1945 Constitution of the Republic of Indonesia containing delegation of authority by the central government to the local governments. Bagir Manan defines authority, in the language of law, is different from power. Power only describes the right to act and not to act, while authority means rights and obligations.<sup>1</sup> Various related laws and regulations that specifically regulate regional governance have been rolling since the Indonesian state was founded, as described in article 18 of the 1945 Constitution of the Republic of Indonesia;

*"The Unitary State of the Republic of Indonesia is divided into provincial areas and the province is divided into districts and cities, each of which has a local government, which is regulated by law."*

Regulations regarding road transportation, especially in the division of government affairs in the transportation sector, sub-affairs of Traffic and Road Transportation (hereinafter referred to as LLAJ) for the management of type B passenger terminals and location determination and operation or closure of motor vehicle weighing devices, are technically regulated in the Act Number 22 of 2009 on Road Traffic and Transportation. This legislation explains the existence of transportation, namely the movement of people or goods from one place to another by using a transportation driven by a human or a machine. This transfer requires a departure or arrival place according to a predetermined area or the commonly known as Terminal. The term terminal based on Legislation terminology is defined as,

*"The terminal is a place where public transportation arrived and departed, people or goods are loaded and unloaded, and where transportations are moved."*

The Act Number 22 of 2009 concerning Road Traffic and Transportation divided Passenger terminals into several types, namely Terminals with Type A, B, and C. The division of government affairs, between the central

<sup>1</sup> Nurmayani, *Hukum Administrasi Daerah*, (Bandar Lampung: Universitas Lampung. 2009), 26.

government, provincial government and regional government has been regulated in article 15 which is an integral part of the attachment to the Regional Government Law. Based on the Minister of Transportation Regulation Number 132 of 2015 concerning the Implementation of Road Transportation Passenger Terminals, the terminals have their respective authorities. In particular, the type B terminal states that each terminal is determined by the Governor by considering the suggestions of the Head of the region, this terminal is to serve public transportation for inter-city transportation within the province which is integrated with urban transportation services and/or rural transportation. It is located in the inter-city route network within the province, while the type C terminal, the Regent considers the suggestions/input from the SKPD which is responsible in the field of LLAJ facilities and infrastructure.

The management of the terminal by the governor and/or the regent/mayor as well as the regular operation of weighing devices by the central government as a result of the handover of authority for the distribution of government affairs as regulated in the Act Number 23 of 2014 concerning Regional Government is not appropriate and contrary to the principle of regional autonomy namely the de-centralization principle which means the delegation of government affairs by the central government to autonomous regions based on regional autonomy. Whereas the spirit of the concept of regional autonomy is the delegation of authority from the central to the local government. The regions have the authority to manage their autonomous regions without central government interference.

Article 404 of Act Number 23 of 2014 regulates;

*“Handover of personnel, funding, facilities and infrastructure, as well as documents as a result of the division of Governmental affairs between the central government, provincial regional government as regulated under this Law shall be carried out no later than 2 (two) years since this law is enacted.”*

The Local Government Law Number 23 of 2014 was enacted on October 12, 2014 meaning that since October 12, 2016 the provisions in Article 404 must be implemented, and in the East Java Province it is implemented since January 1, 2017. However, there are found some regions that have not carried out the handover of government affairs as regulated in the Regional Government Law, and there are also road transportation passenger terminals that the status have been downgraded. As for the operation and closure of the weighing equipment permanently, namely weigh bridges are still available and are not managed regularly by the central government, especially in the province of East Java, so that it causes a sociological impact on the community since it creates legal uncertainty on the implementation of government affairs and causes disobedience to the rules.

The above elaborations have shown several legal problems, including the problem of inconsistency in the rule of law, that the state of law put the law as the highest (supreme) matter. The rule of law must not ignore 3 basic ideas of law, namely justice, expediency, and certainty. Based on that concept, the legal problems to be answered namely: (1) do the delegation of authority to manage type B passenger terminal from the district government to the provincial government, and the delegation of authority to operate weighing equipment regularly, from the provincial government to the central government, meet the principles of regional autonomy?, and (2) What legal principles are used to transfer management authority of type B passenger terminals to the provincial government and the regular operation of weighing equipment to the Central Government in the perspective of regional autonomy? By the occurrence of these problems, it will also affect the existing regional legal products that will relate to transportation in the existing national development connectivity in the regions.

## RESEARCH METHOD

This research belongs to juridical normative research (doctrinal research). It aims at providing a systematic exposition of the legal rules governing certain areas of law, analyze the relationship between one legal rule and another, explain difficult parts of a legal rule, and even includes predictions of the development of a certain legal rule in the future,<sup>1</sup> meaning that it emphasizes on normative legal science, while in searching legal material, it is still adhering to the legal aspects contained in law. Thus, the approaches to the problem used are: historical approach, conceptual approach, statutory approach, and comparative approach.

## RESULTS AND DISCUSSION

### **Delegation of Authority to Manage Type B Passenger Terminal and Regular Operation of Weighing Equipment from Local Government to Provincial/Central Government under Regional Autonomy Perspective**

The existence of a terminal is very important for the smooth and orderly implementation of intra and intermodal integration. Essentially, the terminal is a node in the road transportation network system which consists of two types of terminals, namely (1) passenger terminal and (2) freight terminal. Both are means of road transportation

<sup>1</sup>Dyah Ochtorina Susanti and A'an Efendi, *Penelitian Hukum*, (Jakarta: Sinar Grafika, 2013), 11.

to pick up and drop off passengers/goods, as well as arrangements for the arrival and departure of public transportations, thus it must be managed and maintained in order to meet the needs of the community and road transportation properly.

The Directorate General of Land Transportation (1995) states that public transportation terminals are the node points in the road transportation network system where a breakdown occurs, which is a transportation infrastructure that functions primarily as a public service, in the form of a place for public transportation to pick up and drop off passengers and or goods, loading and unloading commodity, as a place for the movement of passengers both intra and between modes of transportation that occurs as a result of the movement of people and goods as well as demands for transportation efficiency. Therefore, the role of the terminal is quite complex, for it must be well managed.

Indonesia is a unitary state, meaning that the state power is centralized, however it consists of regional governments in which the authority is delivered by the central government clearly, and its government system is implemented by the system of centralization/de-concentration, and *medebewind*/co-administration. In the centralized / de-concentrated system, the state sovereignty, both internally and externally, is handled by the central government and transferred through its offices located in the regions (de-concentration). However, due to the vastness of the regions in our country which are divided into several provinces, districts and cities, it cannot only be regulated or managed by the central government. These regions have local government through decentralization or the delegation of authority by the central government with the aim of regulating and managing their own governmental affairs in accordance with the specificities and potential of these regions for the welfare of the people.

In practice, decentralization which is interpreted as 'handover' of part of the authority has indeed overlapped the central duties and authorities in the form of de-concentration or "delegation" of some of the authorities from the central to local governments (especially districts / cities) as well as co-administration. Strengthening the role of the central government by de-concentration is implicitly not merely adding to the previously diminishing roles, but is further based on future goals, namely maintaining the sovereignty of a nation state. Thus, this law provides a basis that the central government has the right to intervene in the form of supervision, guidance, control and performance assessment of autonomy of the local governments. The rights of central government are exercised directly by the central level agencies (Non-Departmental Government Institutions (hereinafter referred to as LPND), or indirectly by the delegation of authority through the apparatus in the regions, namely the governor. It means the provincial government in the corridor of regional autonomy has two positions, namely as representatives of the central government in accordance with Government Regulation Number 19 of 2010 concerning Procedures for Implementing Duties and Authorities as well as the financial position of Governors as representatives of the Government in the Province, by making the de-concentration apparatus and executing regional autonomy itself (decentralization apparatus). Likewise districts and cities currently have a double function, namely as the implementer of regional autonomy and as a de-concentration apparatus.

In a unitary state, the responsibility for the implementation of governmental tasks remains in the hands of the central government. However, since the Indonesian governmental system one of which adheres to the principle of a decentralized unitary state, there are certain tasks which are managed by themselves, resulting in a reciprocal relationship that creates a relationship of authority and supervision. Thus, Bagir Manan argues that the unitary state is the boundary of the definition of autonomy. Based on the basis of these limits, various rules that regulate the mechanism will create a balance between the demand for unity and the demand for autonomy. Therefore, it lies the possibility of spanning arising from the two trends.

According to Ni'matul Huda, the tug of war between the two tendencies shall not be eliminated. This effort will never succeed since the condition is natural. The life of the state and government is never separated from the life of the people, both the people themselves and the communities outside them. A good state or government is one that works in accordance with the dynamics of its society. Thus, by condition, it shall be seen whether this trend is inclined to the unity or autonomy. If everything is returned to the interests of society and a healthy government is realized, this tug of war should not be seen as spanning, i.e., when one endangers the other, but a natural form of dynamism that will always exist at every level of development of life as a state or government. In addition, it is important to create a reasonable mechanism so that each pull is not only a warning, but also as an input for others. At present, the unitary state must be interpreted as a unitary, namely a unitary state that does not eliminate the diversity of the unified elements. The unity in diversity.

Based on the above description, the tug-of-war of the decentralization and de-concentration mechanisms does not need to be eliminated. However, adjustments to the conditions and needs of the state, regions and society shall be made. It means that under certain circumstances, de-concentration can be strengthened along with a strong decentralization, or vice versa. De-concentration can also be extended to regencies and cities, or vice versa, it can only be applied to provinces, as in the Local Government Law Number 23 of 2014.

In regard to the 1945 Constitution of the Republic of Indonesia in article 18 paragraph 7, it explains that the procedures for implementing local government have been regulated. Therefore, the implementation of local

government is directed to accelerate the realization of community welfare through improving services, empowerment and the role of the community, as well as increasing competitiveness by considering the principles of democracy, equity, justice and the uniqueness of a region in the NKRI system. The implementation of Local Government towards decentralized, centralized and de-concentrated regional autonomy has become increasingly obvious after the implementation of the Act Number 23 of 2014 on Local Government.

The Act Number 23 of 2014 on Local Government provides clearer guidance regarding the distribution of government functions between the central government and local governments. The implementation of the local government as mandated by the central government in providing services to the community is to spur synergies in various aspects in the administration of the local government and the central government. The main objective for the implementation of regional autonomy is to improve better public services and to advance the regional economy as well as to increase high competitiveness and accountability.

The Act Number 23 of 2014 on Local Government contains 411 articles, and the Article 404 explains that the handover of personnel, funding, facilities, infrastructure, and documents as a result of government affairs division between the central government, the province and districts/ cities that are regulated by this Act is made no later than 2 (two) years since the Act is promulgated. In the attachment to Law Number 23 of 2014 concerning Local Government, it describes the division of government affairs in the transportation sector. Government affairs in the transportation sector are arranged in the sub-affair of Road Transportation Traffic, explaining that in point (c) the authority to manage type A passenger terminals is managed by the central government, the authority to manage Type B passenger terminals is managed by the provincial regional government, and the authority to manage type C passenger terminals is managed by the district/city government.

Ministerial Regulation Policy is the most important factor that will determine the success or failure of a government in realizing the people's welfare. It indicates that if a government, in this case the Central Government, is able to make policy which is formulated based on formal legal principles and is accepted by the public, it means that the policy certainly has a good quality.

Along with the development of advanced technology, the mobility of the people in relation to social activities is also developing, it is necessary to have transportation facilities that can support these growing activities in the form of roads. Freight transportation also has an important role in supporting the economic growth of a region. The movement of goods transportation in East Java Province from year to year continues to increase in line with the increase in the economy and advances in motor vehicle technology, especially freight transportation. This situation creates problems for road safety facilities and infrastructure as well as road conditions, because roads are transportation infrastructure that can support an important role in the economic, socio-cultural, environmental, political, defense and security sectors. To maintain road conditions, the Government has an obligation to supervise and secure roads. Road supervision and security involves controlling the weight of a vehicle and its cargo by using a weighing device that is installed permanently or generally known as the Weigh Bridge. Supervision and control of overweight cargo is the task of a road safety supervision carried out by the Motor Vehicle Weighing Implementation Unit (hereinafter referred to as UPPKB). Government Regulation Number 25 of 2000 concerning Government Authority and Provincial Authority as Autonomous Regions states that the management and operation of weigh bridges is the authority of the Provincial Government while the Central Government is obliged to provide guidance and supervision as well as providing corrective actions in order to improve the performance of weigh bridges. The national transportation system stipulated by the Decree of the Minister of Transportation Number 49 of 2005 states that transportation has a strategic position in national development to achieve national development goals that are reflected in the mobility needs of all sectors and regions. Transportation is a very important means of smoothing the circulation of the economy, strengthening unity and integrity and influencing all aspects of the life of the nation and state.

The delegation of authority from the district government to the Provincial Government for the management of the Type B Passenger Terminal, as well as from the Provincial Government to the Central Government, in this case the Ministry of Transportation, for the management of weighing devices that are installed regularly which is known as weigh bridges in the East Java Province, according to the Act Number 23 of 2014 concerning Local Government has caused several changes both structurally, functionally and culturally in the regional government structure.

### **Regional Autonomy Perspective on Legal Principles of Authority Delegation on Type B Passenger Terminal Management and Weighing Equipment Regular Operation from the Local Government to the Central Government**

Autonomy means freedom and independence. This limited freedom or independence is a form of giving opportunities that must be accounted for implicitly. The definition of autonomy contains two elements, namely the assignment of tasks in the sense of a number of jobs to be completed and the authority to carry them out, and the existence of granting trust in the form of authority to think about and determine the various completion of the task by themselves.

Article 1 point 6 of Act Number 23 of 2014 on Local Government states that regional autonomy is the right, authority and obligation of the autonomous region to regulate and manage government affairs and the interests of the local community in the system of the Unitary State of the Republic of Indonesia. It is different from the previous regulations on old local government such as Act Number 5 of 1974 that regional autonomy is the right, authority and obligation of a region to regulate its own household in accordance with the prevailing laws and regulations, while in Act Number 22 of 1999 that regional autonomy is the authority of an autonomous region to regulate and manage the interests of the local community according to their own initiative, based on the aspirations of the community in accordance with statutory regulations, and Act Number 32 of 2004 stating that regional autonomy is a right, the authority and obligations of the autonomous regions to regulate and manage their own government affairs and interests of the local community in accordance with statutory regulations. Regional Autonomy often equates people with the word decentralization, because in article 1 point 8 of Act Number 23 of 2014, it is the handover of government affairs by the central government to autonomous regions based on the principle of autonomy. Decentralization basically concerns on the distribution of authority to state administrators, while regional autonomy concerns on the rights that follow. The United Nations defines decentralization as the authority of the central government in the capital, through de-concentration including delegation to officials under it and delegation to the government or regional representatives, while regional autonomy is a form of decentralization, in a broader sense, Regional autonomy is the independence of a region in terms of making decisions regarding the interests of its own region. The definition of autonomy in a narrow sense can be interpreted as being independent, while in a broader sense it means being empowered.

The Liang Gie stated that there are several ideal and philosophical reasons for the implementation of decentralization in regional autonomy, namely preventing the overlapping of power which ultimately leads to tyranny, as an act of democracy, training the people to participate in the government and in exercising their rights in democracy, achieving good governance, policies that are in accordance with the local area to maintain the culture and characteristics of a region, both in terms of geography, economy, culture and historical background so that the regional heads can directly carry out development in the area.

The administration of local government has undergone very basic changes since the enactment of Act Number 22 of 1999 which has now been replaced by Act Number 32 of 2004 and most recently replaced by Act Number 23 of 2014 in relation to Local Government. The principle used in this law is the principle of the broadest autonomy in the sense that regions are given the authority to manage and regulate all government affairs outside those of the central government.

The provision of the widest possible autonomy to the regions is directed at accelerating the realization of community welfare through improved services, empowerment and community participation. In addition, through broad autonomy, in a strategic globalization environment, regions are expected to be able to increase competitiveness by considering the principles of democracy, equity, justice, privileges and specialties as well as the potential and diversity of regions in the system of the Unitary State of the Republic of Indonesia. (explanation of number 1 of the Act Number 23 of 2014).

The essence of national development as the practice of Pancasila is the development of the whole Indonesian human being and the development of the Indonesian society as a whole, in the Act Number 17 of 2007 concerning the long-term national development plan for 2005-2025, namely realizing an independent, advanced, just, prosperous Indonesian society through accelerated development in various fields by emphasizing the development of a strong economic structure based on regional competitive advantages and supported by quality resources. In principle, national economic development cannot be separated from equitable development in all regions. The regional development needs to be continuously improved so that the growth rate among regions and the rate of growth among rural urban areas is more balanced and harmonious thus the implementation of national development and its results will be more evenly distributed throughout Indonesia.

Geographically, the East Java province is located at the central of the connection between the western and eastern regions of Indonesia, the movement of goods, services and passengers from Sumatra and Java to eastern Indonesia and abroad, especially ASEAN and Europe, making East Java a national and international logistics center. Economically, East Java Province is the second largest contributor to the State Budget after DKI Jakarta Province, East Java Province has great advantages and potential, this potential consists of 29 district governments and 9 city governments scattered in mountainous, coastal, and the islands. Its population is almost one sixth of Indonesia's population and more than a quarter of the population of the island of Java, and almost half of the population living in urban areas.

The magnitude of economic activity which is also caused by the high flow of goods and trade in East Java Province makes it an important role in contributing to the national economy. This province has been supported by the existence of infrastructure, including national roads (toll roads and non-toll roads), railways, airports, and ports that can support economic growth centers. Efforts are needed to strengthen connectivity between growth centers and the infrastructure of East Java Province to support accelerated growth and economic equality. The acceleration of economic development in East Java Province as stated in Presidential Regulation Number 80 of

2019 on the Acceleration of economic development in Gresik - Bangkalan - Mojokerto - Surabaya - Sidoarjo - Lamongan region, the Bromo-Tengger-Semeru area, as well as the Selingkar Wilis and Lintas Selatan areas are integral parts to National and Regional development planning. In the 2020-2024 RPJMN which is the mandate of the 2005-2025 RPJPN as an effort to optimize infrastructure connectivity and economic equality, the direction of national development has been oriented towards creating high, inclusive, and competitive economic growth, regional-based development to reduce inequality, improve quality and competitiveness of human resources who are smart, adaptive, innovative, skilled, and characterized, as well as strengthening infrastructure based on regional needs and advantages.

On September 30, 2014, the government enacted the Act Number 23 of 2014 on Local Government as a substitute for the previous law, the Act Number 2 of 2014 concerning Amendments to Act Number 23 of 2014 on Local Government into Law due to the return of the authority of the Provincial/Regional People's Representative Council (DPRD) in electing the Head and Deputy Head of the Province/Regency due to the momentum of the election of the Head and Deputy Head of the Province/Regency in 2015. Then it was revised into the Act Number 9 of 2015 concerning the Second Amendment to Act Number 23 of 2014 concerning Local Government, which changes the position of representatives regional heads and their duties and positions in the DPRD. However, the amendment of Act Number 32 of 2004 to Law Number 23 of 2014 on Local Government, there has been a shift in some regional government authority which was originally held by the district government is changed to the provincial government and the central government. This fact has implications for the implementation of government affairs in the regions.

The political configuration influences the direction of legal politics in the formation of laws and regulations relating to local governments which have an impact on a number of shifts in regional government authority. This political configuration also greatly affects the direction of legal politics in the formation of laws and regulations relating to regional government, and the goal to be achieved is to straighten out the ideals of reformation, namely democracy towards the welfare of the nation. The political configuration and character of the legal product of Act Number 23 of 2014 is seen from the political interaction during the process of drafting, discussing, and enacting legislation. Referring to the above political understanding of law according to the legal experts, it can be concluded that political law is a series of concepts, principles, basic policies and statements of the will of state authorities which contain politics of law formation, politics of legal determination and politics of law enforcement, regarding the function of institutions and guidance of law enforcers to determine the direction, form and content of the law to be formed, the law which applies in its territory and regarding the direction of development of laws that are developed, and to achieve the goals of the state.

The current applicable Local Government Law, namely Act Number 23 of 2014 was born as a form of correction of the weaknesses of the previous Act Number 32 of 2004, and it must also be acknowledged that the existence of Act Number 32 of 2004 encountered problems both in its concept and application. The considerations explain the background of the birth of Act Number 23 of 2004, namely:

- a. that in accordance with Article 18 paragraph (7) of the 1945 Constitution of the Republic of Indonesia, the structure and procedures for implementing regional government are regulated in by the Law;
- b. that the implementation of regional government is directed at accelerating the realization of public welfare through improving services, empowerment and community participation, as well as increasing regional competitiveness by considering the principles of democracy, equity, justice and the uniqueness of a region in the system of the Unitary State of the Republic of Indonesia;
- c. that the efficiency and effectiveness of local government administration needs to be improved by paying more attention to aspects of the relationship between the Central Government and regional government and between regions, the potential and diversity of regions, as well as the opportunities and challenges of global competition in the unified state governance system;
- d. that Act Number 32 of 2004 on Local Government is no longer in accordance with the development of conditions, state administration, and demands for regional government administration for it needs to be replaced;
- e. that based on the considerations as referred to in letter a, letter b, letter c, and letter d, it is necessary to establish a Law on Local Government.

The Act Number 23 of 2014 was formed under anomalous conditions, i.e., the government and the DPR were in their final period which should not have determined very fundamental policies such as this Local Government Law. Moreover, the drafting of this Law is far from democratic value, meaning that it does not involve the people as the holder of supreme sovereignty. Whereas public participation in the making of statutory regulations has been recognized in Act Number 12 of 2011. In terms of legal politics, this Law is not free from anomalies, because the Act Number 23 of 2014 should be made in a configuration condition. This democratic politics is a responsive law, however the factual condition is contrary. Both the elitist process and substance do not bring the public interest, after this Act is enacted, it receives rejection and even criticism from various parties, which led to the issuance of Perppu Number 1 of 2014 by President Soesilo Bambang Yudhoyono. But

unfortunately, the rejection made at that time only focused on Regional Elections (Pilkada), which previously elected directly by the people to be elected by a representative body. The public is doing demonstration to demand that regional head elections is returned to be general election, even though there are many other substances of this law that are against human rights, democracy, and even the noble ideals of Indonesia. Furthermore, the existence of the Local Government Law which shall frames decentralization in order to find its ideal form, on the contrary it withdraws the authority of the regional government to the central government. The ActNumber 22 of 1999 brought a new of hope for the development of regional autonomy in Indonesia, in this law a great authority is given to local governments even though it cannot be implemented properly since it is not equipped with adequate democratization. However, the existence of this Law was later reduced by the issuance of government regulation which was very inconsistent with the norms stipulated in the Law. Government regulations established by the government limit the broad autonomy mandated by law, which in turn results in little space for local governments to run its governmental system. In addition, the existence of a law on financial balance between the central government and regional governments, although it is better than the previous condition, does not reflect the principle of justice, because the regional government, which is actually the implementer of autonomy as a whole, is not accompanied by adequate financial distribution, thus the implementation of government cannot run properly. This situation ultimately results in the dependence of the local government on the central government.

The Act Number 32 of 2004 was later born. The law that was born during the period of Indonesia's political configuration can be classified as a democratic political configuration. However, ironically according to many parties, and the research that the writer has done, it fact this Law is not responsive. It can be seen from the manufacturing process which does not involve the people but is highly elitist and full of elite interests, as well as from its substance which is largely irrelevant to the principle of autonomy. The strongest criticism of this law is the withdrawal of powers that were originally owned by the local government to the central government. Regional autonomy, which was previously interpreted as the authority of the local government to regulate the interests of the community, has been replaced by the authority to take care of government affairs only. Through this Law autonomy is gradually withdrawn to the central government, the government argues that the existence of Act number 22 of 1999 which gives authority to local governments has the potential to threaten the integrity of the Unitary State of the Republic of Indonesia, and it must be admitted that this act leaves several problems. However, delegation of regional autonomy from the local government to the central government is not a proper solution to existing problems. In 2008, Act number 12 of 2008 on Local Government appeared, and this Law was changed to ActNumber 32 of 2004 but there were no significant and fundamental changes, only related to the settlement of regional head election disputes and several other matters. Therefore the researchers did not discuss this case in this research, moreover this research is not related to the material amended by the Actnumber 12 of 2008.

After the enactment of Lawnumber 32 of 2004, rejection from many parties occurred. The withdrawal of authority possessed by autonomous regions does guarantee the security and integrity of the Republic of Indonesia, but on the other hand it also removes the essence of autonomy itself. Whereas normatively regional autonomy has the mandate of the Indonesian constitution. As an answer to the problems caused by ActNumber32 of 2004, the ActNumber 23 of 2014 was born. However, unfortunately, this Law does not address regional complaints so that broad autonomy is properly implemented, but instead reinforces the grip of the central government over the local government by withdrawing almost all of the authorities previously held by the district government. In the process of its drafting, this Law receive criticism because it seemed hasty and secretive. Community participation, which is essentially the main characteristic of democracy, is not carried out, moreover the people's sovereignty which is the mandate of the constitution is violated. Various criticisms emerged either through the mass media or direct demonstrations, but unfortunately the criticisms only focused on regional head elections, thus when the President issued Perppu Number1 of 2014 which change the election of the Head of region, the critics and rejections on the substance of the Act Number 23 of 2014 was completed. Even though there are a lot of provisions in this law that are very detrimental to the regions, regional autonomy is castrated in such a way that even the regions receive nothing.

According to Oxford Advanced Learner's Dictionary, Division derived from the rood word Divide. It means the process or result of dividing into separate parts; the process or result of dividing something or sharing it out. The division of power is proposed by John Locke in *Trias Politica*. A government in a country performs various functions. In a centralized government means that the government has an absolute power in several ways. Indeed, it becomes an obstacle to the realization of a just government. It is due to the fact that, a government having an absolute power over several things, for example in making laws and regulations, performing governmental functions and even judicature, it bring bigger possibility for the state government to act arbitrarily against the state government. Thus, it becomes a crucial problem since arbitrariness will result in injustice to society. Therefore, some Western political thinkers began to develop their thoughts on the theory of separation of powers and distribution of power. Political experts like John Locke and Montesquieu later became the

pioneers of this thought to avoid arbitrariness in state administration activities. Basically, the two ideas proposed by John Locke and Montesquieu have differences and similarities. John Locke was the one who initiated the idea of sharing power in government to avoid centralized government absolutism. Meanwhile, a half century later, Montesquieu emerged with his thoughts on the separation of powers which is also known as *Trias Politica* in his book entitled *L'esprit de Lois* (1748). The essence of Montesquieu's thought has the same basis as Locke's ideas, namely to avoid a centralization of government power which has the potential to cause arbitrariness in the government system.<sup>1</sup>The government functions are divided into three powers, namely legislative, executive and judicial power, known as *Trias Politika*.<sup>2</sup>Mariam Budiardjo stated that in the twentieth century, in a developing country where economic and social life had become more complex, and the executive body regulated almost all aspects of people's lives, *Trias Politika* in the sense of "separation of powers" could no longer be maintained.<sup>3</sup>

The sovereignty contained in a unitary state cannot be divided, the form of decentralized government of a unitary state is an effort to realize democratic governance, in which regional government is carried out effectively to empower the benefit of the people. Authority in the implementation of local government includes the authority to make local regulations (*zelfwetgeving*) and governance (*zelfbestuur*) which is carried out democratically. The delegation or transfer of authority from the central government to autonomous regions is the nature of the unitary State. The principle of a unitary state is the highest power of all state affairs is held by the central government without any interference by a delegation or the transfer of power to the local government. The implementation of state power have two forms, namely centralization i.e., when the state power is centralized, and decentralization i.e., when the state power is emitted. In various government developments, there was a strong flow to centralism, which was caused by certain factors.<sup>4</sup>

The central government power is not interfered by the existence of autonomous regions authority, it does not aim to reduce the power of the central government. Granting some authority (power) to the regions based on autonomy rights (a unitary state with a decentralized system) does not provide a sovereignty to the local government, because the supervision and supreme power are held by the central government. The relationship between the central and local government in which a unitary state is *gedecentraliseerd*, the central government forms regions, and delegates part of its authority to the regions. The delegation of authority in decentralization has the character of creating regulations and other administrative decisions within the boundaries of the functions that have been assigned to the autonomous bodies. Thus, the delegation of authority in decentralization takes place between central institutions and autonomous institutions in the regions, while the delegation in de-concentration happens between individual central officials at the central to individual central officers in the regions.

The delegation of authority in de-concentration is to implement regulations and other central decisions that are not in the form of regulations, which cannot take the initiative to create regulations and/or make other forms of decisions to be implemented on their own. The delegation in de-concentration takes place between individual central officers in the central government to individual central officers in regional governments.<sup>5</sup>

The concept of decentralization can be administrative and political. The administrative nature is called de-concentration, i.e., delegation of authority to local levels, and the political nature is devolution, which means that certain decision-making powers and control over resources are given to regional and local officials. Essentially, these central government perform central administration in the regions. The devolution of central government power to its regional apparatus due to the development of society in de-concentrated areas is one type of decentralization; De-concentration, decentralization, however decentralization does not always mean that the official granting the authority can replace the decision that has been taken/made by the official given the authority with his own decision, and the officer who grants the authority can replace the authorized officer according to his own will.

In the study of constitutional law, de-concentration is the delegation of authority from the central government to subordinate agencies in order to carry out certain functions in government administration. The central government does not lose its authority as long as the subordinate agencies perform their functions on behalf of the central government. The tasks performed is providing assistance "co-administration", or is not under the contexts of "superior – subordinate" relationship., however, the local governments do not have the right to reject any administrative duties granted to them. This relationship arises based on legal provisions or statutory regulations. Basically, the co-administration is the task of implementing higher level laws and regulations. Regions are bound to implement statutory regulations, including those granted in the framework of co-administration.

The Local Government Acts Chapter 1 Article 1 point 2 affirms Local Government is the implementation of

<sup>1</sup> Miriam Budiardjo. *Dasar-Dasar Ilmu Politik*, (Jakarta: Gramedia Pustaka Utama, 1997), 4

<sup>2</sup> Bagir Manan, *Pertumbuhan dan Perkembangan Konstitusi Suatu Negara*, (Bandung: Mandar Maju, 1995), 78-79

<sup>3</sup> Jimly Asshiddiqie, *op.cit.*, pp.29-30

<sup>4</sup> Agus Salim AndiGadjong, *Pemerintahan Daerah Kajian Politik dan Hukum*, (Jakarta: Ghalia Indonesia, 2004), 27.

<sup>5</sup> Hoesein, Benyamin. *Desentralisasi dan Otonomi Daerah*, (Jakarta : FH UI, 2000), 31.



government affairs by the regional government and regional people's representative council according to the principle of autonomy, and the co-administration under the autonomy principle based on the principles of the Unitary State of the Republic as referred to in the 1945 Constitution of the Republic of Indonesia, while point 11 of the Act states that the co-administration is an assignment from the central government to the autonomous regions to carry out part of the government affairs which fall under the authority of the central government or from the provincial regional government to the regency/city regions perform part of the government affairs which are become the authority of the province.

The relationship between the co-administration and decentralization in seeing the relationship between the central government and local governments, should start from: (1) the co-administration is part of decentralization, i.e., the responsibility on the implementation of co-administration is the responsibility of the region concerned; (2) there is no main difference between autonomy and co-administration because an assistance task contains an element of autonomy. The regions have their own ways of carrying out co-administration; and (3) the co-administration is the same as the autonomy, containing elements of submission, not assignment. The fundamental difference is the autonomy is complete transfer, while co-administration is incomplete delegation of authority.

The central government performs supervision and guidance on local government. Coordination is carried out periodically at the national, regional, or provincial level. Providing guidelines and standards covers aspects of planning, implementation, management, funding, quality, control and supervision. Providing guidance, supervision and consultation is done periodically and/or at any time, both to all regions and to certain regions as needed.

Supervision on local government is carried out by the government. Supervision is carried out by government internal supervisory apparatus in accordance with statutory regulations. The government gives awards for local government achievement. Sanctions are given by the government to supervise the implementation of regional government. These sanctions are given to regional governments, regional heads or deputy regional heads, DPRD members, regional officials, regional civil servants, and the village heads. The results of guidance and supervision are used as material for further guidance by the government and further used as material for examination by the Supreme Audit Agency (referred to as BPK).

Supervision on national local governance nationally are coordinated by the Minister of Home Affairs, the supervision on local government for districts government are coordinated by the governor, and the guidance and supervision of village governance is coordinated by the regent / mayor. Regents and mayors in guidance and supervision can delegate to the head of the sub district. Guidelines for supervision and guidance including standards, norms, procedures, rewards, and sanctions are regulated in government regulations. The supervision performed on local government is an effort to achieve the ideals of regional autonomy. The government, minister, and head of non-department government institutions carried supervision and guidance based on the functions and authority coordinated to the Minister of Home Affairs for provincial supervision, and to the Governor for district and cities supervision.

Based on the Local Government Act, the handover of government affairs by the central government to autonomous regional governments is based on the principle of autonomy. The transfer is the delegation of authority from the local government to the central government as in the transfer of authority to manage the type B passenger terminal from the local government to the central government. The existence of new regulations in Act Number 2 of 2015 on Stipulation of Government Regulations in lieu of Law Number 2 of 2014 concerning Amendments to Law Number 23 of 2014 on Local Government into Laws and Regulations does not make the previous regulations invalid. The discussion of the new Law on regional governance discusses the election of the Governor, Regent and Mayor which regulates general elections.

Any government affairs in relation to local government, both regarding the distribution and delegation of authority from the central government to the local government and from the local government to the central government shall adhere to the Act Number 23 of 2014 on Local Government because it is an amended regulation or is not a substitute law. However, If a replacement regulation exists, the previous law is no longer valid.

## CONCLUSION

The delegation of authority from the Local Government, in this case the Regency/City Government which has handed over the management of the type B passenger terminal to the Provincial Government and the transfer of authority to operate the weighing device from the Provincial Government to the Central Government is in accordance with regional autonomy as regulated in article 15 Act Number 23 of 2014 on Local Government in attachment number O division of Government affairs in the field of Transportation, that the preamble of the 1945 Constitution of the Republic of Indonesia paragraph 2 and Article 1 paragraph 3 of the 1945 Constitution clearly state that Indonesia is a state of law (*rechtstaat*) or is not solely a state of power (*machtstaat*). Constitutional system government is not absolute, thus the policy of the central government to grant some of its affairs to

become regional authority is also delegated through laws and regulations included in regional autonomy. The implementation of the de-concentration principle is placed in the province as an administrative area to carry out the governmental authority delegated to the governor as the representative of the government in the provincial area. The governor as the head of the provincial region also functions as the representative of the government in the region, to bridge and shorten the supervision range on government duties and functions, including in fostering and supervising the implementation of government affairs in regencies and cities. De-concentration principle objectives are: (a) Maintaining the integrity of the Unitary State of the Republic of Indonesia; (b) Realization of the implementation of national policies in reducing regional discrepancies; (c) The realization of harmonious relations among local governments; (d) Identification of the potential and maintenance of regional socio-cultural diversity; (e) The achievement government administration effectiveness, as well as the management of development and services for the public interest of the community, and; (f) The realization of social and socio-cultural communication in the administrative system of the Republic of Indonesia.

The legal principle of management authority delegation for the type B passenger terminal to the Provincial Government and the regular operation of weighing equipment to the central government in the perspective of regional autonomy, namely; (a) In accordance with Article 18 paragraph (7) of the 1945 Constitution of the Republic of Indonesia, that the structure and procedures for the implementation of local government are regulated by the Law; (b) The administration of local government is directed at accelerating the realization of community welfare through improving services, empowerment and community participation, as well as increasing competitiveness; (c) regions shall consider the principles of democracy, equity, justice and the uniqueness of a region in the system of the Unitary State of the Republic of Indonesia; (d) The efficiency and effectiveness of local government administration needs to be improved by considering aspects of the relationship between the Central Government and the local government and among local governments, the potential and diversity of regions, as well as the opportunities and challenges of global competition in the unified state governance system; (e) The Act Number 32 of 2004 on Local Government is no longer meet the needs of current development, state administration, and demands for regional governance, for it needs to be replaced;

The principles of regional autonomy regarding de-concentration, decentralization and co-administration (*madebewind*) contains theory of regional power distribution, meaning that the power is indeed divided into several parts but it is not separated, this division may bring possible cooperation between the central government and local governments. The existence of principles of decentralized regional autonomy, de-concentration and co-administration, causes the central government does not have the authority on the regions due to the fact that any affairs occurs in the regions is under the authority of the local government. Both local government and central government have their own authority.

## SUGGESTIONS

The Act Number 23 of 2014 on Local Government has lost the spirit of regional autonomy which was the ideals of 1998 reformation, and this Law clearly has the spirit and mission of the New Order style of decentralization rather than regional autonomy. Thus it is important to have comprehensive understanding on autonomy in accordance with The 1945 Constitution of the Republic of Indonesia.

Regencies/cities and provinces shall not be positioned as the conquest of the central government, however regions are equal partners of the central government in running the government to realize the aspirations of the nation, for the spirit of developing Indonesia in realizing road transportation connectivity starts from the regions.

Previous Local Government Act Number 32 of 2004 have some weaknesses. It shall not be settled by taking the authority as the basic capital of local development, but by increasing guidance and supervision. Therefore, the regions need to be monitored democratically by involving community participation.

The implementation of de-concentration principle is placed in the province as an administrative area to carry out the governmental authority delegated to the governor as the representative of the government in the provincial area, and the governor as the head of the province also functions as the representative of the government in the region, to bridge and shorten the supervision range on government tasks and functions include the guidance and supervision of the administration of government affairs in regencies and cities. Thus, if a province can share the management authority of type B passenger terminals, it can also operate the weighing equipment permanently.

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