

LOCAL GOVERNMENT LEGAL POLITICS FROM OLD ORDER, NEW ORDER, TO POST-REFORMATION

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Abstract

Since Indonesia's independence 76 years ago, laws on Local Government have been formed. The principle of local government implementation is contained in Article 18 paragraph (5) of the 1945 Constitution, which gives the widest autonomy to local governments in designing and implementing policies in their regions. The term decentralization was first introduced in the Old Order era, but its implementation was only really implemented during the reform period, although it still experienced obstacles. During the New Order era, regional government was implemented using a centralized system, which was detrimental to regional autonomy. The reform period in 1998 brought significant changes with the enactment of Law Number 22 of 1999 concerning Regional Government, which affirmed the principle of broad autonomy for regions. Until now, the applicable law is Law Number 23 of 2014 concerning Regional Government. Although there have been legal developments in granting autonomy to local governments, there are still challenges in its implementation. This study aims to examine the historical journey of decentralization in Indonesia and evaluate the extent to which the principle of regional autonomy can be realized in Law Number 23 of 2014.

Keywords : *Local Government, Law, old order, new order, reform*

I. INTRODUCTION

The Regional Government is one of the subsystems in national governance. The Regional Government is considered one of the foremost units representing the State in realizing the aspirations of the Indonesian State, as mandated in the preamble of the 1945 Constitution of the Republic of Indonesia, paragraph 4 (Simarmata, 2016), which states "...to establish an Indonesian Government that protects all Indonesian people and the entire Indonesian bloodline, promotes general welfare, enlightens the nation's life, and participates in maintaining world order." In line with this, the formation of village government officials is inseparable from the principle of decentralization, as stipulated in Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia, which states that regional governments can exercise autonomy extensively except for central government affairs. Based on this, the principle of decentralization emerged, defined in Article 1 paragraph (8) of Law No. 23/2014 as the delegation of Government Affairs by the Central Government to autonomous regions based on the principle of autonomy.

With the existence of Law No. 23/2014 regarding Regional Government, it can be observed that there is a hierarchical process of transferring authority from the center to the regions. Through this delegation of authority, regional governments, along with their apparatus, are given the opportunity to manage and organize governance in their areas. Looking at the history of the formation of the 1945 Constitution, Muhammad Yamin was the first pioneer to discuss regional government issues in the BPUPKI session on May 29, 1945 (Dr. Ni'matul Huda, S.H., 2016). The

order to lawmakers to draft laws on decentralization must consider and remember the basis of deliberation in the State's governance system, as stated in Article 18 of the 1945 Constitution, which indicates that deliberation also takes place at the regional level.

In the journal (Christia & Ispriyarso, 2019), Sidik interprets decentralization as a tool to achieve the state's goals based on a democratic system. (Simandjuntak, 2016) states that decentralization is a form of autonomy given to the community in certain territorial areas. The purpose of implementing a decentralization system is to improve the welfare of communities in the regions and alleviate poverty in those areas. In the decentralization system, there is a need for political, fiscal, and administrative powers of regional governance (Noor, 2012). Political decentralization is used to make decisions at the regional level, which is then used as a tool to improve public services at the regional level. Fiscal decentralization is related to funds allocated from the state budget to regional budgets as a form of equalization in regions. Administrative decentralization is related to responsibilities in planning, managing, and allocating resources from the central government to regional governments.

The term decentralization has been around since the time of the first president, although at that time, it was not given the attention it deserved. Even before Indonesia's independence, there were regulations related to decentralization issues. Kusuma et al., 2020, state that the implementation of decentralization existed even before the enactment of the Decentralisatie Wet on July 23, 1903. After Indonesia gained independence, legal products regarding regional government were the Law Number 1 of 1945, followed by Law Number 22 of 1948 three years later, and in 1959, the Decree of July 5 was issued by President Soekarno at that time.

After the downfall of the old order government and its replacement by the new order government, a law regulating regional government was established, namely Law No. 5 of 1974 regarding Regional Government. However, during the new order era, the government was centralistic, leading to many conflicts in regional areas. This turmoil then overthrew the Soeharto regime, giving rise to the 1998 reform era, which was expected to bring about political changes in the legal field, including the change from a centralization system to regional autonomy (Fauzi, 2016).

In the Thamrin journal, 2019, A. Muktie Fadjar stated that the development of state administration in Indonesia related to regional autonomy has experienced ups and downs, namely the first being "real and responsible autonomy" as mandated in Law Number 5 of 1974. Then, with the term "real and responsible extensive autonomy" enshrined in Law Number 22 of 1999, and the last is with the term "broadest autonomy" stated in the 1945 Constitution Article 18 paragraph (5) and Law Number 32 of 2004 regarding Regional Government. Based on the above background, the purpose of this research is to analyze the legal politics of regional governance from the old order era, the new order era, to the post-reform era.

II. PROBLEM FORMULATION

The following is the formulation of the problem to be raised:

1. How is the development of local government legal politics in Indonesia from the Old Order, New Order, to Post-Reformation eras, including significant changes in regulations and their implementation?

2. What is the impact of legal politics on changing the local government system from centralized in the New Order era to decentralized with regional autonomy in the Post-Reformation on the effectiveness of public services, regional community welfare, and political stability at the local level?

III. RESEARCH METHODS

The research method used in this paper is the normative legal method with a historical approach. Normative legal research refers to the concept of law as a norm and is a process to discover legal rules, legal doctrines, and legal principles to address legal issues faced (Marzuki, 2010). The historical approach is employed to examine the necessary data by prioritizing an orientation towards understanding historical facts (Al Anang, 2019). This research refers to library research by examining legal materials obtained both in primary, secondary, and tertiary sources.

Primary legal materials in this study are obtained from legislation, including the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 1945 concerning Regulations Regarding the Position of the Regional National Committee, Law Number 22 of 1948 concerning the Determination of Basic Rules of Self-Government in Regions Entitled to Regulate and Manage Their Own Household Affairs, Decree of July 5, 1959, regarding the return to the 1945 Constitution, Law No. 18 of 1965 concerning the Basic Principles of Regional Government, Law No. 5 of 1974 concerning Regional Governments, Law No. 22 of 1999 concerning Regional Government, Law Number 32 of 2004 concerning Regional Government, Law Number 23 of 2014 concerning Regional Government. Law Number 2 of 2015 concerning the Determination of Government Regulation Substitute for Law Number 2 of 2014 concerning Amendments to Law Number 23 of 2014 Concerning Regional Governments, Law Number 9 of 2015 Second Amendment to Law Number 23 of 2014 Concerning Regional Governments.

Secondary legal materials (Rapita, 2016) are obtained through written works or legal dogmatics contained in dissertations such as journals, articles, dictionaries, books, research results in both print and electronic media. Meanwhile, tertiary legal materials are obtained from the internet or encyclopedias as supporting materials in this research. The obtained data will then be described in the form of a narrative with scientific logic. In this research, the case raised is related to the legal politics of regional governance from the old order era, the new order, to the post-reform era.

IV. RESULTS AND DISCUSSIONS

The history of the birth of regional government was first initiated by Muhammad Yamin at the BPUKI session on May 29, 1945, then on August 18, 1945 at the request of Sukarno who at that time served as chairman of the PPKI, Soepomo explained about the draft constitution that would be ratified into the Constitution of the Republic of Indonesia 1945. The conclusion is that basically contained in the provisions of Article 18 of the first 1945 Constitution, the existence of regions based on the principle of decentralization. Second, units at the local government level based on the 1945 Constitution in their implementation are carried out by "looking at and remembering the basis of consultation in the State government system". Third, in the preparation and administration of local government must "consider and remember the rights of origin for regions of a special nature".

a. Law No. 1 of 1945 concerning Regulations Regarding the Position of the Regional National Committee.

This law consists of six (6) articles, enacted on November 23, 1945, in Jakarta (Sagala, 2016). After proclaiming independence, Indonesia had not formed institutions related to constitutional matters, leading to the issuance of Law No. 1 of 1945 concerning the Regional National Committee (KND). Additionally, the Indonesian Central National Committee (KNIP) was formed, chaired by Mr. Singgodimedjo, responsible for administering constitutional matters until the establishment of state institutions mandated by the 1945 Constitution. The enactment of this law is based on considerations regarding the history of Indonesian governance, consisting of kingdoms and influenced by the colonial era (Safitri, 2016). In this law, regional autonomy is divided into three levels: residencies, cities, and regencies (Article 1 of Law No. 1/1945).

b. Law No. 22 of 1948 concerning the Determination of Basic Rules for Self-Government in Regions Entitled to Regulate and Manage Their Own Household Affairs.

After approximately 3 years of regional autonomy based on Law No. 1/1945, it was replaced by Law No. 22/1948. This law solidified the structure of regional autonomy, consisting of provinces, regencies, and villages. Law No. 22 of 1948 emphasized village autonomy, as stated in explanation No. 18, which recommends guidance for each region governed by this law to prioritize implementation in the villages. However, the realization of the ideas in this law did not materialize as expected due to hindering factors. Firstly, village autonomy was not updated as expected by Law No. 22 of 1948. Secondly, Law No. 22 of 1948 was not accompanied by the renewal of supporting legal regulations. These factors resulted in the ideas outlined in this law not being implemented as intended.

c. Law Number 1 of 1957 concerning the Basics of Regional Government.

This law repealed Law No. 2 of 1948 by dividing the territory into three levels: Level I includes provinces, including special regions; Level II consists of municipalities and regencies; and Level III. In this law, the principles of decentralization were applied concurrently with the principles of deconcentration (Zayanti Mandasari et al., 2011). In 1957, there was a change in the constitutional structure towards the Provisional Constitution, emphasizing the decentralization system (Sutrisno, 2014). Additionally, Presidential Decree No. 6 of 1959 on Regional Government was issued, explaining the duties of regional heads. This decree was a continuation of the Decree of July 5, 1959, returning to the 1945 Constitution, necessitating the establishment of the structure of powers, duties, and responsibilities of regional governments. The last legal product on regional government during the old order was Law No. 18 of 1965 concerning the Basics of Regional Government.

d. Law Number 18 of 1965 concerning the Basics of Regional Government.

This law is the last legal product during the old order. Article 2 of this law states that the territory of Indonesia is divided into three:

- Provinces and Municipalities as Level I Regions
- Regencies and Municipalities as Level II Regions
- Districts and Municipalities as Level III Regions

Regional government consists of Regional Heads and Regional Representative Councils. The division of regions into three is expected to perfect the Indonesian identity based on the political manifesto of the Republic of Indonesia, which is based on the Constitution, socialism, guided democracy, and national identity.

e. Law No. 5 of 1974 concerning the Basics of Regional Government.

After the fall of the old order government, it was replaced by the new order government. Initially, the new order was intended as a correction to the failures of the old order government. This era focused more on Level II regions, which in Article 11 of this law encompasses three main aspects: administration, politics, and autonomy (Winarno, 2004). However, during the new order, regional implementation remained centralistic and authoritarian, with a centralized governance system where the government dominated in determining regional government policies.

This centralization system led to the accumulation of wealth and potential resources in each region at the center. Frustrated with the central government, regional governments demanded compensation for natural resources and potentials that were exploited, resulting in only a small portion of local revenue (PAD) entering regional governments. To quell demands from various regions, Law No. 5 of 1974 on Regional Government was issued, politically representing a legal history of the failure of Law No. 22 of 1948. The presence of Law No. 5 of 1974 was expected to create regional stability, but in practice, the law that should have been the basis for the implementation of decentralization was not implemented as intended. Although it focused on Level II regions, it still involved significant intervention from both the central and Level I regional governments.

f. Law Number 22 of 1999 concerning Regional Government.

Several decades of the new order government with a centralistic system did not bring positive impacts for regional governments, leading to various upheavals demanding maximum autonomy for regions. Autonomy began to be implemented after the 1998 reform, with the hope that the creativity, potential, innovation, and participation of regional communities could be guaranteed as intended (Azikin, 2018). This was in line with the opening of the 1945 Constitution and Article 18 of the 1945 Constitution. Law No. 22 of 1999 was a response to demands for maximum regional autonomy. Regional communities demanded autonomy as a manifestation of democratic principles outlined in the articles of Law No. 22 of 1999 (Abidin, 2001). However, as time progressed, this law was seen as no longer aligned with the needs and demands in the regions, leading to its replacement by Law No. 32 of 2004 on Regional Government.

g. Law Number 32 of 2004 concerning Regional Government.

In this law, regions are divided into regional governments, villages, and the election of regional heads. This law contains requirements for the establishment of autonomous regions (Bauw, 2018). With the enactment of Law No. 32/2004, it was expected to serve the interests of the people in the regions based on the principles of autonomy and democratization. Several years later, Law No. 32 of 2004 underwent changes with the issuance of Law No. 23 of 2014

on Regional Government. This amendment transformed the initially decentralized government into a combination of decentralization and deconcentration.

Post-reform regional autonomy based on Law No. 23/2014 granted rights and authority to determine regional policies within the scope of regional authority defined by this law (Simarmata, 2015). While regional autonomy had existed since Indonesia's independence, compared to previous legal products, this law emphasized and clarified the rights and authority of regional autonomy. Concerning concurrent matters, Law No. 23/2014 provided more detailed regulations than previous laws. The management of concurrent government affairs is included in the annex to Law No. 23/2014. Law No. 23/2014 underwent two amendments

V. CONCLUSION

Regional autonomy, whether in the old order, the new order, or post-reform era, has its own various ways of governing regional governments. The old order government had guidelines based on several laws, including Law No. 1 of 1945 concerning Regulations Regarding the Position of the National Regional Committee, Law No. 2 of 1948 concerning the Determination of Basic Rules of Government, which was followed by Law No. 1 of 1957 concerning the Basic Principles of Regional Government, revoking Law No. 2 of 1948. Then there was Presidential Decree No. 6 of 1959, which was a continuation of the Decree of July 5, 1959. And finally, Law No. 18 of 1965, this law served as the conclusion of legal products in the old order period that regulated regional governments.

After the old order fell and was replaced by the new order, the regional autonomy system focused more on the second level regions, which in Article 11 of this law includes three main aspects: administration, politics, and independence. However, in its realization during the new order government, it still did not have a positive impact on the local communities. This was influenced by the centralistic system applied during the new order period, so regional governments were unable to improve the welfare of their communities. The central government's monopoly on resources resulted in regional development not proceeding as it should, supported by the limited Regional Original Income (PAD) given to regional governments.

Decades of the new order government with a centralistic system did not bring positive impacts to regional governments, leading to unrest that demanded extensive autonomy for regions. After the change and the collapse of the new order, the reform era began with Law No. 22 of 1999, which was a response to the demand for extensive regional autonomy. Extensive autonomy arose due to the critical conditions caused by the previous government, which then led to unrest in each region. The reform era itself occurred during the leadership of B.J. Habibie. However, with the changing times, this law was considered no longer in line with the organization and demands in the regions, so it was replaced by Law No. 32 of 2004 concerning Regional Governments. However, ultimately, this law was replaced, and Law No. 23 of 2014 concerning Regional Governments was enacted, which underwent two amendments, namely Law No. 2 of 2015 concerning the Determination of Government Regulations replacing Law No. 2 of 2014 concerning Amendments to Law No. 23 of 2014 concerning Regional Governments, and Law No. 9 of 2015, the Second Amendment to Law No. 23 of 2014 concerning Regional Governments.

VI. BIBLIOGRAPHY

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