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Historical Juridical Study on the Amendment of Law Number 32 of 2004 Juncto Law Number 23 of 2014 concerning Regional Government

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Article

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Abstract

In Each region there is a regional government that has been regulated in the applicable laws and must be obeyed, but in this case the regional government laws and regulations are dynamic. So that the statutory regulations undergo a change from time to time according to developments in their time. The focus of this research is 1) How is the organizational structure and authority of the Change of Law Number 32 of 2004 to Law Number 23 of 2014. 2) How is the political dynamics that occur as a result of the Transition of Law Number 32 of 2004 to Law Number 23 of 2014. 3) What are the positive and negative impacts of changing the law. This research is about regional government, according to article 18 paragraph (1) that Indonesia is a unitary state. Therefore, in each region there is a government that regulates each region. There are provincial and district/city governments. So Law Number 32 of 2004 was formed which regulates regional government. Although in the end it changed to Law Number 23 of 2014 concerning Regional Government. In this case the changes are related to changes in the organizational structure and authority of the local government. Because local government laws are dynamic, the laws and regulations that underlie the procedures for administering regional government also need to be updated and improved. But these changes did not occur significant changes.

Keywords: *Historical, Amendement, Regional Government.*

Abstrak

Setiap wilayah/daerah terdapat pemerintahan daerah yang telah diatur dalam Undang-Undang yang berlaku dan harus ditaati, namun dalam hal ini aturan perundang-undangan pemerintahan daerah ini bersifat dinamis. Sehingga peraturan undang-undangnya mengalami sebuah perubahan dari waktu ke waktu sesuai perkembangan pada zamanya. Fokus penelitian ini adalah 1) Bagaimana Bentuk struktur organisasi dan kewenangan Perubahan Undang-Undang Nomor 32 Tahun 2004 menjadi Undang-Undang Nomor. 23 Tahun 2014. 2) Bagaimana Dinamika Politik yang terjadi akibat Peralihan Undang-Undang Nomor 32 Tahun 2004 Menjadi Undang-Undang Nomor 23 Tahun 2014. 3) Apa Dampak Positif dan Negatif dari adanya Perubahan Undang-Undang tersebut. Penelitian ini tentang pemerintahan daerah, sesuai dalam pasal 18 ayat (1) bahwasanya Indonesia merupakan Negara Kesatuan. Oleh sebab itu dalam tiap wilayah adanya sebuah pemerinttahan yang mengatur tiap wilayahnya. Adanya pemerintah provinsi dan pemerintah kabupaten/kota. Maka terbentuklah Undang-Undang Nomor 32 Tahun 2004 yang mengatur tentang pemerintahan daerah. Meskipun pada akhirnya berubah menjadi Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintah daerah. Dalam hal ini terjadinya perubahan terkait perubahan stuktur organisasi, dan kewenangan pemerintah daerah. Karena Undang-Undang Pemerintah daerah bersifat dinamis, sehingga aturan-aturan perundang-undangan yang mendasari tata cara penyelenggaraan pemerintah daerah pun perlu terus melakukan pembaharuan dan perbaikan. Tetapi perubahan tersebut tidak terjadi perubahan yang signifikan.

Kata Kunci: *Historis, Perubahan, Pemerintah Daerah.*

Introduction

The 1945 Constitution (UUD) has mandated article 18 paragraph 1 which states that the Unitary State of the Republic of Indonesia is divided into provincial areas, and the provincial areas are divided into districts and cities, each of which has a government. area, as regulated in the form of law. Therefore, with regard to this matter, the Indonesian government must establish a law that regulates regional government.[1]

Then Law Number 32 of 2004 was formed which regulates government and is specifically based on the principle of decentralization. However, before the enactment of Law Number 32 of 2004, since the reform, there have been several changes to regional government laws. Before the enactment of Law Number 32 of 2004, in the post-reform era, Law Number 22 of 1999 replaced Law Number 5 of 1974, which was later changed to Law Number 32 of 2004..[2] Then Law Number 32 of 2004 was formed which regulates government and is specifically based on the principle of decentralization.[3] However, before the enactment of Law Number 32 of 2004, since the reform, there have been several changes to regional government laws. Prior to the enactment of Law Number 32 of 2004, in the post-reform era, Law Number 22 of 1999 was replaced Law Number 5 of 1974, which was later changed to Law Number 32 of 2004.[4]

We need to know that Law Number 32 of 2004 is an elaboration of the 1945 Constitution of the Republic of Indonesia, in this Law regional governments are given autonomy, namely the right of authority and regional obligations to regulate and manage government affairs and the interests of the community themselves.[5] Government authority can be described in two senses namely, as the right to carry out a government affair (in the narrow sense). And as the right to be able to significantly influence decisions to be taken by other government agencies (in a broad sense).[6]

Likewise, Peter leyland and Terry Woods firmly stated that public authority has two main characteristics, namely: first, every decision made by a government official has binding power to all members of society, in the sense that members of the public must obey it. Second, every decision made by an official must have a public function or perform a public service.[7]

Therefore Law Number 32 of 2004 contains regional governments that regulate and manage their own government affairs. According to the principle of autonomy and co-administration, it is directed at accelerating the realization of social welfare through improvement, service, empowerment and community participation. As well as increasing regional competitiveness by taking into account the principles of democracy, equity, justice,

[1] Aman Ma'arij, "Analisis Penerapan Pasal 18 Undang-Undang Dasar Negara Republik Indonesia 1945 terhadap Pelaksanaan Pemerintahan Daerah" *Tajdid,* Vol. 4 No 2 (2020), 194.

[2] Muhammad, Mukmin. "Kebijakan Publik Pemerintahan Daerah Undang-Undang Tentang Pemerintahan Daerah di Era Reformasi" International Journal of Innovation, Creativity and Change, Vol. 13 Issue 7 (2020).

[3] Ferina Ardhi Cahyani, dkk, "Upaya Pengelolaan Wilayah Pesisir dalam Mewujudkan Perlindungan dan Konservasi di Taman Pesisi Ujungnegoro-Roban Kabupaten Batang," *Jurnal Hukum dan Pemabngunan Ekonomi,* Vol. 6 No. 2 (2018), 211.

[4] Jimly As-siddiqy,*Pengantar Hukum Tata Negara*. (Yogyakarta: Sinar Media, 2017), 98.

[5] Andi Kasmawati *Implikasi Hukum Kebijakan Desentralisasi dalam Hubungan Kewenangan antartingkat Pemerintahan Negara Kesatuan.(2)*

[6] Subadi & Tiara Oliviarizky Toersina, "Perkembangan Konsep atau Pemikiran Teoritik tentang Diskresi Berbasis Percepatan Investasi di Daerah", *Mimbar Hukum,* Vol. 30 N0. 1 (2018), 17-31.

[7] Aminuddin Ilmar *Hukum Tata Pemerintahan,* Makasar: Universitas Hasanuddin, 2013, 115

privileges and specificity of a region within the system of the unitary state of the Republic of Indonesia.[8]

Conceptually with the presence of Law Number 32 of 2004 it is considered capable of restoring the name, form, structure and position of the state government as a genuine government unit that has autonomy in regulating and managing the interests of society based on origins and customs as a subsystem of the state administration system. Unitary Republic of Indonesia. Which is based on diversity, participation, genuine autonomy, democratization, and community empowerment in accordance with the mandate of the provisions of Article 18B paragraph (2) of the 1945 Constitution.[9]

However, in its development, problems in Indonesian governance have become increasingly complex and dynamic, especially problems in regional government with regard to the implementation of decentralization and regional autonomy. The problem that we see related to decentralization and regional autonomy is the emergence of petty kings in each regional government. Such a perception causes each regional government to become more difficult to coordinate so that many regional developments are not in line with development at the center.[10]

Research Methods

This type of research uses normative legal research, namely legal research conducted by examining primary legal materials, secondary legal materials using statutory approaches. This type of research uses library research, because in this study it utilizes library resources to obtain research data.[11] Literature research is a form of data collection that requires reviewing relevant books, literature, records and reports.[12] Normative legal research is a study or research on principles, norms, laws, court decisions and doctrines in order to form a system of norms.[13] Normative legal research is oriented towards practical aspects, namely by resolving legal issues both in the form of disputes and matters to be sought regarding how and where a legal issue is regulated by law and is carried out through research on the facts of relevant legal regulations and cases.[14]

Result and Discussion

Form of Organizational Structure and Authority to Amend Law Number 32 of 2004 to Law Number 23 of 2014

The form of authority of Law Number 23 of 2014. Law Number 23 of 2014 regulates government affairs in principle originating from the governmental power possessed by the President, as stipulated in the 1945 Constitution. Furthermore, these Government Powers are

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[8] Sirojuddin, *Dasar-dasar Hukum Tata Negara.* (Jakarta: Persindo, 2017), 115.

[9] Yohanes Pattinasarany *Implementasi Otonomi Negeri Dalam Prespektif Undang-Undang No 32 Tahun 2004* (Fakultas Hukum Universitas Patimura)

[10] Kajung Marijan, *Sistem Politik Indonesia*. (Jakarta: Kencana Prenada Media Group, 2011), 143.

[11] Mayada Afriga Arum Dari & Nadya Melinda Oktarina, "Islamic Criminal Law Principles in Regulations of Misues Information on Social Media" *Rechtenstudent Journal,* Vol. 4 No. 1 (2023), 17.

[12] Dyah Ochtorina & A'an Efendi, *Penelitian Hukum,* (Jakarta: Sinar Grafika, 2014), 48.

[13] Mukti Fajar & Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris,* Cetakan IV (Yogyakarta: Pustaka Pelajar, 2017), 33.

[14] Depri Liber Sonata, "Metode Penelitian Hukum Normatif dan Empiris: Karakteristikk Khas Dari Metode Meneliti Hukum", Jurnal Ilmu Hukum, Vol. 8 No. 1, (2014), 26.

described in various Government Affairs. The implementation of government affairs is then distributed to the central government, which is represented by the existing state ministries as assistants to the president.

Furthermore, some of these government affairs are handed over to the regions to be managed by the regions, namely through the principles of decentralization, deconcentration, and co-administration. In Law Number 23 of 2014, there are government affairs which are fully under the authority of the central government, known as absolute government affairs. Besides that, it is also known as concurrent government affairs, as well as general government affairs.[15]

Absolute Government Affairs are Government Affairs which are fully under the authority of the Central Government. This affair consists of affairs in the fields of foreign policy, defence, security, justice, national monetary and fiscal, and religion. In carrying out absolute government affairs, the Central Government can carry out itself or delegate authority to Vertical Agencies in the Regions or governors as representatives of the Central Government based on the principle of Deconcentration.[16]

Concurrent Government Affairs are Government Affairs which are divided between the Central Government and Provincial and District/City Regions. Concurrent government affairs handed over to the Regions will then become the basis for the implementation of Regional Autonomy. This affair is divided into two, namely Compulsory Affairs and Optional Affairs. Mandatory affairs are then also distinguished between mandatory affairs related to basic services and mandatory affairs that are not related to basic services.[17]

General Government Affairs (general competence) is Government Affairs which is the authority of the President as the head of government.

Absolute government affairs as referred to in Article 9 paragraph (2) include:

a. Foreign policy;
b. Defense;
c. Security;
d. Justice
e. National monetary and fiscal and
f. Religion

Compulsory Government Affairs relating to Basic Services as referred to in Article 11 paragraph (2) includes:

a. Education
b. Health
c. Public works and spatial planning
d. Public housing and residential areas;
e. Peace, public order, and community protection; And
g. Social.

[15] Edoardus E.Maturbongs *Analisis Perubahan Undang-Undang No 32 Tahun 2004 dengan Undang-Undang No 23 Tahun 2014 Tentang Pemerintahan Daerah*

[16] Wasisto Raharjo Jati, "Regional Autonomy Paradigm Inconsistency in Indonesia, Cultural and Decentralization Issue"*Journal of Konstitusi,* Vol. 9 No. 4 (2012), 743-769.

[17] Mardyanto Wahy Tryatmoko, "Democratization od Problems in The New Post-Order Era of Asymmetrical Decenralization" *Journal of Masyarakat Indonesia,* Vol. 38 No.2, (2012). 269-296.

Mandatory government affairs that are not related to basic services as referred to in Article 11 paragraph (2) of Law Number 23 of 2014 concerning Regional Government include [18]:

a. Labor
b. Women's empowerment and child protection
c. Food
d. land
e. Environment
f. Population administration and civil registration
h. Community and village empowerment
i. Occupation control and family planning
j. Communications
k. Communication and informatics
l. Small and medium business cooperatives
m. Capital investment
n. Sports youth
o. Statistics
p. Encryption
a. p.s. Culture
q. Libraries, and
r. Record management

Optional Government Affairs as referred to in Article 11 paragraph (1) include:

a. Maritime and fisheries
b. Tourist
c. Agriculture
d. Forestry
e. Energy and Mineral Resources
f. Trading
g. Industry and
h. Transmigration

From the explanation above regarding changes to the law. Namely in Law Number 32 of 2004 concerning local government. It is implied that the regulation of government affairs indirectly has an authority, the authority referred to in Articles 12 and 13 of Law Number 32 of 2004 concerning regional government, in general the types of authority only regulate mandatory and optional authority which emphasizes government alone. [19]

The Political Dynamics That Occurred Due to the Transition of Law Number 32 of 2004 to Law Number 23 of 2014

The politics of decentralization that was carried out during the early reformation period can be seen as the antithesis, mystification, of the national ideology of the Unitary State of the Republic of Indonesia. Unilaterally through the path of political militarization of central regional issues during the New Order era. Law No. 22 of 1999 not only deconstructs the

[18] UU Pemda No 23 Tahun 2014

[19] Hesti Armiwulan, "Legal Politics f Regional Government Based on Law Number 23 of 2014 in Terms of Institutions and The Relationship Between the Authority of the Regions in Inna Junaennah et al", *State Policy Study Center*, (2015).

ideology of the authoritarian regime, but also opens space for very strong local attitudes to boast about the term "son of the region". And the management of its own resources, such as natural wealth in the mining sector, for example, is to be realized as a national agenda. [20]

The actualization of all these local potentials will later gain momentum during the direct election of regional heads (pilkada). Precisely after Law Number 22 of 1999 was replaced by Law Number 32 of 2004. However, the point of every debate on the scope of regional autonomy that is consensual by the center is that there is an interest in favor of centralized political sentiments. One side is dealing with those who are in favor of decentralization sentiment, on the other hand, is it only limited administratively, or also includes the ownership of local autonomous authorities politically?.[21]

The political experimentation of the regime, either in the form of a pattern of deconstruction or only partial reform. Shows the uncertainty of each implementation of decentralization and the expectations for the targets for achieving it. This kind of uncertainty is political in nature, because it is not impossible that there is distrust from the ruling elite.[22]

Even a certain layer of society itself against the impact of the decentralization policy during the course of the Indonesian nation's political history. The case of withdrawal or tug-of-war in the implementation of regional autonomy, for example, is a concrete example of the regime's distrust of the implementation of decentralization and the achievement of the targets that accompany it.[23]

The most fundamental thing in the political dynamics of decentralization is the presence of regional heads and DPRDs. On the one hand, it represents local autonomy, and central control over the area itself, on the other. In Indonesia, the understanding of regional heads and DPRDs cannot necessarily be considered as the face of the local executive and legislature. But rather an integral part of the local bureaucracy.[24]

Symptoms leading to this kind of unitarism political construction can be read since the enactment of Law Number 5 of 1974, although it was interrupted during the period of Law Number 22 of 1999. However, it was revived during the period of Law Number 32 of 2004 concerning Regional Government . And it was re-enacted when Law Number 27 of 2009 was changed to Law Number 17 of 2014 concerning the MPR, DPR, DPD and DPRD. [25]

Positive and Negative Impacts of Regional Autonomy

Law Number 23 of 2014 was born out of concern about the negative impact of Law Number 32 of 2004. There are several problems highlighted as weaknesses in the old law (UU 32/2004). Which was written by the architect, namely the Director General of Regional

[20] Suharno, 'Critical Review of Law Numbe 32 of 2004 Concerning Regional Government" *Journal of Civics,* Vol. 1 No. 2 (2004), 168-180.

[21] Dikutip Prayudi *Desentralisasi Dalam Sistem Pemerintahan Indonesia Politik Negara di Tengah Hubungan Pusat-Daerah* (Pusat Pengkajian, Pengolahan Data, dan lnformasi Sekretariat Jenderal DPR Rl, Gedung Nusantara 1 Lantai 2, Jl. Jend. Gatot Subroto, Jakarta Pusat 10270, Indonesia)

[22] Faisal & Akmal Huda Nasution, "Otonomi Daerah: Masalah dan Penyelesainnya di Indonesia", *Jurnal Akuntasi,* Vol. 4 No.2 (2016), 208.

[23] Orias Reizal de Rooy, dkk, "Hak Atas Tanah pada Kawasan Konservasi" *Pattimura Magister of Law Review,* Vol. 1 No. 1, (2021)

[24] Haryanto, "Future of Decentralization Politics in Indonesia: An Initial Study" *Government Journal,* Vol. 9 No. 2 (2016), 115.

[25] Dikutip Prayudi, *Desentralisasi Dalam Sistem Pemerintahan Indonesia Politik Negara Di Tengah Hubungan Pusat-Daerah.*

Autonomy of the Ministry of Home Affairs, Djohermansyah Djohan in Kompas (25 April 2015) some time ago. First and most important is the weak function of the governor and central government in controlling district and city governments.[26]

In many cases, the governor as an extension of the central government in the regions failed to prevent the abuse of power from city and district governments. Especially in matters of mining, marine and forestry. The negative impact is severe environmental damage due to the exploitation of district and city governments in the context of increasing regional income. Small kings appeared in areas that the governor and central government could not control.

In many cases unable to coordinate with the governor which is usually due to differences in political background. And on the other hand the governor is in a hanging position without being able to stand on his feet. Second, the proliferation of expansion areas that go too far. Third, there are overlapping authorities.[27]

Positive impacts: From an economic point of view, achieving regional autonomy has many advantages, including: Local governments allow residents in the regions to use optimally their natural resources in each area. Also managing natural resources in the existing areas optimally, thus increasing regional income and community income.[28]

And this way, people will work and try to manage the wealth of their area so they know what is best for them. Management of natural resources, especially local marine resources, is very suitable in Indonesia, despite the positive effects, because local Indonesian people are very related to their territories and the administration for their territories..

Negative impact: However, since the pre-reformasi era, the central government exerts a great deal of influence over all state activities. The government's power over regional governments is considered to have limited regional authority in the local government structure with socio-cultural dynamics.

Conclusion

Changes to Law Number 32 of 2004 to Law Number 23 of 2014 led to changes in the organizational structure and authority of local governments. The Law on regional government is dynamic, so that the laws and regulations that underlie the procedures for administering regional government also need to continue to make updates and improvements. But these changes did not occur significant changes. Rather, these changes are to achieve community empowerment and improvement, so as to achieve good governance.

There was a change in Law Number 32 of 2004 to Law Number 23 of 2014 concerning regional government. In Law Number 32 of 2004, in fact, it has regulated the widest possible range of government affairs, but this Law has general arrangements, and only contains 16 chapters with 240 articles. Whereas in Law Number 23 of 2014 there are 27 chapters with 411 articles. In this case, the regulations are more specific in regulating the affairs of absolute, concurrent and general government.

The positive impact of Law Number 32 of 2004 is being able to provide creativity to regional governments, to carry out development in their regions. As well as providing breadth

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[26] Andryan, "Harmonisasi Pemerintah Pusat dengan Daerah sebagai Efektivitas Sistem Pemerintahan", *Legislasi Indonesia,* Vol. 16 No. 4 (2019), 420.

[27] Budi Kurniawan, *Kritik Dan Saran Untuk Perbaikan Undang-Undang No 23 Tahun 2014* (Yogyakarta)

[28] Muhammad Iqbal & Herman, "Pelaksanaan Otonomi Daerah dan Dampaknta terhadap Pembangunan Masyarakat di Indragiri Hilir", *Wedana,* Vol. IV No. 1 (2018), 446.

for people's aspirations, so that the realization of good governance. While the negative impact is the disobedience of local government to the central government. This results in abuse of power, because local governments feel they have wider discretion than before.

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