

The Dynamics of Decentralization Arrangements in Indonesia Constitutional System

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Abstract. Local autonomy has long been implemented in Indonesia and has been experiencing a number of phases within governmental system. This paper is intended to fathom the dynamics of decentralization arrangement indeed. The discussion it-self shows that according to the substances in a number of decentralization policy which had/has been issued, the dynamics of local autonomy arrangements (as regulated in many decentralization policies) are inclining to be captured in a broad meaning, which is frequently known as a broadest local autonomy. Through local autonomy mechanism, local governments are given a flexibility in order to manage and administer their own domestic household. In order to maximize the implementation of widest local autonomy, local government has to be pushed to be well prepared in handling many local governmental tasks. Such preparations are related to human resources capacity, the competences in running the tasks, and financial management capacity.

Key words: Regulation dynamics, local autonomy, decentralization.

Introduction

According to the historical records, the arrangement of local autonomy in Indonesia has been encountering a changing dynamics from time to time. Local autonomy concept it-self has long been known and developed in Indonesia. Long before the proclamation of Indonesia, local autonomy concept had been practiced by the colonialist. However, it can be assumed that the concept was never fully and consistently implemented. It can be accepted because basically the colonialist had another interest back then. That is why the realization of a real local autonomy for Indonesian people was an impossible thing to happen.

Based on the argumentation of Janpatar Simamora (2012:11-12), the implementation of local autonomy in Indonesia cannot be detached from the history of Indonesian constitutional process. It can be seen from the Dutch colonialism era and military imperialism of Nipponese era, until the independence of Indonesia on 17 August 1945. Even though

at the beginning of the process, the Dutch colonialist government only implemented the centralist principle, but along the time the principle was shifted to be decentralist gradually.

Further stated that the creation of local region in the era of Dutch colonialism can be concluded from the establishment of a number of autonomous regions (swapraja) such as Swapraja Surakarta, Swapraja Yogyakarta and villages. However, the implementation of decentralization principle in the Dutch era can only be found in a theoretical discourse, because in practice, the principles were frequently ignored. The arrangement cannot be detached from the facts that the Dutch colonialist were intending to make an overseeing process easier for all around of the regions. In this case, it was not a surprising fact then that the decentralization process was only considered as a theoretical thing (see Janpatar Simamora, 2012:13). The condition finally made the concept of local autonomy in the Dutch era become ineffective and the

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benefits cannot be really felt by Indonesian people.

After the independence of Indonesian people, the local autonomy policy has been continually implemented. It can be seen from a number of regulations which has been formed. Moreover related to the dynamics of the process, a variety of regulations related to the local autonomy has been developed from time to time. In line with the condition, this article is trying to analyze more about the dynamics of local autonomy arrangement, especially from the perspective of the dynamics of decentralization policy it-self. Through this discussion, we would expect a recommendation to maximize the implementation of the local autonomy.

The Meaning of Local Autonomy

Analyzing from the using of the terminology, the term of autonomy contains a meaning referring to an autonomous form to manage and administer the household with some purposes, not only to meet the efficiency and effectiveness of the government, but also as a form of constitutional demand related to the principles of democracy. The content of autonomy is an authority to manage its own household, and the local autonomy refers to a unity of legal community with a limited area (Ahmad Surkati, 2011:41). If we see it from the aspect of the democracy, local autonomy is necessary in order to enlarge the participation of the society in the government and to make the government more effective (Samsul Hidayat, 2015:4). Janpatar Simamora (2011:222) states that there is almost no country which can be considered to be successful to gain a balanced level in implementing democracy. Therefore, local autonomy can be pointed as a medium to the development process. Local autonomy can be argued as a form of decentralization and can also be stated as the substance of the decentralization it-self (Bagir Manan, 1990:21-22). Decentralization as a transfer of tasks and authority to the subordinate government can be seen as one of the character of the implementation of governmental process in a unitary state.

If we see it from a broad perspective, generally known two types of distribution of power in a state, i.e. horizontal distribution of power and vertical distribution of power. Vertical distribution of power is not a matter of separation of power or division of power but as a dispersal of power. The dispersal

of power in a unitary state is known as a territorial decentralization (L.Prakke dan C.AJM. Kortmann, 1988:351). From the vertical dispersion perspective, the existence of local government cannot be considered as a form of full independent status of a region to execute the rights and functions of the autonomy based on their interest arbitrarily without considering the national interest.

The freedom of local region to implement the governmental process including functions related to the competence to manage and administer local resources is not understood in a arbitrary sense, because it has to be managed according to national legal system, fairness, and local diversity. Other than that, which is also more important, in a unitary state the final responsibility of governmental process is in the hand of national government. As M. Solly Lubis (1978:23) suggested that:

“...all the state functions are not divided between the central and local government, therefore state functions in a unitary state are a unity (*eenheid*) and the holder of supreme power in the state is a central government.”

Moreover, Abu Daud Busroh (1993: 64-65) explains that a unitary state according to the structures is a country with no subordinate states incorporated, like the federal state. Unitary state is a singular, meaning that there is only one state, and there is no other state within the central state. And even also there is another argument saying that the sovereignty can be divided or in another word that the authority of central government is not limited, because the unitary constitution do not recognizes another legislative institution other than the national legislative body. Based on the perspective, it can be identified two specific characters of a unitary state, i.e. decentralization and de-concentration.

The vertical distribution of power or territorial division of power is a transfer of power among several tiers of government and this kind of distribution of power can be clearly understood when it's compared between the unitary and federal state. If we connect this concept with the Republic of Indonesia, territorial division of power is translated with the creation of a national government institution and local government. The division can be understood as a separation of state or state within a state as generally known in a federal structure, but within the frame of unitary state, i.e. the Unitary State of the Republic of Indonesia.

The Concept of Household Doctrine in Local Autonomy

In order to see how the autonomy was given and how the scope of the autonomy be arranged, generally, many scholars identify the three kinds of doctrine, namely formal doctrine, material doctrine, and real doctrine. For the three doctrines, many scholars has been using many different terms. Some call it as a local household system. Josep Riwu Kaho (1988:15-19) uses a meaning "system with a pressure on technique used in order to decide the fields of affairs which is to be transferred to local government as tasks of local household and then uses a term "principle" as stated by Sujamto (1990: 21-22). M. Joeniarto (1982:30) explained it as a theory about division of power for locals. Regardless of the differences of the terms, apparently, all scholars step from a similar foundation that the doctrines (formal, material, and real) are related to the system to divide the authority, tasks, and responsibility, in order to manage and administer the tasks of national and local government.

According to R. Joeniarto (1982:30) the transfer of each task to local government must consider whether the transfer would bring more benefit and positive effect for local community, especially, and to the state generally; whether every local government structure has competence in handling the tasks qualitatively and quantitatively; and how about the financial capacity of the local government related to the tasks. Every task transferred to the local government to be managed and administered as part of the local household and it has to be able to be measured formally, so that it can be clearly concluded whether the tasks should become a local authority or not. From the perspective of the development of constitutional system, the theory about the transfer of autonomy to the local through legislation can be contained by three system i.e. formal household system, material household system, and real household system.

First, the formal household system, in system, distribution of authority, tasks and responsibility between central and local to manage and administer the governmental tasks are not limited positively (Victor M. Situmorang dan Cormentya Sitanggang, 1994:64), but to be set in details and concrete. The basic thought of this system is that there is no different character between tasks executed centrally and locally. Any

kind of tasks implemented by the central government is basically able to be executed by the local government. The distribution of tasks, authority and responsibility to manage and administer a certain matter is solely based on the consideration that a governmental business would be better and more successful if the local government is taken into account.

In this system, principally, the local can manage and administer one governmental task as part of the local household based on their own freedom and initiative even when the task had never been transferred. In this case, the principle meaning of local autonomy in the household system is not something to be awarded, but something which is allowed to grow naturally and to get recognition. This condition can be considered as an indication that local autonomy naturally cling to local region it-self as a mankind who has his own basic rights in order to do everything that he consider would be important to him (B. Hestu Cipto Handoyo, 1998:32-34). This understanding appears because according to the formal household system, the character of the substance or errand of the local household is not a gift but something growing and developing and gaining the recognition from central government.

Second, it's the material household system, which is different from the formal household system above. This material system contains the details of distribution of power, tasks, and responsibility between central and local and those elements are arranged assertively and clearly and as a result local should has certain guidance. The basic thought of this system that there is a basic difference between central and local functions. Local region is considered to have a specific scope of governmental tasks which is materially different with the central governmental tasks.

Material household system is considered also, in the Dutch literature, as three environmental doctrines (*de driekringener*) (Rochmat Soemitro, 1983:33). It is called as the doctrine according to Dutch governmental structure model which contained with central government, province, and *Gemente*. Essentially, governmental business should not lay on two or three structures of government organization body, but it is based on the thought that governmental tasks can be divided.

All kinds of governmental tasks in one country are considered to be central concern,

and the local government would act only as an implementing organ of each task from the central government. In this condition, the existence of autonomous region in the household system is the logical consequence of the existence of the transfer of authority from central to local government related to the characteristic of the tasks. The nature of local autonomy in this system, is not something which has been growing and developing naturally, but as the results of the transfer process from central to local government, through legislation based on the characteristic and nature of the governmental tasks it-self.

Third, real household system. The term of real household system can be concluded from the explanation of Law No. 1 Year 1957 concerning the Principles of Local Government and TAP MPRS No. XXI/MPRS/1966 which added the term "broadest" (Moh. Kusnardi dan Harmaily Ibrahim, 1988: 255). Real household system is an alternative for the two household systems above. In this system, the transfer of local government tasks was based on the real conditions and factors in autonomous region. The concept gave a chance for local government to manage and administer a number of tasks to be its own concern.

Local autonomy according to this system was basically stemmed from the recognition of central government to the conditions and factors which grown and developed in the community environment within the region. As a result, the substance and content of local autonomy in this system would be different in each region. In order to implement the local autonomy policy, for newly-formed region (established based on the real factor) there would be a number of beginning tasks given to the local according to the real conditions and factors in the region. That's why in this system we can find elements of formal and material household system at the same time.

In this real household system, material principle contributes to give a certainty of the local tasks at the first time, because through this system the beginning tasks which is transferred to the local can be developed through the formal household system with more independence and flexibility. With the firstly-awarded tasks which is transferred to local government at the beginning of the establishment shows that material element exist. And with the local authority to manage and administer a number of governmental tasks which can be important for local,

even though the transfer has not been yet executed, show that the formal household element also exist.

The viewpoint holding that local autonomy more considered as a duty than the right is not entirely according to the principle of balance. This opinion is based on the practical experience that there are so many duties given to the local government by the central government which ignore the capacity of local government apparatus in handling the tasks. With the assertion to the aspect of duty (usually through a rigid legislation), the scope of work of local government apparatus becomes more limited, especially in order to attract the local initiative and adjustment to the central guidance and instruction related to the local condition.

The Dynamics of Regulation concerning the local autonomy in Indonesia

The regulation on local autonomy in Indonesia has been experiencing a long dynamic process. The dynamics are signed by the shifting of several regulations related to the local government arrangement. As mentioned before, local autonomy in Indonesia has long been known since the era of Dutch colonialism. But at that time, the implementation was still hard to be realized because the main interest of the colonialist was so strong tight the nation. In this case, the history of local autonomy policy before the era of independence of Indonesia, is still hard to trace.

Basically, each alteration of the regulations was according to the shifting of the constitution and then followed by the changing in its inferior policy and laws. But in practice, it was frequently happened though the constitution changed but the implementing regulation was not followed by the revision. We can see the dynamic pattern of local autonomy arrangement by analyzing the regulations related to the local government. Since the beginning of the independence phase, some regulations concerning the local government had been changed i.e. Law No. 1/1945, Law No. 22/1948, Law No. 1/1957, Executive Decree No. 6/1959, Law No. 18/1965.

Then, through TAP MPR No. XXI Year 1966, the concept of autonomy was using a widest meaning where the implementation would be arranged in an organic law. After the enactment of the TAP MPR, in 1973 there was TAP MPR No. IV concerning GBHN, and

this regulation was the basis for the Law No. 5 Year 1974 concerning the Principles of Local Government which had been used until 1999. This law was one of the main crucial political issue in the reformation era. After the law regime, we used the Law No. 22/1999 concerning the local government, and then replaced by the Law No. 32/2004 and until this time we are using the new policy through Law No. 23/2014. Related to the positive law, the description of local government regulation from time to time can be explained as follows:

Law No. 1 Year 1945

According to the Law No. 1/1945, local region as the heritage of the Dutch colonialist in Java Island was rebuilt by Indonesian government through the arrangement in that law. But, because of the uncertainty of the scope of the local power and the ineffectiveness of the central supervision to the local, then the establishment of the Haminte of Surakarta and Haminte of Yogyakarta in 1947, the arrangement of local autonomy was not based on the general principle but on the basis of the detailed tasks. Through Law concerning the establishment of Haminte Surakarta and Haminte Yogyakarta, each Haminte was transferred about twenty beginning tasks. Those tasks can be run by the Haminte without any regulation ordering the transferred process in prior.

In the general explanation section of each law, it had been stated some considerations and reasons why the general transfer model was abandoned and then by choosing the detailed model. Both laws explained that in the first phase, local government would need some guidance in running the tasks and the certainty of the scope of the tasks by arranging it in details. The details were truly needed in order to decide the financial capacity of the local. In addition, both laws also stated that the addition and revision of the transferred tasks would be regulated by a ministerial decree of homeland affairs. The detailed tasks would also demand local governments to create some local legislations. As the consequence, local government shall not be allowed to regulate some tasks which were not transferred to the local and it can be concluded that local's initiative to manage and administer on their own interest were still impossible to realize.

Law No. 22 Year 1948

The next legislation regulated the

local government business was the Law No. 22/1948. According to the article of explanation section of the law, it was stated the necessity to regulate the limitation of local authority in order to keep it in line with the central power. Based on the law, local authority would be stated in each regulation concerning the establishment of the region. The authority was fully an autonomy and medebewind such as irrigation, agriculture, livestock, industry, education and culture affairs. According to the Law No. 22/1948, central government would give broader autonomy to local government than the previous law in the era of Dutch colonialist. The central government was also willing to transfer broader autonomy to regency.

The procedure to transfer some authority was also regulated in NIT Law No. 44/1950. The law stated that local household would be arranged through legislation. But the Law did not state clearly whether local autonomy or another type arrangement. In 1950, according to the law, Indonesian government formed 4 first tier region in Java island. And for the details, there were 15 beginning tasks given to East Java Province, Special Region of Yogyakarta, Central Java Province, and West Java Province.

Generally, the beginning tasks regulated in each legislation were arranged in the form of certain workings and activities. As according to the Law No. 22/1948, that those activities were run in the principle of autonomy and medebewind. The details of the workings and activities were generally regulated in attachment section of the establishment law and through implementing policy. The majority of the activities and functions were transferred to the provinces in the form of guidance and supervision towards the subordinate local government. Eventhough according to the Law No. 22/1948 that the center of the local autonomy was in the village, but in the general explanation in various regulations concerning the establishment of provinces, it was stated that the centralization of the local autonomy was in the subordinate region. That was because some factors especially lack of qualified resources.

Law No. 1 Year 1957

The model of transfer of local authority in Law No. 22/1948 was similar in the Law No. 1/1957 concerning the principles of Local Government. According to Article 31 verse (1) the region shall manage and administer

all kind of local household except the other functions which by this law had been given to another level of government. This section stated that local household tasks can be handled by local government, and as long as those tasks had been admitted by the central government, local government can handle it. Further, the verse (2) of the article holded that in the regulation of local region establishment, there would be set a number of tasks which can be managed by local since the establishment. Those tasks can be called as the beginning duties and as a minimum tasks. In addition, in each establishment of region, there would also be arranged local finance, personel, and materials substances. This principle was according to the Article 31 UUDS 1950.

This model of transfer seemed to be more satisfying for local region which was formerly formed as a swaprja region in the era of Dutch colonialist. It brought more room for local region to initiate than the detailed model. But, general transfer model also could only give local government very limited tasks, when a majority of tasks had been taken or run by the central government. Therefore, general transfer model should be followed by the detailed structure of tasks simultaneously.

Law No. 18 Year 1965

Even though the Law No. 1 Year 1957 was replaced by the Law No. 18 year 1965, but the new law applied similar model of transfer like the previous Law. In Article 89 of Law No. 18/1965, there was a combination of transfer model which can be used, i.e. local government had a right and duty to manage and administer its own household. Without any reduction to the provision in verse (1), in each establishment law, there will be regulated about the beginning tasks of local government along with the tools and the money, and local financial resources.

In the general explanation section verse III, stated that verse (1) gave an opportunity to the local to handle the tasks which had not been gained attention from central government yet. This opportunity meant that the rights related and influenced by the general arrangement or national interest were better implemented and governed by local government. Outside the central governmental tasks and common interest would be part of the local autonomy. Central task was everything according to regulations assigned by central government to the central

it-self. We can conclude that the transfer or authority in the verse (1) applied a general formulation model.

Law No. 5 Year 1974

The arrangement of transfer procedure in Law No. 5 Year 1947 concerning the Principles of Local Government was not as clear as stated in previous legislations. The model of the transfer procedure in this law can only be understood by elaborating a number of the articles with the explanation section, including general explanation and specific explanation related to each article in the legislation. In the Article 1 item e Law No. 5 year 1974, it was explained that local region is a unity of legal community with a certain limitation of area attached with a set of rights, authority, and duty to manage and administer its own household within the unitary system of the Republic of Indonesia according to the prevailing laws. Further, in Article 4 verse (2) was stated that the formulation, name, limits, capitol, rights and authority related to the tasks including the beginning capital of the local are regulated by law. Both articles did not completely suggest that authority and task in such law would be specified and/or defined in general. But, according to the substance of Law No. 5 year 1974, it can be concluded that such law was prone to applying the transfer in details.

Further seen, both laws (Law No. 1/1957 and Law No. 18/1965) were applying a mixed-model transfer, a combination between general formulation and formulation in detail, but the bases of both models were different. Law No. 1/1957 was based on the 1950 of temporary constitution (UUDS 1950), and Law No. 18/1965 was based on the 1945 Indonesian constitution (UUD 1945). The method to transfer the authority in decentralization policy was not consistently applied by the central government in order to form local autonomy in Indonesia. For example Law No. 1 year 1945 used a general transfer model, but in the practice, central government seemed using it differently. For local autonomous region in Java island as formed in the era of Dutch colonialist, the central government used a general formulation model, but for the newly-formed autonomous region using a detailed transfer model.

In the next period, the revision and replacement of local autonomy program influenced the variation of transfer model

applied in each regulation. But in the experience of establishment of autonomous region after the PRRI-Permesta, in every local region, central government always used specified model to transfer the authority. For this reason, the inclination of using a certain transfer model apparently did not in line with the prevailing local government policy but according to the periodization of the government.

By using the transfer of the authority in detail, there was demand to assure the clarity of the distribution of power and function among level of government. But it could be reached if the strategy of distribution of authority and function had been previously set. Such a strategy was never or has not been available. This problem has made decentralization (autonomization) process run slowly and bring inconsistency to the decentralization policy to be used in order to fill the concept of the local autonomy. For higher capacity local government, the detailed model is felt to be not conducive for the enhancement of the local initiative in order to give public service and development.

Law No. 22 year 1999 and Law No. 32 year 2004

Law No. 22/1999 and Law No. 32/2004 are explained simultaneously in this study because both laws were practically using a quite similar model, by giving local government a flexibility to manage and administer its household according to the capacity at each local region. Or in another explanation, local region is urged to run the local business without waiting the transfer of authority from central government. All governmental tasks become local except regulated clearly as the central's. This concept is also called as a broad autonomy model (Bagir Manan, 2002:37).

Based on the concept of modern state, especially related to the concept of welfare state, governmental tasks cannot be recognized quantitatively. All aspects of life in society, mainly related to the public service and public interest, politics, economy, social, including culture are likely to be considered as governmental business. Such a business is very wide to be identified and it can be wider according to the development of state and government function to realize the public welfare. In line with the residual principle, the household tasks of local government likely to become broader from time to time.

But in empirical cases, there is always

a number of governmental tasks entirely implemented in a centralistic way, but there was never entirely implemented in a decentralized way. The wide scope of governmental business, in any time which can be developed, could potentially become a problem for local government. This problem could bring heavier burden for local government and it would be hard to be implemented (Alamsyah, 2010:6). In order to fix the problem, Law No. 32/2004 divided the household of local government become three categories, i.e. obligatory tasks, optional tasks, and concurrent tasks. Concurrent tasks mean that both local government and central government can run same function or tasks concurrently in a certain degree.

Law No. 23 Year 2014

The arrangement of local autonomy in Law No. 23/2014 is not entirely different with the model used in two previous laws, Law No. 22/1999 and Law No. 32/2004. According to Article 18 verse (2) and verse (5) of UUD 1945 - generally known as Unitary Constitution of the Republic of Indonesia of 1945 after the amendment process (Janpatar Simamora, 2014:549) - it is stated that local government has an authority to manage and administer alone the governmental business according to the autonomy principle and medebewind principle and to be given a local autonomy. In the explanation section of the law, it is stated that the autonomy for local government is directed in order to accelerate the realization of public welfare through enhancement of public service, empowerment, and public participation.

From a global environment perspective, through local autonomy, local government is expected to enhance the competitive capacity in line with the principle of democracy, fairness, justice, specialty and characteristic, potency, and diversity within the unitary system of the Republic of Indonesia. The autonomy gives a wider room for local to implement the governmental process (Irawati, 2013:105) according to the unitary principle. In the unitary system, the sovereignty is on the hand of central government and not on the hand of local region. As the consequences, even with a broader autonomy, the final responsibility is always on the hand of central government.

In this law, there are two types of governmental tasks, i.e. absolute tasks which is owned solely by central government and concurrent tasks. Concurrent tasks contain

of obligatory tasks and optional tasks which can be divided among the central government, province government, and municipal/regency government. Obligatory tasks can be divided into two types, obligatory tasks related with the basic services and obligatory tasks unrelated with the basic services. The distribution of concurrent tasks between the province and municipal/regency would be arranged based on the scale or scope of the tasks.

If we see it from the dynamics perspective of the local autonomy policy in Indonesia, it can be understood that such policies are always changing over time. This condition shows that local autonomy is dynamic and open for the improvement and development according to many related factors. Which means that local autonomy is not a rigid and stagnant concept, but as a form of open authority that can be improved in accordance with the national interests.

Moreover from another perspective, the dynamics it-self show that the concept of local autonomy becomes broader along with the process of development, and it is currently known as widest autonomy. Janpatar Simamora (2013:10) argues that the construction of autonomy concept at this time has given local government a flexibility in order to build the region with full responsibility to bring the service closer to the people. Moreover, the local autonomy concept should also be based on the aspiration of the people. Therefore, the implementation of local autonomy demands a preparation from local government in order to run and manage all kinds of governmental business within its responsibility. Such preparation is related to every side of government, such as human resources capacity, financial or budgeting capacity of each local, including competences related to the comprehensive understanding in managing and running all kinds of tasks transferred to the local government.

Conclusions

From the analysis above, we can take two important conclusions: first, the dynamics of local autonomy arrangement in Indonesia constitutional system have been frequently changed from time to time and based on the national interests. We can see it from the revision and replacement of some regulations related to the local government. Second, from the substances of the decentralization policy,

it can be realized that local autonomy concept has been developed and implemented in a broader interpretation, so that we can call it as a local autonomy.

This, The dynamics of local autonomy arrangement need to be prepared by enhancing the local capacity in managing and administering all kinds of local governmental business. The preparations related to the human resources capacity, the competences to interpret and run the local business including the ability to manage the local financial resources. The arrangement of local autonomy in a sense must be followed by enhancing the local capacity in order to run the function which has been transferred to the local. It, at the first place should be in line with the purposes of local autonomy such as enhancing the welfare of society and to embody the equalization of the economic development.

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