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Division Construction Government Authority in Law Number 23 of 2014

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Abstract

The concept of the division of government affairs in deconcentrating and co-administration has a long history in Indonesian constitutional records. Amendments to the 1945 Constitution, especially the second amendment concerning the concept and pattern of the division of a gov-ernment, have indicated that a centralized government would actually pose a threat to disinte-gration so that strengthening decentralization is not a weakening of Indonesia, but an effort to strengthen it. In other words, the choice to use the concept of autonomy as broadly as possible should be understood as a way to build a just balance between central and regional power rela-tions. One of the issues regarding the constitutionality of regional government that has become a space for academic debate after the issuance of Law No. 23 of 2014 concerning Trade Law relates to the concept of the division of government affairs between government structures. Moving on from the point of view of State Constitutional Law and State Administrative Law, the analysis will be directed at the parameters used to construct the division of authority be-tween government structures based on executive power (Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia) or based on the authority stipulated by the constitu-tion. In another part, Law Number 23 of 2014 has reduced the essence of the concept of de-concentrating which previously was only carried out by the Governor, now it is also carried out by the Regent/Mayor. In such a concept, the problem is how to juxtapose the decentraliza-tion method with other methods such as deconcentrating and co-administration and institu-tionalization of the three principles.

Keywords: *Arrangement Government, Distribution Authority.*

Introduction

Indonesia is a strong unitary state, this is written in the 1945 Constitution. According to history at the beginning of the formation of the constitution, there were two main things related to the form of the state, namely unity and federation. However, the concept of unity was chosen which ontologically fits perfectly with the Indonesian state. With that the geographical and sociological conditions of Indonesia as a unitary state find it very difficult to run the government if it is only led by the central government, so that then the unitary state is chosen on the basis of decentralization, this principle gives part of the central authority to the regions.

Based on the very 1945, Esp articles 18, 18 A and 18 B, administration government in a unitary republic Indonesia is divided into several parts, namely provinces, and Provinces are divided into cities and districts. Every province, district and city is a region government empowered to regulate and manage their own affairs based on government principles of decentralization, deconcentrating and best possible assistance autonomy.

Jimly Asshiddiqie who is also an important figure in Indonesia emphasized the provisions of Articles 18, 18A and 18B of the 1945 Constitution have changed the shape of our country into a dynamic unitary state. That is, setting the relationship between the center and the regions. In addition, the relationship between centers and regional, it is also possible to develop pluralist autonomy policy. In Law Number 22 of 1999 concerning Regions government, it has been established that regional authority, namely the field government, except those in the foreign sector politics, defense and security, justice, monetary and fiscal, religious and authority in other fields.

The main purpose of the amendment is to correct various weaknesses that still exist in Law Number 32 of 2004. Aspects that are considered as weaknesses of Law Number 32 of 2004 include the concept of decentralization policy in a unitary state, the relationship between local governments and civil society and

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various other aspects of the administration of regional government that has not been regulated. In terms of the concept of decentralization policy, Law Number 23 of 2014 divides government affairs into 3 types, namely absolute government affairs, concurrent government affairs, and general government affairs.

Absolute government affairs regulated in Article 9 and Article 10 of Law Number 23 of 2014 state that absolute government affairs are affairs that are fully under the authority of the Central Government. The provisions regarding this type of affairs are no different from the provisions regarding central government affairs which were previously regulated in Article 10 of Law Number 32 of 2004 which states foreign policy, defense, security, judiciary, monetary and national fiscal, and religion. However, the division of affairs in Law Number 23 of 2014 is considered to provide more rigid arrangements regarding the authority of each government unit. Therefore, some experts assume that the division of government affairs between the center and the regions in this law is increasingly inclined to a material autonomy system.

In addition to leaning towards a material autonomy system, the status as a representative of the central government which in the previous law was only carried by the Governor is now also carried out by the Head of the Regency/City Region. This means that every government unit, both at the provincial and district/city levels, is an object of deconcentration. This condition has resulted in the questioning of the legal politics of regional autonomy contained in Law Number 2014 which seems to be increased leading to a centralized system. The mandate of the Constitution of the Republic of Indonesia in Article 18 is to carry out the widest possible autonomy in the administration of regional government. This study is considered important to present a discourse on the concept of effective decentralization in the midst of an atmosphere of strengthening democracy in substantive and procedural aspects.

Research Methods

This research is descriptive analysis, using legal and conceptual approaches. The statutory approach is the rule of law become the focus of research, while the meaning of the relevant concept in this case is abstraction element in a field study and is universal, its function is to come up with something interesting to reviewed.

Analysis and Discussion

Authority Sharing Pattern

As it is known that the provisions of Article 18, Article 18A, Article 18B of the 1945 Constitution of the Republic of Indonesia, provide a new direction and format about the principles of governance in the regions. Amendments to Article 18 of the 1945 Constitution of the Republic of Indonesia are also intended to further clarify the division of regions within the Unitary State of the Republic of Indonesia, where the term "divided into" (not "consisting of") as referred to in Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The division of regions within the Unitary State of the Republic of Indonesia as referred to in Article 18 paragraph (1) emphasizes the nature and existence of Indonesia as a Unitary State which is affirmed in the provisions of Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, where the Unitary State of the Republic of Indonesia according to the provisions of Article 25A of the Constitution The 1945 Constitution of the Republic of Indonesia is a justification that the Unitary State of the Republic of Indonesia as an archipelagic state has the characteristics of an archipelago and is a place and limit in the administration of government.

Concerning the principles as referred to in the provisions of Article 18, Article 18A, Article 18B of the 1945 Constitution of the Republic of Indonesia mentioned above, Philipus M. Hadjon states that: Article 18 contains "the principle of hierarchical division of regions (paragraph 1); The principle of autonomy and co-administration (paragraph 2); Principles of democracy (paragraphs 3 and 4); and the principle of autonomy as widely as possible (paragraph 5)" Article 18A, is the principle of the relationship between the central government and local governments which includes: Authority relations (paragraph 1) and financial relations, public services, utilization of resources (paragraph 2). Article 18B contains the principle of recognition of

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special or special regional governments; and the principle of recognizing the existence and traditional rights of indigenous peoples".

The State of Indonesia as a unitary state in the form of a republic underlies the implementation of regional government on the principle of decentralization. This basic rule gives birth to the meaning of autonomous, with the substance of the transfer of authority or government affairs to the regions. The meaning contained in the principle of decentralization is that the implementation of general government affairs by local governments is related to autonomy in regulating and autonomy in managing government affairs. The implementation of decentralization requires the division of government affairs between the Government and regional governments. In such a context, that: "Regional principles regulate and manage their government affairs according to the principle of autonomy and assistance tasks (Article 18 paragraph 2). This provision confirms that regional government is an autonomous government within the Unitary State of the Republic of Indonesia. In local government, there is the only autonomous government (including co-administration). In other words, this provision only regulates autonomy. The new principles in the new Article 18 are more in line with the regional idea of forming the regional government as an independent government unit in a democratic region.

The delegation of government affairs by the Center to the Regions as regional household affairs is a consequence of the adoption of the principle of decentralization as regulated in Article 18 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The elaboration of the provisions of Article 18 paragraph (2) and paragraph (5) of the 1945 Constitution of the Republic of Indonesia is more further details can be seen in the provisions of Article 9 and Article 10 of Law Number 23 of 2014

Although regional autonomy is implemented by embracing a broad autonomy system, this implementation certainly cannot be separated from the context of the Unitary State of the Republic of Indonesia as stated in the provisions of Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. the principle of autonomy and co-administration, emphasizes that regional government is an autonomous government within the Unitary State of the Republic of Indonesia, in such a perspective, in formulating the content and content of autonomy as referred to in the provisions of Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia, it must be placed in the perspective of Article 1 paragraph (1) of the 1945 Constitution. In this regard, the administration of regional government is based on the above provisions, based on: 1) The principle of decentralization is the transfer of government authority by the Government to an Autonomous Region within the framework of the Unitary State of the Republic of Indonesia. 2) Deconcentration is the delegation of authority from the Government to the Governor as a representative of the government and/or central apparatus in the regions. 3) Co-Administration Tasks are assignments from the Government to Regions and Villages and from Regions to Villages to carry out certain tasks accompanied by financing, facilities, and infrastructure as well as management resources with the obligation to report their implementation and be accountable to those who assigned them.

Based on the provisions in the 1945 Constitution of the Republic of Indonesia as described above, there are 2 (two) patterns of distribution of state power, namely the horizontal division of power and the vertical division of power. Horizontal division of state power is the division of state power to the main state organs which in the state administration are called state institutions, while the vertical division of state power is the division of state power between the Central Government and Regional Governments.

Regarding the concept of the division of state power or authority in the implementation of government in a unitary state, 3 (three) approaches can be used, namely: "First, Ultravaries, which can be studied according to the division of authority regulated in the details of authority to local governments and the rest to the central government. Second, General Competence, which is studied according to the distribution of authority to the regions is general and the rest of the authority rests with the central government. Third, the mix, which is studied according to the distribution of authority to the regions, is combined.

The adoption of a unitary state that is decentralized allows the territory of the country to be divided into large and small regions, which is a form of vertical division of power. The vertical division of power in the context of the Indonesian state can be seen formally in Article 1 paragraph (1), Article 4 paragraph (1), and

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Article 18 paragraph (1) of the 1945 Constitution. Vertical division of power based on decentralization will give birth to autonomous regions that have the authority to manage their household. As for the things behind the concept of the vertical distribution of power as stated above, at least motivated by: "a). The ability of the government and its existing equipment in the area is limited; b). The territory of the country is very wide; c). The government can't know all and all kinds of interests and needs of the people scattered throughout the country; d). Only local people know their needs, interests and problems and only they know how best to meet those needs; e). From a legal point of view, Article 18 of the 1945 Constitution guarantees the existence of regions and territories; f). Several government affairs are regional and indeed more efficient if carried out by the regions; and g). Regions have adequate capabilities and instruments to carry out their household affairs, so decentralization is carried out in the administration of government in the regions.

Taking into account the explanation above, it can be said that the concept of a vertical division of power based on decentralization gave birth to an autonomous regional government. This pattern of power is of course the basis for the relationship between the central and regional governments. Regional governments carry out government affairs under their authority, except for government affairs which are government affairs, In carrying out government affairs that fall under the authority of the region, regional governments exercise the widest possible autonomy to regulate and manage their government affairs based on the principles of autonomy and co-administration.

Government affairs are divided into non-decentralized affairs which fall under the authority of the Government and decentralized affairs which are not exclusively under the authority of autonomous regions. On the one hand, in the taboo of decentralizing affairs, the Government can develop it on its own, deconcentrate it to vertical agencies, or can carry out assistance tasks to autonomous regions. On the other hand, in matters that can be decentralized, the Government can also develop it themselves, concentrate or give assistance to autonomous regions, and decentralize them to autonomous regions. Decentralized affairs can be carried out through details (ultra vires doctrine), general (general competence/ open end arrangements), or a combination of both. If Law 22/1999 applies the principle of "residual function" for Regency/City, namely all government affairs that are not explicitly stated in PP 25/2000 as the authority of the Central and Provincial Governments will become the authority of Regency/City, in Law 32/2004 the division of government affairs uses the principle of "concurrence function" means the application of the principle of concurrency in all government affairs. What is done at the Center is also the authority of the Province and the authority of the Regency/City, only the scale is different.

The division of government affairs between the central government and autonomous regions cannot be separated from the development of instruments of decentralization from a country, to trace it even first it is necessary to know whether the form of state developed by a unitary or federal nation. If it is Unitary, then the decentralization developed is carried out by the Central Government at the national level, while in the Federal State, decentralization is carried out by the State Government. In federal countries, often the Federal State Constitution (constitution) regulates the general existence of local governments in the country such as in Germany, but there are also federal states that regulate the existence of local governments in their respective state constitutions, such as in the US.

The development of decentralization into a nation-state system has an effect on local government institutions, one of which is the pattern of distribution of government affairs. Thus, comparing the division of functions is impossible without a comprehensive institutional framework of decentralization developed by a country. It is not possible to examine the system of division of functions without a comprehensive basic framework on decentralization and local government institutions. From here we need a comprehensive framework regarding decentralization institutions and local government.

Although Law No. 32 of 2004 has succeeded in solving several problems in the administration of regional government, in its implementation several new problems have emerged that need the attention of the government and all stakeholders. The unclear regulation in Law No. 32/2004 often gives rise to different interpretations from various interest groups and becomes a source of conflict between government structures and their apparatus. For example, in the division of functions, the unclear division of functions between government structures is still a persistent problem faced by Indonesia in the implementation of

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decentralization. Conflicts and overlapping authorities between government structures and between regions still occur and require clearer and more effective arrangements. Ecologically-based government affairs are still difficult to divide between levels of government because the boundaries of government administration areas often do not match the externalities arising from ecologically-based government affairs.

Parameters of the Distribution of Governmental Authority

Regulation of deconcentration, Law No. 32 of 2004 underwent a slight change in pressure. Different from Law Number 22 of 1999, Law Number 32 of 1999 as its successor does not contain a single article that clearly states the existence of an administrative area in the Republic of Indonesia for deconcentration, in chapter 1 article 1 paragraph 8, it is stated: "Deconcentration is the delegation of authority government by the Government to the Governor as a representative of the government and/or to vertical agencies in certain areas." The phrase "in certain areas" for vertical agency operations is considered quite 'absurd'. This phrase can also open up opportunities for differences in jurisdictional boundaries between field administration maps and jurisdiction maps of certain autonomous regions, both Provinces and Regencies/Cities.

According to Law Number 32 of 2004 Provinces as the operational jurisdiction of the Governor as a representative of the government are not defined as administrative areas. According to some experts, this will automatically follow the map from the Province as an autonomous region. Theoretically, this view is not comprehensive because the administrative area as a result of deconcentration is not only addressed to the Governor but also to vertical agencies. Changes like this will likely result in the definition of the concept of deconcentration in state practice in Indonesia. It is increasingly apparent that in the construction of deconcentration there may be asymmetry when we encounter Article 37 paragraph (1) Article 38 paragraph (1) of Law Number 32 of 2004 which regulates the duties and authorities of the Governor as a representative of the government.

From the two articles, especially Article 38 paragraph (1), it appears that the Governor is not given the task of dealing with vertical agencies. Whereas the theory of government representatives is not like that, where there is a responsibility for government representatives as integrators and coordinators of all vertical agencies in their regions. Building a regional government system by placing a government representative in the region is not just a technical matter because, if there is no government representative placement (generalist field administration), then there is another system with a 'functional' pattern that relies on vertical agencies (sectoral field administration). Therefore, consistency is required in developing each of these systems.

Law 32/2004 seems to be confounded by a functional pattern that relies on the existence of vertical agencies and reduces the existence and role of government representatives. The sentence structure of Article 228 paragraph (1) and Article 1 paragraph 8 differ in the phrases 'in certain areas and 'in regions'. The interpretation of the two phrases has different implications for the practice of developing vertical agencies. From this point of view, the compilers of Law Number 32 the Year 2004 seem oblivious or have certain intentions. Amendments to Law Number 32 of 2004 mean that there is pressure from central government agencies to the Ministry of Home Affairs which is accommodated in articles related to the division of affairs and the existence of government representatives as well as the development of vertical agencies. This pattern is widely referred to by "Commonwealth" countries that adhere to a regional government system with a mechanism similar to a 'local parliament'. Its characteristics are: (1) no government representative; (2) vertical agencies have jurisdiction that does not have to coincide with certain autonomous regions but has rational considerations for each sectoral department (state ministry); (3) local government is controlled by the council (DPRD). So in England, the head of local government is the CEO of the committee chairs in the council who are elected primus inter pares. Vertical agencies are very strong in monitoring the authority carried out by autonomous regions related to their tasks (concurrent). However, local government is developed by greatly opening up the participation of local communities.

During the time of Law Number 22 of 1999, changes from Law Number 5 of 1974, it appears that pressure comes from below (local government / local elites), while the amendment of Law Number 22 of 1999 to

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Law Number 32 of 2004 appears to be the pressure that comes from the bureaucratic elite at the Center. The proposal to change the pattern of division of affairs was smoothed by the big issue of the mechanism for the direct election of regional heads for both governors and regents/mayors. This issue has attracted the attention of many people so that they do not pay attention to other things in the regional government. This atmosphere also allowed the passage of these regulatory changes, which still looks odd for the integration of the regional government system in Indonesia, which is being renewed.

A mong countries that adhere to the principle of decentralization, on the one hand, there is no single function that is only developed in a decentralized manner, on the other hand, there are several centralized affairs. As an organization, the application of the principle of centralization within the State is the main thing. This principle is adhered to since birth, and even until the end of life. If this principle disappears, the State organization will also disappear. Decentralization was born because of the element of centralization, even an expert stated that 'Decentralization can not take place without centralization.' Therefore, Law Number 32 of 2004 accommodates this thought. Although the ultra vires pattern at all levels of government is very rarely found in a single product of legislation, the construction of articles 10, 11, 12, 13, and 14 in Law Number 32 of 2004 adheres to this understanding of ultra vires even though Article 2 paragraph 3 mentions autonomy. broadly. This distribution is very easy to understand to resolve who does what in the national government so that there is clarity for all stakeholders, what must be considered is the dynamics of the distribution because changes can occur although various criteria are also developed to do so which often lead to disputes when changes occur.

The issue of dynamics and the handling of this dispute should naturally be accommodated in a Government Regulation that regulates and operates later regarding the distribution of these affairs, namely Government Regulation Number 38 of 2007 which has just been enacted. This regulation is a substitute for Government Regulation Number 25 of 2000 which applies as an operational act of Law Number 22 of 1999. This Government Regulation is not only concerned with the clarity of the Government's authority, even in accommodating the dynamics of changing affairs due to demands in the field, but it is appropriate to mention the principles of good governance and other general government principles, for example: regarding discretion or fries ermessen, and the basic considerations, because it is very possible that a need for handling the State is not carried out due to unclear distribution which relies on creativity. There must be pressure from within the country itself, if a matter has not been handled, then it has become an obligation and given clear sanctions.

The distribution between levels of government as referred to in the articles, both in Law No. 32 of 2004 with total ultra-vires and Law No. 22 of 1999 with a combination of ultra-vires and general competence, is very common in various Government Law products with degrees of descriptions and forms and patterns that may vary from time to time even between countries, between a Federal State and a unitary state such as Indonesia.

The decentralization policy pattern in Law Number 23 of 2014 is more focused on government effectiveness. The classification of government affairs is further stated in the provisions of Article 9 of Law Number 23 of 2014, namely: 1) Absolute government affairs are government affairs that are fully under the authority of the central government. 2) Concurrent government affairs are government affairs that are divided between the central government and the provinces and districts/cities. Concurrent government affairs that are handed over to the Regions become the basis for the implementation of Regional Autonomy. 3) General government affairs are government affairs that are under the authority of the president as head of government.

Furthermore, regarding the principle of the division of concurrent affairs, the criteria for authority, as well as the pattern of distribution of government authority (central and regional) and the delivery of concurrent governance of affairs as referred to in the provisions of Article 13, Article 16, Article 17, Article 18, Article 19, Article 20, and Article 22 Law Number 23 of 2014. In-Law Number 32 of 2004 deconcentration is the delegation of government authority to the Governor as a representative of the government and/or to vertical agencies in certain areas. Meanwhile, Law Number 23 of 2014 has been expanded, namely by adding the phrase "and/or to the governor and regent/mayor in charge of general government affairs." Meanwhile,

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the concept of co-administration has also changed, where: assignment from the Central Government to an autonomous region to carry out part of the Government Affairs under the authority of the Central Government or from the provincial Government to a district/city area to carry out part of the Government Affairs under the authority of the provincial Region.

Referring to the description above, the regulation of government affairs in the concept of Law Number 23 of 2014 raises the problem of whether in the concept of division of authority we adhere to the general competence, ultra vires, real or combination methods. The debate about the division of authority around the world revolves around two models: The Ultra Vires Doctrine or the General Competence.

The ultra vires doctrine shows that local governments can act on certain things or only provide certain services. The functions of government affairs for local governments are detailed while the remaining government functions are the competence of the central government. The principle of general competence or open-end arrangement is the opposite of the previous principle. The local government must do whatever is deemed necessary in the decision in the area. The central government already has detailed affairs or functions, while the rest are functions or affairs that are the responsibility of local governments.

Referring to what was stated above, Law Number 23 of 2014 has the potential to cause conflicts in the distribution of government authority, even though we understand for ourselves that the concept of the division of government affairs itself is very vulnerable to potential conflicts, both conflicts of authority and conflicts of norms about the law. sectoral law. When examined in-depth, the regional government law has not yet delegated the authority to manage natural resources to the regions. The existing decentralization is more about the autonomy of the government system politically and not the autonomy of managing natural resources based on the needs of the people in the region. Decentralization in natural resource management is more technical than substantive. The existing legal provisions describe the implementation of natural resource management methods in the regions and not regulations by the regions themselves or have not seriously strengthened the concept of autonomy to regulate and manage their interests. In short, the area is the "petri dish" or "guinea pig" of the central laboratory.

An important point in regional autonomy is the relationship between the center and the regions, including the division of affairs and the division of government authority between the central government and local governments. The division of government affairs consists of; Affairs that are fully under the authority of the central government; Affairs that are divided between levels and/or government structures, hereinafter referred to as regional government affairs, consist of mandatory and optional affairs. This point will determine the extent to which the central government and regional governments have the authority to administer government affairs, and furthermore, the object of government affairs can be the same, but the authority or scope is different. In the relationship between the central government and regional governments, there are main problems, namely how to synchronize the relationship of authority in carrying out affairs between the central government and regional governments, both matters regulated in the Regional Government Law and the Fiscal Balance Law, as well as matters regulated in various sectoral laws. , so that it is in line with the principle of broad autonomy.

As a system, local government is complex. It can be approached from various points of view. Local government experts have long offered simplifications in parsing the system. Fried (1963) offers the concept of a comparison of local government systems using whether a country adheres to the placement of 'representative government' or not. The results of this study establish that there are two main systems in the world, namely: (a) countries that adhere to the prefectural system; and (b) countries that adhere to a functional system (not adopted by Government Representatives in the Regions). Elsewhere, AF Leemans in his book "The Changing Patterns of Local Government, using the pattern of ties in local government as a comparison tool. Leemans mentions three patterns: (1) dual hierarchy model; (2) fused/ single hierarchy model; and (3) a split model as written by Leemans: "Various basic patterns of relationship exist between central government field administration and representative local government institutions." Furthermore, it is said as follows "There are two hierarchies of decentralization: the central government field administration and the representative local government institutions. Each hierarchy is composed of several levels of local

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government or administration, each responsible for areas of decreasing size. This pattern may be called the dual hierarchy model.

From the description above, the dual hierarchy model suggests that there are two types of institutions that arise because of deconcentration and decentralization together without any linkages at each level. This model is purely impossible because the dictum of decentralization is always on a continuum with deconcentration. In contrast to this model, the fused/single hierarchy model in the various levels of government created is always a link between the use of decentralization and deconcentration principles (mechanisms). It was further explained that "The central government field organization is fused with local representative institutions. This pattern may be called or single hierarchy model. In such a case, only one integrated organization for government and administration exists at each level, composed of central government officials and local representatives.

In terms of the split model, there are levels of government that separate or stand alone in the application of the principles (mechanisms) of decentralization and deconcentration as expressed by Leemans as follows "In what might be termed the split-hierarchy model, only central government field organizations are found on some levels of the local government and administration hierarchy, and only local representative institutions on others.

In contrast to this analysis, Alderfer (1964) refers to Fried summarizing the existence of four patterns of local government in the world that follow the pattern (1) France; (2) English; (3) the Soviet Union; and (4) traditional systems. The first three patterns represent the modern system of local government that has been guided by various countries until now. However, according to him, there is still a traditional system that develops at the local level in a country.

There is not a single regional government system adopted by developed countries that abandons the arrangement of intergovernmental relations. Humes IV uses indicators on how the supervisory system developed in each country is developed to form a regional government system. Almost the same as Alderfer, According to Humes IV, if it can be grouped in this world there are 4 main systems adopted by various countries: (1) the Soviet Union system; (2) the french system; (3) the German system; and (4) the English system.

The essence of the description above is that Humes IV has developed an instrument for comparison of regional government in terms of institutional (formal) supervision that is built. There are two dimensions, namely: (1) dimension I -- Humes IV's name is 'control hierarchy' --- namely supervision whose spectrum pattern is from inter-organizational1 to intra-organizational2; and, (2) dimension II – what Humes IV calls 'functional control'--, namely supervision whose spectrum is between sectoral (functional basis) or holistic (area basis), which is carried out by the Government. This means that the more sectoral it is, the more it relies on sectoral departments to supervise local governments. Of course, in practice what is being supervised are the tasks of local governments related to their fields. On the other hand, the more holistic government supervision is carried out, the more central government representatives (Governor, major, Regent, Burgomeister, etc.) are used to oversee the local government. Both sectoral and holistic can be mixed, so that in practice even though a government representative has been placed in the region and he is even a regional head (dual function), there are still vertical institutions in the region overseeing the running of regional government. Each dimension is broken down by Humes IV into several characters. On the one hand, dimension I (Hierarchical Supervision) is broken down into four types of characters, namely: (1) inter-organizations (regulations); (2) Subsidiarization-hybrid; (3) Supervision (hybrid); and, (4) intra-organizational (subordination). On the other hand, dimension II (Functional Supervision), consists of 3 Characters: (1) area, if only relying on representatives of the Central Government (WPP) in the region or WPP has a very strong role in the region; (2) dual, if there is a mix-up between the WPP and the sectoral department/LPND3 field administration; and (3) functional, if only relying on field administration of sectoral departments/ LPND.

The pattern of division of government affairs as stated above, in its implementation often creates problems (conflicts) and incompetence in the government process. On the other hand, if it is managed properly, it

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will provide synergy and provide direction for better and quality governance. This is based on an empirical reality that there is a lot of overlapping of authorities which if left unchecked can cause friction and tension between levels of government related to a regional authority. The three types of overlap are (a) overlap between the central and regional authorities; (b) overlapping authority between Province and Regency/City, and (c) overlap between the authorities of the Regency/City itself.

The main cause of the various overlaps is the out of synchrony between the various laws and regulations governing each of these authorities, both at the level of laws, government regulations, and at the level of Ministerial Decrees related to these authorities. One of them is the potential for conflict about the authority to manage natural resources in the marine area which has implications for other sectoral laws that are directly or indirectly related to the authority to manage natural resources by the regions.

In this section, the parameters of the distribution of authority must be placed on the issue of regional management which has become the concern of stakeholders because of the negative excesses of massive regional expansion over the last five years, mainly related to social conflicts, declining quality of services, and very high spatial fragmentation of the region. local government. It is feared that the uncontrolled formation of the New Autonomous Region will make the administration of government inefficient and ineffective. Efforts to control the formation of New Autonomous Regions have been carried out by the government by issuing Government Regulation Number 78 of 2007 and Government Regulation Number 6 of 2008. Government Regulation Number 78 of 2007 regulates the procedures and requirements for the formation of New Autonomous Regions while Government Regulation Number 6 of 2008 regulates evaluating the performance of autonomous regions and their implications for regional integration. However, these Government Regulations are often less effective in controlling the formation of New Autonomous Regions due to different interpretations of the authority to form New Autonomous Regions that arise from the interpretation of Law Number 10 of 2004 concerning the formation of laws and regulations. The establishment of a New Autonomous Region through the Law can be interpreted as meaning that the DPR has the authority to initiate initiatives in the formation of a New Autonomous Region. The revision of Law Number 32 of 2004 must regulate who has the authority to propose the formation of an autonomous region, the government alone or together with the DPR.

Although Law No. 32 of 2004 has determined government affairs that are exclusively the authority of the center and those that are decentralized to the regions and set the criteria for dividing decentralized affairs to the regions. The massive and simultaneous handover of government affairs to the regions, which has never been done by other countries, makes it difficult for Indonesia to learn from the experiences of other countries in decentralizing affairs. Lessons are difficult to obtain from other countries, so the examples of the division of affairs between government structures that might be considered for doing the same thing in Indonesia are relatively limited. At the central level, problems arise because of the lack of synchronization of Law No. 32 of 2004 with sectoral laws. Although Law Number 32 of 2004 has ordered the transfer of mandatory and optional affairs to the regions, in reality, several ministries and institutions are still reluctant to do so. Many sectoral laws are not in line with the spirit of the decentralization policy. The desire to maintain the status-quo arises because of the short-term interests of officials in ministries and agencies associated with the risk of organizational downsizing and reduced access to budgets when affairs are decentralized to the regions.

Thus, it is necessary to restructure the arrangement regarding the division of government affairs. The restructuring was carried out by rearranging the architecture of the division of government affairs between levels of government. First, changing the concept used to divide government affairs into exclusive affairs and concurrent affairs (can be decentralized). Exclusive affairs are affairs that are fully under the authority of the central government, while concurrent affairs are affairs that can be regulated by the government and/or regions, the determination of which is carried out with certain criteria. Second, clarifying the way in which central affairs are organized by determining which affairs should be carried out by the government itself directly, using deconcentration, and co-administration. Deconcentration needs to be limited to exclusive and concurrent affairs which, due to certain criteria, are carried out by the government as government affairs. By clarifying the way of administering government affairs, relations between levels and structures of government in the administration of government affairs will be better organized. In the

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division of affairs, there must be a clear division of authority to regulate and administer in the jurisdictional areas: central, provincial, and district/city. There should be no overlap between one jurisdiction and another. The authority to regulate and administer must be clearly divided between levels of government. The authority to administer and regulate based on the principle of centralization rests with the central government. Meanwhile, the authority to regulate and administer is based on the principle of decentralization and the emphasis is placed on those closest to the community (the principle of subsidiarity).

In a unitary state, it is impossible for an affair to be carried out only in a decentralized manner without centralization. This means that the state can give authority to the government to regulate government affairs, even if these affairs are carried out through the principle of decentralization or assistance tasks, in matters that are handed over to the regions, the government has the authority to make norms, standards, procedures, and criteria that must be used as the basis. by the province and district/city to manage the affairs under their authority. The government can regulate and manage affairs which according to certain criteria should be managed inclusively by the government. This is different from a federal state where both the federal government and the respective state governments can inclusively have the authority to regulate and administer a particular government affair.

Conclusion

About the division of authority, the Law on Regional Government has not yet delegated the authority to manage natural resources to the regions. The existing decentralization is more about the autonomy of the government system politically and not the autonomy of managing natural resources based on the needs of the people in the region. Decentralization in natural resource management is more technical than substantive. The existing legal provisions describe the implementation of natural resource management methods in the regions and not regulations by the regions themselves or have not seriously strengthened the concept of autonomy to regulate and manage their interests. In short, the area is the "petri dish" or guinea pig from the central laboratory. The concept of decentralization which provides an expansion of authority to the regent/mayor as executor of government affairs has expanded, namely by adding the phrase "and/or to the governor and regent/mayor as the person in charge of general government affairs, further emphasizing the substance of legal politics that leads to centralization (softly), and potentially when the interests of local governments differ from those of the central government.

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