

Reconstruction on the Regulation of Governor Role in Regional Government Operation System in Indonesia

Najmul Akhyar

Doctoral of Law, Brawijaya University Malang,
INDONESIA.

ABSTRACT

The position and the role of governor as regulated in Law No. 22 of and subsequently revised with Law No. 32 of 2004 has such problems related to the position and the role of governor that in one side is as regional chief and in the other side is as central government representative in the region. Governor as government representative in province area has no adequate supervision power. From the result of this study shows that problems in the position and the role of governor are caused by: First, Law No.22 of 1999/Law No. 32 of 2004 clarified that the focus of regional autonomous operation is in regency and municipal. Second, because the law also clarified that there is no hierarchical correlation between province government with regency and municipal. Third, although later the government issued the government regulations that govern on the position also the role of governor especially as the central government representative in regional that given power to give sanctions and rewards to regent/mayor, yet the government regulations are not adequate because the problem is not the explicit of legislations regulation. Reconstruction in the regulation of governor role in the regional government operation system in the future should be based on the consideration of Indonesia upright as unitary state, globalization demand, good governance demand, problem solutions for coordination, development and supervision also the increment of society welfare. This reconstruction also has effect to the governor and vice governor election system. If the reconstruction on governor role more focused on the governor and vice governor as central government representative in regional, then, the government election is directly not relevant or consistent with the role. Normatively, authorities regulated in Law No. 19 of 2010 also the regulation of sanctions as represented in Law No. 23 of 2011 has clarified the governor authority. Strengthening the governor authority is not only by government regulations, but also through legislations; it is by changing Law No. 32 of 2004.

Keywords: Reconstruction, role and position, governor

INTRODUCTION

In 1945 Constitution of Republic Indonesia, in Article 18, it is regulated that the form of Unitary State of Republic Indonesia (NKRI) is divided into provinces and it is divided subsequently into regencies and municipals. Each government regionals regulate and arranges its governmental affairs according to principles or autonomous bases and assistance duties.

Mandate of Article 13 clarify that Indonesia as unitary state gives authority to regional government in regulating and arranging its governmental affairs according to autonomous bases and assistance duties. It means that in implementing administration in regional should be operated with autonomous principles widely in the system and the frame of Unitary State of Republic Indonesia. The wholeness and the importance of Unitary State is the general limitation in giving the widely autonomous by central government to regency or municipal government.

Empirically in Indonesia has occurred 8 (eight) times changes in regulations that regulate the implementation of regional government, yet in nowadays, there is still multi interpretation whether it is in local/regional or even in central/inter-departments. It can be seen through problems in the difference in interpreting regulations on regional government or even the publication of legislation in contrary with the operation of regional government based on real decentralization and autonomous, widely and responsibly.

After independence, the government issued Law No. 1 of 1945 as the first regulation on the implementation of regional government, although formally the regulations are not about the regional government. Hereinafter, alternately it is issued the regulations on the implementation of regional government, they are Law No. 22 of 1948 about the Principal of Regional Government, Law No. 44 of 1950 about The Regional Government of East Indonesia, Law No. 1 of 1957 about the Principals of Regional Government, Law No. 18 of 1965 about the Principals of Regional Government, Law No. 5 of 1974 about the Principals of Government in Region, Law No. 22 of 1999 about Regional Government and in nowadays is applied Law No. 32 of 2004 about Regional Government. Any regulation regulates regional autonomous, yet it tends to different based on the condition of social politic in making the regulation.

Regional autonomous does not only mean to make regulation (*zelfwetgeving*), but also involve the meaning of the government itself (*zelfbestuur*). Therefore, Van der Pot comprehend that the concept of regional autonomous as *eigenhuishoudingis* to administer self-government. The government applied the principle of regional autonomous is as the purpose in order to make regional government can increase service, empowerment, and society participation, also the increment of competition in each regions by considering democracy, even distribution, justice, peculiarity, and specialty of a region in the Unitary State of Republic Indonesia system.

Its correlation with the role and the authority of governor in the Law No. 32 of 2004 about Regional Government is regulated that the governor has doubled roles, it is as the chief of autonomous regional of province also as the vice regional in province. It is stated in Article 37 Law No. 32 of 2004, governor by his/her position also served as the vice government in relevant province.

The duties and authorities of governor as the vice government in province subsequently is regulated in the Article 38 Law No. 32 of 2004, they are:

- a. Guidance and supervision of implementing reGENCY/municipal government;
- b. The coordination of implementing governmental affairs in provinces and reGENCY/municipal;
- c. The coordination of guidance and supervision in implementing the assistance duty in province and reGENCY/municipal.

In line with the implementation of regional autonomous, the implementation of deconcentration and decentralization principles in province, in its implementation, there is problems in correlation with autonomous government in reGENCY and municipal. The role of government as the chief of autonomous province is more dominant than his/her role as the vice government in regional. It has effect on the less harmonious policy between province and reGENCY/city.

Governor as the vice government in province has no adequate supervision power. In contrary, reGENCY/municipal government tends to less obedient to consult and report its policies to the governor. For instance in the process of appointment, placement and mutation of structural

position of echelon II reGENCY/municipal government is not conducted based on the norm, standard, procedures and criteria determined in the regulations, it is conducted after consultation to the governor.

Therefore, the government tries to conduct strengthening function of governor as the acquisition province and as the central vice government, through the Government Regulation No. 19 of 2010 jo. Government Regulation No. 23 of 2011 on the procedures in implementing duties and authorities is also the financial position of governor as the vice government in province. The strengthening of governor function as the chief of administration region is aimed to strengthen the correlation between the levels of government.

The effort of central government to reposition the role and the authority of governor as the vice central government, finally, answered by the issue of Government Regulation No. 19 of 2010. The issue of this regulation is expected to bring progress in implementing regional autonomous by frame of unitary state. However, this regulation is not the end of waiting process, yet, it is the beginning of the long journey in actualizing the strengthening position and authorities of governor in implementing regional government in order autonomous spirit and decentralization still in unitary state corridor.

Therefore, until 2013, the implementation of decentralization and the change of regional autonomous paradigm that legally formal regulated by legislation about the implementation of regional government that is described above as a law product that in the process of arrangement is plenty of political nuance is still remaining such polemics to study, they are it is related to central and regional, regional head/vice regional elections, establishment of new autonomous region (regional expansion), the determination of regional border, the arrangement of regional regulation that often in contrary with legislation, the quality of public service in less optimum and so forth.

Reconstruction on the Regulation of Governor Role

According to formal jurisdiction aspect, since the first time its issue in the Law No. 1 of 1945 up to in Law No. 5 of 1974, regional autonomous spirit has been seen and to be the basic implementation of government in regional. It is only the spirit of the government administrators is still far from the idealism of regional autonomous concept itself. Language used is not as concise and simple as regional autonomous, still around how to regulate the household affairs.

Therefore, it can be understood that subsequently the presence of regional decentralization and autonomous seems “very real” in the form institution, yet “subtle” in function. Regional decentralization autonomous also “very real” to attend with democracy package, yet the included “spirit” is still very centralization.

Beyond that, if the efforts to build state institutions are not accompanied by efforts to build the capacity of the state (*state capacity*), it would implicate not for the 'actuality of the state' (*state in practice*) in the life of society. At a more micro context, this trend is reflected by the presence of decentralization and regional autonomy that looks 'very real' in the form of an institution, but 'subtle' in the function.

Above postulate implicitly suggested that the reform agenda of decentralization and regional autonomy in the future should be oriented towards building the capacity of the state (*state capacity*). Therefore, the primary focus should be more emphasis on efforts to build and strengthen the four pillars of state capacity, like institutional capacity (*institutional capacity*), technical capacity (*technical capacity*), *administrative capacity*, and *political capacity*.

IN PHILOSOPHIC

Based on 1945 Constitution Article 1 subsection (1), Indonesia is explicitly stated as unitary state in the form of Republic. The principle on the unitary state is that the country that has the highest power in all household affairs is the central government without any delegation or given power to regional government (*local government*). As a unitary state, Republic of Indonesia is adopting two basic values, it is the value of unitary and territorial decentralization value same as existed in the form of regional autonomy. It makes unitary state of republic Indonesia is being unitary state with decentralistic system. The concept of the Unitary State with decentralized system is embodied in the article 18 and its explanation is amendment in article 18, 18A and 18B.

In line with the reconstruction on the governor role in regional government system in Indonesia philosophically should be associated with the national purpose of Indonesia nation besides it also see on the problems of governor authority that in nowadays is based on the Law No. 32 of 2004 they are:

- a. There is no respect on the governor position as the vice of central government in regional
- b. The governor authority to give sanction to regent/mayor
- c. Overlapping on governor role as the regional head and as the vice central government in regional

In correlation with the above issues, the reconstruction on the position, authority and the role of governor in the future should be based on the consideration of the upright of Indonesia as Unitary State, globalization demand, good governance demand, coordination problem solutions, development and supervision also the increment of society welfare. Therefore, the focus of regional autonomous is still in regency/municipal level, it is based on the possibility on the occurrence of federal concept if regional autonomous is focused on province. It makes province, in the future, is as administrative regional and governor as the vice of central government in regional conducts:

- a. Coordination, development, supervision and monitoring toward governmental affairs that is conducted by the government of regency/municipal based on the norm, standard and procedures determined by the government.
- b. Conducting governmental affairs that effects on regional/inter-regencies/municipal and other government affairs based on the governmental policies.

In supervising, province as central apparatus in regional is maximized as the vice regional not as autonomous regional, it is because:

- a. The wide area of NKRI
- b. In efficiency and effectiveness
- c. The less of coordination in administering government that cause the overlapping authority performance.
- d. Giving role to the governor as the vice of central government can decrease the concerns toward the present of separatism threats.
- e. Strengthening of governor role as the vice of central government in regional is to strengthen the Unitary State of Republic Indonesia.

IN THEORY

The basic problems contained in the Law No. 32 of 2004 especially are relation with the role and the authority of governor is:

The Concept of Decentralization and Regional Autonomous

Law No. 32 of 2004 does not show a grand design conception in the whole on agenda and decentralization direction and regional autonomous. Nothing this grand design, more or less would be seen on the government system in regional, province position, distribution structure of central-regional authority and also the scope of regional autonomous.

The Position of Governor as the Vice of Central Government

In so far, the position of governor in multi roles as the regional head and as the vice of central government in regional emerge such problems like “the disobedience by regent/mayor” that ignore the role of governor also the overlapping role whether in making policy, governor as the vice of central government or as the regional head. In line with the issues, it is not so clear that the province role is as the actor of deconcentration and decentralization. There is overlapping roles of governor; they are governor as deconcentration apparatus or the vice of central government in regional and as autonomous regional head. The role and monitoring duties toward regency/municipal are conducted in the context of deconcentration and devolution that of course, it will cause the conflict of interest for governor as what is happen in the case of NTB governor about the process of divestment PT. Newmont Nusa Tenggara where the central government wants stocks of Newmont bought by the central government, yet subsequently the governor wants that the stocks is the rights of regional government in this case is the rights of province and regency government in NTB.

The Election of Governor and Vice Governor

The problems also presented in Law No. 32 of 2004 that the content is not consistent, it is about the election of regional head and the vice including in it is the election of governor and the vice governor. In one side, according to Law No. 32 of 2004 the regional head and the vice is elected directly by the residents through local election (Pilkada), yet on the other side, other regulation said that the discontinuation of regional head and the vice is not by the mechanism of the involvement of residents as the process of election. Besides, if we see the position of governor as the vice of central government in regional, it should be considered that the governor election today is conducted or associate with the role of governor, so that reconstruction on the governor role also have to reach the process of governor and the vice election.

If it is focused on regional government legislation, reposition of governor role as the vice of central government is decreasing the implementation problem of Law 22/1999 juncto UU 32/2004 that fail to change paradigm on regent/mayor as “local authority” of regency/municipal. Both regulations that is not explicitly stated the hierarchal between province and regency/municipal has weaken the role of governor as the vice of government in conducting supervision, development, and coordination. The phenomenon, the government of regency/municipal contact central government without any confirmation from province government, they cooperate with outer party, regent/mayor has official journey, and the planning in regency/municipal without any confirmation from province government. Ironically, when the regency/municipal government face problems in their regional, like disaster, disease, poverty, land, border, law, or security, regent/mayor as governor to intervene and responsible.

IN NORMATIVE

Discussion on the position and authority of the governor can not be separated from the conception of government as a whole. Local governments should be understood as a subsystem of the system of government as a whole. A system of government in the state will only function if the sub system integrated the rein, mutually supportive and not the opposite. Understanding of this cornerstone of the importance of buying and institutional reconstruction authority between levels of government at the central, province and regency/municipal.

In a decentralized concept will give to the concept of local state government and local self-government. If the local state government implemented through the administrative region where the central government in the regions represented as at the vice governor at the central government and the local vertical institutions in the regional, while local self-government is implemented through a regional or autonomous region which is represented by the presence of DPRD.

In Indonesia, the local manifestation of the state government and local self-government has changed from time to time. If the Law no. 5 of 1974 administrative regions and autonomous regions coincide well in the regency/municipal and province, in Law.22, 1999 the coincidence of administrative regions and autonomous regions only at the provincial level. Thus, the province has a position as an autonomous region as well as administrative areas. It is also stipulated in Law No.32 of 2004 as are vision to Law no. 22, 1999.

Such authorities regulated in government regulations No. 19 of 2010 also the regulation of sanction as stated in government regulation No. 23 of 2011 is not effective because the strengthen to governor authority is not enough by government regulation but should also through law, it is by changing Law No. 32 of 2004.

CONCLUSION

Conclusion of the study on the reconstruction on the regulation of governor role in regional government operation system in Indonesia is as follow:

1. The position and role of the governor as stipulated in Law No. 22 of 1999 and later revised by Act No. 32 of 2004 has some problems related to the position and role of the governor is on the one hand as a Regional Head and the other side as a representative of central government in the regions. Significant problematic among others is not respected position as deputy governor of the central government authority areas and the Governor to give sanction to the Regent / Mayor. Problematic-standing problems and the role of the governor due to: First, because Law No. 22 year 1999/Law No. 32 of 2004 confirms the emphasis on the implementation of regional autonomy there districts and cities. Second, because the law also confirms the absence of hierarchical relationship between the provincial government and the city district. Unfortunately the interpretation of this law was done textually so the county and city authorities in denying the governor's position. As a result, the way local government is not in accordance with what is expected by many parties. Third, although the then Government issued Government Regulation governing the position and role as deputy governor of the Central Government in particular in the area given the authority to impose sanctions and rewards to the Regent/Mayor but the government regulation is not enough because the problem is not specifically setting in Law legislation.

2. Reconstruction on the governor role in local governance system in the future should be based on consideration of the establishment of Indonesia as a unitary state, the demands of globalization, demand good governance, solutions to problems of coordination, guidance and supervision as well as improving people's welfare. Therefore philosophical emphasis of regional autonomy remains at the regency/municipal is based on the possibility of the federal concept if the emphasis of regional autonomy at the provincial level. So the next provincial administrative regions and is a governor as the representative of central government in the region.

ACKNOWLEDGEMENTS

This article is dedicated to civitas academica of Brawijaya University. They have already contributed significantly to this article.

REFERENCES

- [1] Ahmad, H.(2008). *Paradigma Kebijakan Pelayanan Publik Pada Era Otonomi Daerah : Sebuah Analisis*, Hardiyansyah-ahmad. Blogspot.com, 16 April 2008
- [2] Arief, S.(2009).*Penelitian Hukum, Konstelasi Dan refleksi*, ed. Sulistyowati Irianto dan Sidarta, *Obor Indonesia*, jakarta.
- [3] Asshidique,J.(2007). *Pokok-pokok Hukum Tata Negara Indonesia Pasca Reformasi*, Bhuana Ilmu Populer, Jakarta.
- [4] Atmaja,(2003). *Hukum Antar Wewenang (Konsep dan Cara Penyelesaian)* Makalah Lepas (Bahan Kuliah S2) FH - UNUD, Denpasar.
- [5] Azhary,(1995). *Negara Hukum Indonesia Analisis Yuridis Normatif tentang Unsur-Unsurnya*, UI Press, Jakarta.
- [6] B.N. Marbun, *Kamus Hukum Indonesia*, Pustaka Sinar Harapan, Jakarta.
- [7] Bagir, M. (2000).*Wewenang Provinsi, Kabupaten, dan Kota dalam Rangka Otonomi Daerah*, Makalah pada Seminar Nasional, Fakultas Hukum Unpad, Bandung, 13 Mei (Bagir Manan II).
- [8] Bryan, A. G.(ed), (2004).*Black's Law Dictionary*, Eight Edition, A Thomson Business, hal. 1259
- [9] -----,(1999). (eds), *Black's Law Dictionary*, West Group, seventh edition, page, 549.
- [10] Daniel, S. L.(1990). *Hukum dan Politik di Indonesia, Kesenambungan dan Perubahan*, LP3ES, Jakarta.
- [11] Diah, R. M.(2009).*Teori Kewenangan*, www. Google.com diunduh tanggal 18 Oktober 2009
- [12] Herbert H. S. (1984).*Prilaku Administrasi (terjemahan)*, PT. Bina Aksara, Jakarta, hal. 195
- [13] Indroharjo, (1994).*Usaha Memahami Undang-Undang Tentang Peradilan Tata Usaha Negara Buku II Beracara Di Pengadilan Tata Usaha Negara*, Pustaka Sinar Harapan, Jakarta.
- [14] Koko, K.(1997). "Perlindungan Hukum bagi Tenaga Kerja di Indonesia", Disertasi, Universitas Padjadjaran, Bandung.

- [15] Kranenburg, (1975).*Ilmu Negara Umum*, Alih Bahasa Sabaroedin, Pradya Paramita, Jakarta.
- [16] Lintong Oloan Siahaan, (2005). *Prospek PTUN Sebagai Pranata Penyelesaian Sengketa Administrasi Di Indonesia Studi Tentang Keberadaan PTUN Selama Saty Dasawarsa 1991-2001*, Perum Percetakanan Negara RI, Jakarta.
- [17] Marwan, M.(2004). *Pengantar Ilmu Hukum*, Ghalia Indonesia, Jakarta.
- [18] Mochtar, K. "Pemantapan Cita Hukum dan Asas-Asas Hukum Nasional di Masa Kini dan Masa yang Akan Datang",*Makalah*, Jakarta.
- [19] Muladi, (2002).*Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana*, BP Undip Semarang, cet. 2.
- [20] Mustanun, D. M. (1972). "Selayang Pandang (Tentang) Perkembangan Tipe-Tipe Negara Modern,"(Orasi Ilmiah), FH-UNHAS, Ujung Pandang.
- [21] N.E. Algra, H.R.W. Gokkel (terjemahan Saleh Adiwinata, et. Al), (1983). *Kamus Istilah Hukum Fockema Andreae Belanda-Indonesia*, Binacipta.
- [22] Oemar, S. A.(1980).*Peradilan Bebas Negara Hukum*, Erlangga, Jakarta, hal. 26.
- [23] Padmo, W.(1988). "Konsep Yuridis Negara Hukum Indonesia", *Makalah*, September.
- [24] Philipus, M. H.(1987).*Perlindungan Hukum Bagi Rakyat Indonesia*, Bina Ilmu, Surabaya.
- [25] Peter, M. M.(2005).*Penelitian Hukum*, Prenada Media, Jakarta.
- [26] Prajudi, A.(1998).*Hukum Administrasi Negara*, Bhakti Indonesia, Jakarta.
- [27] Pratikno,(2003). "*Desentralisasi: Pilihan yang Tidak Pernah Final*," dalam Abdul Gaffar Karim (ed.) *Kompleksitas Persoalan Otonomi Daerah di Indonesia* (Jogjakarta: Pustaka Pelajar.
- [28] Puslitbang Hukum Dan Peradilan Badan Litbang Diklat Kumdil Mahkamah Agung RI, (2010).*Eksekutabilitas Putusan Peradilan Tata Usaha Negara Laporan Penelitian*, Balitbang Pendidikan dan Pelatihan Hukum dan Peradilan ahkamah Agung RI, Jakarta.
- [29] Raulus, E. L. (2003).*Peradilan Tata Usaha Negara Di Indonesia Dibandingkan Dengan Peradilan Administrasi Yang Berlaku Di Berbagai Negara*. Dalam Mengkaji Kembali Pokok-Pokok Pikiran Pembentukan Peradilan Tata Usaha Negara, LPP-HAN, Jakarta, cet. Pertama.
- [30] Richard, K. N. Jr,(2000). *Legal Reasoning and Legal Writing (Structure, Strategi and Style) Aspen Law & Bussines*, New York.
- [31] Ryaas, R. (2005). "*Otonomi Daerah: Latar Belakang dan Masa Depan*" dalam Syamsuddin Harris (ed.) *Desentralisasi dan Otonomi Daerah* Jakarta: LIPI Press.
- [32] Satjipto Rahardjo, Ilmu Hukum (2003). *Pencarian, Pembebasan dan Pencerahan*, Program Doktor Universitas Diponegoro, Semarang.
- [33] Scheltema dalam Joko Heroe Soewono, (2006). "Eksistensi Hukum Ketenagakerjaan dalam Menciptakan Hubungan Kemitraan antara Pekerja dan Pengusaha (Studi Kasus di Kabupaten Tulungagung)", Disertasi, Universitas Brawijaya, Malang.
- [34] S. F. Marbun, *Peradilan Administrasi Negara dan Upaya Administrasi di Indonesia*, Liberty, Jogjakarta.

- [35] Soewoto, (1990). *Kekuasaan dan Tanggung jawab Presiden Republik Indonesia*, disertasi, fakultas pasca sarjana Universitas Airlangga, Surabaya.
- [36] Sri, S. M.(1992). *Bunga Rampai Hukum Tata Negara Indonesia*, Alumni Bandung.
- [37] Sunaryati, H.(2006). *Penelitian Hukum Di Indonesia Pada Akhir Abad Ke-20*, PT. Alumni Bandung, cet. Ke-2.
- [38] Supandi,(2005). *Kepatuhan Hukum Pejabat Dalam Menaati Putusan Pengadilan Tata Usaha Negara (Disertasi)* dalam mempertahankan gelar doktor Ilmu Hukum pada Universitas Sumatera Utara, Medan.
- [39] W. Friedmann,(1971). *The State and The Rule of Law in A Mixed Economy*, Stevens and Sons, London.
- [40] Wirdjono, P. (1970). *Asas-Asas Hukum Tata Negara Indonesia*, Dian Rakyat, Jakarta.

Regulations

- [41] 1945 Constitution of Republic Indonesia
- [42] Law No. 32 of 2004 about Regional Government (Indonesia Republic Gazette No. of 2004, Additional Gazette of Republic Indonesia No. 4437)
- [43] Government Regulations No. 23 of 2011 about the procedures of conducting duties and authority also financial position of Governor as the vice government in province.