

LOCAL AUTONOMY MODEL IN REALIZING THE PEOPLE'S WELFARE IN INDONESIA

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ABSTRACT

This research attempted to find out and to analyze the legal politics of local autonomy in local government organization and to find the local autonomy model that can bring people welfare into reality in Indonesia. This research employed a normative research type with statute, historical and concept approaches. The law material source used consisted of primary, secondary and tertiary law materials, with prescriptive analysis. Considering the result of research, it could be concluded that legal politics of local autonomy since Indonesia's independence had been governed in some regulation that could be grouped into 4 (four) periods: namely: in the aftermath of independence by setting the implementation of local autonomy in the Act Number 1 Year 1945 on the Rules Concerning the Status of the National Committee of the Regions, Act Number 22 Year of 1948 on the Establishment of Rules principal Regarding In-Self-Governing Locals Eligible managing his own household, Act Number 1 Year 1957 on Principles of Local Government; during the Old Order to the settings in the Act Number 18 Year 1965 on Principles of Local Government; the New Order period stipulated in Act Number 5 Year 1974 on Principles of Local Government and the Reformation period stipulated in Act Number 22 Year of 1999 on Local Government, Act Number 32 Year 2004 on Local Government and Act Number 23 Year 2014 on Local Government. The model of local autonomy implemented in the period before the Reformation fused models of the principles of decentralization and deconcentration carried out Junctointly for the province and regency / municipality and in the aftermath of the Reformation applied Split models of the regency / municipality just implement the principle of decentralization while for the province still applied fused models. How charging chief likened the conduction local province and regencies / municipalities. There are levels / types of the Autonomous 1st, 2nd and 3rd level areas, as well as the province and regencies / municipalities. Autonomous systems ever applied material, real, responsible and widest. With the model welfare cannot be realized because of the high level of poverty. Therefore, we need a change in the model of local autonomy as an attempt to realize the people's welfare, which is a purely autonomous, accountable, proportionate and sustainable.

Keywords: Local autonomy model, legal potitic, realization, people welfare, Indonesia.

Introduction

Local autonomy concept⁵ has long occurred even since pre-independence time, exactly since the enactment of Decentalisatiewet by East Indies government on July 23, 1903.⁶ According to Longmans' dictionary autonomy is self government or own affairs,⁷ post-independence the existence of local autonomy was the implementation of the 1945 Constitution. In its implementation local autonomy experienced the changes of regulation in line with the politic development in the state.

The existence of local autonomy is the implementation of "Welfare State" state concept as the attempt of bringing welfare into reality constituting one of the State's objectives. In "Welfare State" modern state, the government should participate actively in community activity so that the common welfare for everyone (every citizen) remained to be guaranteed. Thus, the government

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⁵ According to Mas'ud Said, local autonomy is understood as a process of devolution in the public sector where there is a transfer of authority from the central government to the provincial and district / city, M.Mas'ud Said, *Arah Baru Otonomi Di Indonesia*, 2nd ed., UPT Penerbita Universitas Muhammadiyah Malang, Malang, 2008, p.6

⁶ C.S.T Kansil, *Pokok-Pokok Pemerintahan Di Daerah, Rineka Cipta*, Jakarta, 1991, p. 4.

⁷ Samuel Ogwu O, *Local Government Autonomy As An Imperative For True Federalism In Nigeria*, Journal of Good Governance and Sustainable Development in Africa (JGGSDA), Vol. 3, No 1, April, 2016. P. 87.

should protect its citizen not only in political but also in social-economic sectors.⁸ For that reason, the government's duty is expanded to ensure the public interest so that its duty encompasses a variety of life aspects. So, in Welfare State, the government is given *bestuurzorg*, the organization of public welfare.⁹

The idea of Indonesia's public welfare organization is included in the 4th paragraph of Preamble of the 1945 Constitution stating that "...a government of the state of Indonesia which shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate toward the establishment of a world order...and so on". It can be seen clearly that one objective of Indonesia country establishment is to bring the welfare of citizens or called people welfare into reality.

The implementation of autonomous system applied so far changes including material autonomy, real autonomy, as wide as possible autonomy, real and responsible autonomy and again as wide as possible autonomy.¹⁰ The conferral of wide autonomy to local area is directed to accelerate the manifestation of community welfare through improving community service, empowerment and participation. In addition, through wide autonomy, local area is expected to improve its competitiveness.¹¹ Real and responsible wide autonomy as the concrete form of authority conferral to autonomous local generally has not benefited much the people welfare, particularly the people in local area because many poverty portraits are still found in local area. The performance of local autonomy has not revealed the optimum result as mandated in the law and community expectation.

The poverty rate in Indonesia fluctuated,¹² based on data from the Central Statistics Agency (BPS), the number of poor in the period 1999-2005 amounted to 12.87 into 35.10 million inhabitants in 2005. Later in the period 2006 to 2016 that in 2006 the number of poor people amounted to 39.30 million to be 28.01 million in March 2016.¹³ Likewise, the inequality between the poor and the rich population increasingly apparent. The worse poverty rate is due to it is getting farther away from the poverty line and the gap of poor population is getting wide and in fact Gini Coefficient is getting higher, in 2010 of 0.378, in 2011 amounted to 0.410 in 2013 amounted to 0.413 and in 2016 amounted to 0,397.¹⁴ It means that the gap between the poor and the rich is getting wider in Indonesia, the poverty rate is more severe because it is getting farther from poverty line, and in this case there is no even welfare distribution. Local autonomy followed and expected to realize the people welfare has not appeared so. Local autonomy followed so far is given as widely as possible to all areas, and the model applied is fused model¹⁵ for province and split model¹⁶ for regency/municipal areas.

Local autonomy problem is something living and developing in a lifetime corresponding to the need and the development of society. Government affairs handed over to local government can be expanded or reduced dependent on the National interest and government policy consideration, all of which are conducted based on the prevailing provisions and regulations. Therefore, it can be understood that on the model of local autonomy in the governance area is an important thing to study.

Considering the elaboration above, the problem in research is formulated as follows: Why has the legal politics of local autonomy not been able to realize the people welfare in organizing local government? And what is local autonomy model in government organization that can realize the people welfare?

Method

⁸ SF.Marbun and Mahfud MD, *Pokok-Pokok Hukum Administrasi Negara*, Liberty, Yogyakarta, 2009, p. 45.

⁹ Luthfi J. Kurniawan et al., *Negara Kesejahteraan Dan Pelayanan Sosial*, Intrans publishing, Malang, 2015. p. 102.

¹⁰ Samsul Wahidin, *Hukum Pemerintahan Daerah, Pendulum Otonomi Daerah Dari Masa Ke Masa*. 1st ed., Pustaka Pelajar, Yogyakarta, 2013, pp. 118-121.

¹¹ HAW. Widjaja, *Penyelenggaraan Otonomi Di Indonesia*, 4th ed., Raja Grafindo Persada, Jakarta, 2013, p.131.

¹² Poverty, in the strict sense is understood as a state of lack of money and goods to ensure survival. In a broad sense poverty is a multidimensional fenomena. At the UN conference related Social Development, Declaration Copenhagen describes poverty as "... a condition characterized by loss of basic human needs, including food, safe drinking water, sanitation facilities, health, housing, education and information. Check out more : Ali Khomsan, Arya Hadi Darmawan, et al., *Poverty Indicators and Misclassification of the Poor*, Yayasan Pustaka Obor Indonesia, Jakarta in 2015, page 1-2.

¹³ Sub Direktorat Kerawanan Sosial, *Perhitungan Dan Analisis Kemiskinan Makro Indonesia*, Badan Pusat Statistik, Jakarta, 2016, hlm. 25-26

¹⁴ *Ibid.* hlm 34.

¹⁵ *Fused Model* is the autonomous area combined with administrative area. In this case, there are double functions of local head. For more detail, see: Sedarmayanti, *Good Gavernance Rangka Dalam Otonomi Daerah*, Mandar Maju, Bandung, p. 46

¹⁶ Sedarmayanti, *Ibid.* p. 39.

This study was a normative/doctrinal research. In this research, law is conceptualized as what has been written in the legislation.¹⁷ Doctrinal legal research was used to find positive law materials used to answer the problems studied.¹⁸ In doctrinal research, the result of abstraction was obtained through induction process from the prevailing positive legal norms¹⁹, by means of studying literature.²⁰

This dissertation research was descriptive in nature, the one aiming to describe something in certain area and at certain time²¹ describing the building of local autonomy legal model in organizing local government in order to realize the people welfare in Indonesia.

The approach used in this research was statute approach because the author employed legislation (law and regulation) as the preliminary basis of analysis. Statute approach was conducted by studying all laws and regulations pertaining to the legal issues dealt with.²² Historical approach was carried out by studying the background and development of material studied.²³ Concept approach was conducted by studying some thoughts about autonomous area and the emphasis of local autonomy suggested by practitioners, departing from perspectives and doctrines developing in legal science. By studying those perspectives and doctrines, the author would find ideas relevant to the problem studied.²⁴

The law material sources needed in this research were: Primary law material, that is, the binding law materials consisting of basic norm, basic rule, legislation, non-codified law material, jurisprudence, treaty, law material from colonial period still prevailing until today.²⁵ Secondary law material consisted of publications concerning the law, rather than official document²⁶, and tertiary law material is the one giving instruction or explanation about primary and secondary law materials.

The analysis of law material was preceded with law material inventorying first including legislations related to local autonomy. Then, the author made interpretation including grammatical, teleological or sociological, systematical, historical, comparative, extensive, and restrictive interpretations²⁷, with prescriptive analysis nature related to developing local autonomy model in organizing local government to bring the people welfare into reality.

Discussion

a. Legal Politics of Local Autonomy in Organizing Local Government has not been able to bring the people welfare into reality

A unitary state is said as holding on the decentralization principle and system when the authority of governing and dealing with government organization is conducted not merely by central government but also by government units at lower level that is autonomous in nature.²⁸ Alexander Moisiu states that decentralization of local government is a process whose application bring results, which affect almost every aspect of human activity. One of the goals of this process in to bring citizens to the decision-making. European Charter of local Autonomy entitles citizen to be participants in local governance. Decentralization of local government is based on the principle of sub solidarity; in providing services closer to citizens these services must comply with

¹⁷ Amirudin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Raja Grafindo Persada, Jakarta, 2010, p. 118.

¹⁸ Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum*, Ghalia Indonesia, Jakarta, 1983, p. 24.

¹⁹ Bambang Sunggono, *Metode Penelitian Hukum*, 1st ed., Raja Grafindo Persada, Jakarta, 2005, p. 89.

²⁰ Soerjono Soekanto and Sri mamudji, *Op.Cit.* p.14

²¹ Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, ctk. Kedua, Sinar Grafika, Jakarta, 1996, p.8.

²² Peter Mahmud Marzuki, *Penelitian Hukum*, ctk. Ketujuh, Kencana Prenada Media Group, Jakarta, 2011, pp. 93-94.

²³ Mukti Fajar ND. dan Julianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris*, *Op.Cit.* pp. 189.

²⁴ *Ibid.* pp.187.

²⁵ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. *Op. Cit.*, pp .13.

²⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, *Log. Cit.*

²⁷ Sudikno Mertokusumo, *Mengenal Hukum suatu Pengantar*, Liberty, Yogyakarta, 2008, hlm170-175. Sudikno Mertokusumo mengutip juga dari Leemaire W.L.G, *Het recht in Indonesia*, NV Uitgeverij W.van Hoeve s'Gravenhage, 1952, pp.81, citing also Algra, N.E. et al. *Rechtsaangvang institut Inleiding tot de Rechtswetenschap*, R.U. Utrecht, 1975, p. 56.

²⁸ I Gde Pantja Astawa “ *Problematika Hukum Otonomi Daerah di Indonesia*, Alumni, Bandung, 2008, p. 26.

the requirements and needs of them.²⁹ Republic of Indonesia country is a unitary state with decentralization system. At formal level, it is the juridical consequence, but there are some factors causing the idea of holding on the vertically power division, thereby enabling the handing over of some powers or authorities from Central Government to the lower government units based on the law.³⁰

Local autonomy regulation in Indonesia changes continuously; since Indonesian's independence, local government has been governed for several times. Regulation announced for the local government organization in order to realize the state's objective, that is, people welfare, can be grouped into four periods:

1. Post-independence period (1945-1-59)

In this period, Act Number 1 Year 1945 about the Position of Local National Committee was enacted. Autonomy system and local government implementation principle applied was still looking for its shape because it was still in newly independent circumstance. Local authority is broad enough, because the local area can govern anything with restriction only, as long as it is not in contradiction with the government regulation above, but the difficulty here lies on the Local area not finding out clearly its authority and obligation borders.³¹

The objective of Act Number 1 Year 1945 enactment is to pull out the executive power from Local National Committee (KND) hand³². All of Local National Committee (KND) were established as the assistant of local government in which civil power, *pangrehpraja*, police officers and other government tools were still on Japan's hand. After civil power could be seized from Japan, Local National Committee (KND) in its practice replaced *Pangrehpraja* and police; in addition, *Pangrehpraja* and police were actually the employees of Republic of Indonesia. Such the dualism attenuated the position and the power of *Pangrehpraja* and police as the official government instrument.

Furthermore, the enactment of Act Number 22 Year 1948 about the Application of Basic Rules concerning Government itself in the Areas Entitled to deal with their Household themselves, under which the autonomous area level consists of Province headed by a governor, Regency (Big City) headed by a regent, and village (small town) headed by village head. The fulfillment of local leader position is conducted through assigning the candidate proposed by Local Legislation Assembly (*Dewan Perwakilan Rakyat Daerah*). Autonomous system applied was material in nature meaning that Law determines in detail the obligations (authorities) the central government gives to local area; the ones excluded are the central government's authority³³. The principles applied were *decentralization*, *deconcentration*, and *medebewin*.

Decentralization principle is the transfer of a number of governmental affairs from Central Government or from higher to lower-level local government, thereby becoming the local household affairs. Thus, initiative, authority, and responsibility for the affairs transferred lie on the local area, concerning policy politics, planning, and implementation and funding aspects. The executor apparatus is local apparatus itself.³⁴

Deconcentration principle is the transfer of authority from Central Government or higher-level territorial head or vertical institution head to their officials in local area. The responsibility remains to lie on Central Government. Both its planning and implementation and funding remain to be the responsibility of Central Government. The elements of implementation are coordinated by local head in its position as the representative of cultural government³⁵. From the principle of assistance (*Medebewind*) duty is defined as participating in the implementation of Government affairs assigned by local Government with the obligation of being accountable for it to the one assigning.³⁶

Then, Act Number 1 Year 1957 about Local Government Specifics, replacing the Act Number 22 Year 1948, was enacted. Under this law, the autonomous area level consists of first-level area (DATI I), second-level area (DATI II) and third-level area (DATI III). The fulfillment of local head positions were elected by Local Legislative Assembly and needed the President's approval for

²⁹ Aleksander Moisiu, *Decentralization and the Increased autonomy in Local Government*, 2nd World Conference On Business, Economics And Management- WCBEM 2013, Procedia Social and Behavioral Science, Elsevier Ltd. 2014, p. 460.

³⁰ Muhammad Fauzan, *Hukum pemerintahan Daerah kajian Tentang Hubungan Keuangan Pemerintah Pusat Dan Daerah*, UII Press, Yogyakarta, 2006, pp. 37-38.

³¹ Dann Suganda, *Organisasi dan Sistem Pemerintahan Negara Republik Indonesia serta Pemerintahan Daerah*, Sinar Baru, Bandung, 1986, pp.92-93

³² Solly Lubis, *Pergeseran Garis Politik Dan Perundang-Undangan Mengenai Pemerintah Daerah*, Alumni, Bandung, 1979. pp. 65.

³³ Samsul Wahidin, *Hukum Pemerintahan Daerah, Pendulum Otonomi Daerah Dari Masa Ke Masa*, Op. Cit. p.80.

³⁴ C.S.T Kansil dan Christine Kansil, *Pemerintahan Daerah Di Indonesia: Hukum Administrasi Daerah*, 3rd edition, Sinar Grafika, Jakarta, 2008, p. 3.

³⁵ *Ibid*, p. 4.

³⁶ *Ibid*.

DATI I, Interior minister for DATI II and III. Autonomy System applied is real, in which the autonomy is implemented realistically by local government over Central Government's authority. The principles applied were *decentralization*, *deconcentration*, and *medebewind*.

2. Old Order Period (1959-1965)

In this period, the Law Number 18 Year 1965 about the Specifics of Local Government was enacted, replacing the Act Number Year 1957. The autonomous area level consisted of DATI I/Province headed by a governor, DATI II/Regency/Municipal headed by a regent/mayor, DATI III/sub district headed by *Camat* (sub district head). The fulfillment of local leader position was carried out by the assignment of candidate proposed by the corresponding Local Legislative Assembly. The autonomy system applied was as broadly as possible autonomy; in this case all affairs were transferred to local leader, along with its apparatus and finance, except anything that is national in nature, governed in the Law³⁷ and then replaced is real and responsible.

The word real means the autonomy transfer to local government is based on some factors, considerations and actions actually ensuring that the corresponding area can really deal with the household itself. The word responsible means that the autonomy transfer is actually intended to make the development run smoothly throughout the country and in harmony, not in contradiction with the direction given, in harmony with the nation unity and political building, ensuring the harmonious relationship between local government and central government and ensuring the local development³⁸. The principles applied were *decentralization*, *deconcentration* and *medebewind*.

3. New Order Period (1966-1998)

In this period, the Act Number 5 Year 1974 about the Specifics of Government in Local Area replacing the Act Number 18 Year 1965 was enacted. The autonomous area level consisted of DATI I/Province headed by a governor and DATI II/Regency/Municipal; headed by a regent/mayor. The fulfillment of local leader position was carried out by the assignment of candidate proposed by the corresponding Local Legislative Assembly. The autonomy system applied was real and responsible. The principles applied were *decentralization*, *deconcentration* and *medebewind*.

4. Reform Period (1998-now)

In this period, the Act Number 22 Year 1999 about the Local Government replacing the Act Number Year 1974 was enacted. Autonomous local level consisted of province headed by governor and regency/municipal headed by a regent/mayor, no level area (DATI) was known. The fulfillment of local leader and deputy of local leader positions was elected by the corresponding Local Legislative Assembly. The autonomy system applied was as broadly as possible autonomy. The principles applied were *decentralization*, *deconcentration* and *medebewind* for province, and *decentralization* and *medebewind* for regency and municipal.

Then, the Act Number 32 Year 2004 about the Local Government replacing the Act Number 22 Year 1999 was enacted. The autonomous area level consisted of province headed by a governor and regency/municipal headed by a regent/mayor. The fulfillment of local leader and deputy of local leader positions in couple was elected directly by the local people. Autonomy system applied was the as broadly as possible autonomy. The principles applied were *decentralization*, *deconcentration* and *medebewind* for province, and *decentralization* and *medebewind* for regency and municipal.

Later, the Act Number 23 Year 2014 about the Local Government replacing the Act Number 32 Year 2004 was enacted. The autonomous area level consisted of province headed by a governor and regency/municipal headed by a regent/mayor. The fulfillment of local leader and deputy of local leader positions in couple was elected directly by the local people. Autonomy system applied was the as broadly as possible autonomy. The principles applied were *decentralization*, *deconcentration* and *medebewind* for province, and *decentralization* and *medebewind* for regency and municipal.

Local autonomy policy in local government organization from post-independence, old order, new order and reform periods had not been able to realize the people welfare. It was affected by some factors:

Firstly, decentralization and deconcentration principles are applied simultaneously to all autonomous local levels therefore inside governor, regent and mayor there are two positions inherent: as autonomous local head and the representative of central government existing in local area, thereby resulting in less maximal performance. This condition experienced the change during reform period for the double position only occurs in governor only because deconcentration principle is not enacted in regency and municipal.

Secondly, there are several autonomous local levels like that in post-independence and old-order periods existing in 1st level, 2nd level, and 3rd level Areas. In New Order period there are 1st level and 2nd level Areas. Meanwhile, during reform period there is no term level area used but there are 2 (two) types of autonomous area: Province and Regency/Municipal. In the presence of autonomous area levels/types, therefore the service given to the society is less maximal; it is because it is the autonomous area closer to the society that serve better because it know better the situation and condition of its societies.

³⁷ Samsul Wahidi, *Op. Cit.* p.80

³⁸ C.S.T.Kansil, *Pokok-Pokok Pemerintahan Di Daerah*, 3rd ed., *Op. Cit.*, p.112

Thirdly, the way of fulfilling the local head position is equated for province and regency/municipal, by means of election through representative or direct election by the people. It is less appropriate to be applied to the province because its area is broad involving some regency/municipal, the electorates known poorly the candidate of their leader, so that they elect haphazardly.

Fourthly, the same autonomy system is applied to all autonomous local areas, the as broadly as possible autonomy, except in new order period; it is less appropriate because it can result in the slow progress for the lower human resource (HR) and limited natural resource.

b. Local autonomy model in organizing the government that can realize the people welfare

Local autonomy in Indonesia is always problematic because it tried to be enforced over the systemic confusion in Indonesian state structure format. The extraordinary fond of Unitarianism makes Indonesians finding difficulty in looking for an ideal format for political decentralization and local autonomy. With substantial geographical and social-cultural heterogeneity degree, the local areas will tend to require the power space larger than that provided commonly by central government in a unitary state. Therefore, decentralization will always be the problem when it is not repaired.³⁹ Bambang Suharnoko Sjahrir, Krisztina Kis-Katos and Gunther G. Schulze states that the Indonesia decentralization process has lead to unprecedented and large-scale devolution of authority from the center to the districts. Since 2001, the local governments of the regencies (*kabupaten*) and municipal (*kota*) have gained considerable administrative, political, and fiscal autonomy. Administrative decentralization devolved the majority of public service responsibilities to provincial and local governments. The center retained the function of defense, security, justice, foreign affairs, fiscal affairs, religion, forestry, and currency and transferred the rest of the functions to the districts. The provinces received mainly coordinating and backstopping powers and remained directly responsible to the center. Act Number 22 Year 1999 also stipulated that districts were responsible for the sectors (*bidang pemerintahan wajib*) health, education, public works, environment, communications, agriculture, industry, and trade, investment, land, cooperatives, manpower, and infrastructure.⁴⁰

The organization of local autonomy should ensure the harmony between one local area and another. It means that it can build the cooperation between local areas improving the common welfare and to prevent the gap between local areas⁴¹. Soetardjo Kartohadikoesoemo and Kadarman Reksonotoprodjo interpreted that with Hatta's conception in Indonesia, later there will be only two levels of autonomous area (including Village): *Regency* and *Municipal* (equivalent to regency), and *Desapraja*.⁴²

Autonomous model applied currently is *fused model* is decentralization principle implemented along with the deconcentration principle for provincial area. In the *split model* for regency/municipal, the position of regent/mayor only serves as local leader, with decentralization principle. There are two levels of autonomous area: province and regency/city. The autonomous system applied is as broadly as possible autonomy. The implementation of autonomy system is carried out as broadly as possible, thereby dividing the authorities/affairs equally for individual areas. It is because, corresponding to the article 18 Year 1945 constitution, according to the author, it is not consistent with the condition of Republic of Indonesia state consisting of more than 3,000 island and different geographic conditions. This model, according to the author, has not been able to realize the people welfare, because of the high poverty rate in Indonesia reaching 30.25 millions people or about 12.25 percents of total population in 2015. The gap between poor and rich population is getting wider with Gini Coefficient of 0.42 in 2014. For that reasons, autonomous model corresponding to the geographic condition of Indonesia country should be conceptualized.

Autonomous model, the author conceptualized, that is, local autonomy closer to the society just like the conception of Hatta and Soetardjo Kartohadikoesoemo and Kadarman Reksonotoprodjo, is intended to ensure the welfare for all people better. In this concept, the provincial government only implements deconcentration principle only, in this case the governor serves as the territorial head only constituting "the central instrument" only as the representative of central government existing in local areas. Thus, there is no double position within the governor: as local leader and as the representative of central government existing in local area; but in practice, it is difficult to implement the two functions with different interests, because on the one hand as the territorial head it cannot remove its function as the central government's instrument in its deconcentration duty. But, on the other hand, as the local head, it should focus primarily on undertaking its autonomy duty in its decentralization duty. So, the governor serves as only administrative territorial head.

To occupy the position of governor and deputy governor did not pass through local leader election (PILKADA) but governor and deputy governor is assigned by President from the qualified Civil Servants/State Civil Apparatuses, proposed by interior minister, as governed in Article 18 of Act Number 22 Year 1948 and Article 11 of Number 18 Year 1965. The procedure of assignment is governed further in legislation. Thus, it is expected that the governor can work more maximally. In this case, the Local Legislative Assembly (DPRD) of province is not required.

³⁹ Abdul Gaffar Karim, *Kompleksitas Persoalan Otonomi daerah di Indonesia I*, 1st ed., Pustaka Pelajar, Yogyakarta, 2003, p. xxvii

⁴⁰ Bambang Suharnoko Sjahrir, Krisztina Kis-Katos and Gunther G. Schulze, *Administrative Overspending in Indonesia Districts: The Role of Local Politic*, World Development Vol. 59, Elsevier Ltd. 2014. P. 169.

⁴¹ Sujamto, *Otonomi Yang Nyata Dan Bertanggungjawab*, Ghalia Indonesia, Jakarta, 1984, pp. 149-150.

⁴² *Ibid.*

Local autonomy is put on Regency and Municipal, because these areas are closer to the society. However, its autonomous system is not as broadly as possible like that enacted currently in which all regencies and municipalities have the same authority/affairs. All affairs are transferred except the one according to the law is specified by Central Government (as governed in Article 18 clause (5) of the 1945 Constitution, 2nd amendment).

In the author's opinion, authority/affairs given to the autonomous area (Regency/Municipal) should be different, because individual autonomous areas has different condition, whether geographic condition, human resource (HR) it has, natural resource, or infrastructure. For that reason, the transfer of affairs is conducted gradually to autonomous area. And those autonomous areas are classified by conducting assessment by an agency established by Government, for example Local Autonomy Assessment Agency (*Badan Penilaian Otonomi Daerah*= BAPODA). It is this agency that will make assessment on autonomous areas and determine the classification/type A for those actually capable of running autonomy, B for those sufficiently capable of running autonomy, and C for those poorly capable of running autonomy. And a standard assessment should be developed and governed in legislation. There should be likely a change of type for autonomous area based on the assessment achieved, for example from type A going down to B, from C going up to B. In this case, when the result of area type assessment decreases, the affairs assessed as inapplicable will be withdrawn by central government; similarly when the local area is assessed as increasing in its type, its authorities/affairs will be increased. Thus, the local heads should attempt sincerely to work in order to achieve the maximum result for their community interest. It because there is a moral burden inside the local heads elected in Local General Election (PILKADA).

For that reason, the author proposes a concept using "Pure, responsible, proportional and sustainable autonomy" model. In this case, pure autonomy is defined as the autonomous area implementing decentralization principle becoming its area's household affair responsibility only. Responsible is defined as autonomous area given authority/affairs and capable of undertaking and being responsible for. Proportional is defined as the transfer of authority/affairs to local government by central government not similar but consistent with the respective areas' condition. Sustainable means that the transfer of affairs is conducted gradually and sustainably corresponding to the development of assigned autonomous area. Thus, that local good governance will be created, oriented to mutual interest, thereby realizing the people welfare.

Conclusion

The result of research shows that legal politics of local autonomy in organizing local government with the ever changing regulations has not been able to realize the people welfare. It is because: *firstly*, decentralization and deconcentration principles are applied simultaneously for all levels of autonomous area. Secondly, there are some levels of autonomous levels, for example in post-independence and old-order periods, there are 1st, 2nd and 3rd level areas. In New Order, there 1st, and 2nd level areas. Meanwhile, in reform period, there are 2 (two) types of autonomous areas. Thirdly, the way of fulfilling local leader position is equated for province and regency/municipal. Fourthly, the as broadly as possible autonomy system is applied equally to all autonomous areas.

Local autonomy model in organizing local government that can realize the people welfare is "Pure, responsible, proportional and sustainable autonomy" model. In this concept, provincial government implements deconcentration principle only, local autonomy is put on regency and municipal. The areas given authorities/affairs can be actually responsible for. The transfer of authorities/affairs is consistent with the condition of corresponding area, and the affairs are given to the local area gradually.

Recommendation

The government should change the model of local autonomy in local governance which is currently available, so that welfare can be truly realized, to the government through the agency, by changing the Act Number 23 Year 2014 About the Local Government that has been changed by Act Number 9 Year 2015 On the Second Amendment to Act Number 23 Year 2014 about Local Government. By first amend Article 18 of the Constitution Year 1945 by changing the substance of articles 18 and 18 A of the Constitution Year 1945 as follows:

Article 18 :

Paragraph (1) The Unitary of Republic of Indonesia is divided within the province and the province is divided into regencies and municipalities that have governmental area regulated by the Act.

Paragraph (2) The territory of the province carries out the affairs delegated by the central government and assistance tasks, regencies and cities set up and manage their own affairs submitted by the central government and carry out tasks.

Paragraph (3) the regency and municipality have a regional council whose members are elected through a general election.

Paragraph (4) The Governor as the head of the province was appointed by the President, regents and mayors respectively as the heads of municipality and regency governments elected democratically.

Paragraph (5) Local government run pure autonomy, accountable, proportionate and sustainable regulated by the Act.

Article 18 A

Paragraph (1) The relationship of authority between the central government and the provinces, local government regencies and cities governed by the Act.

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