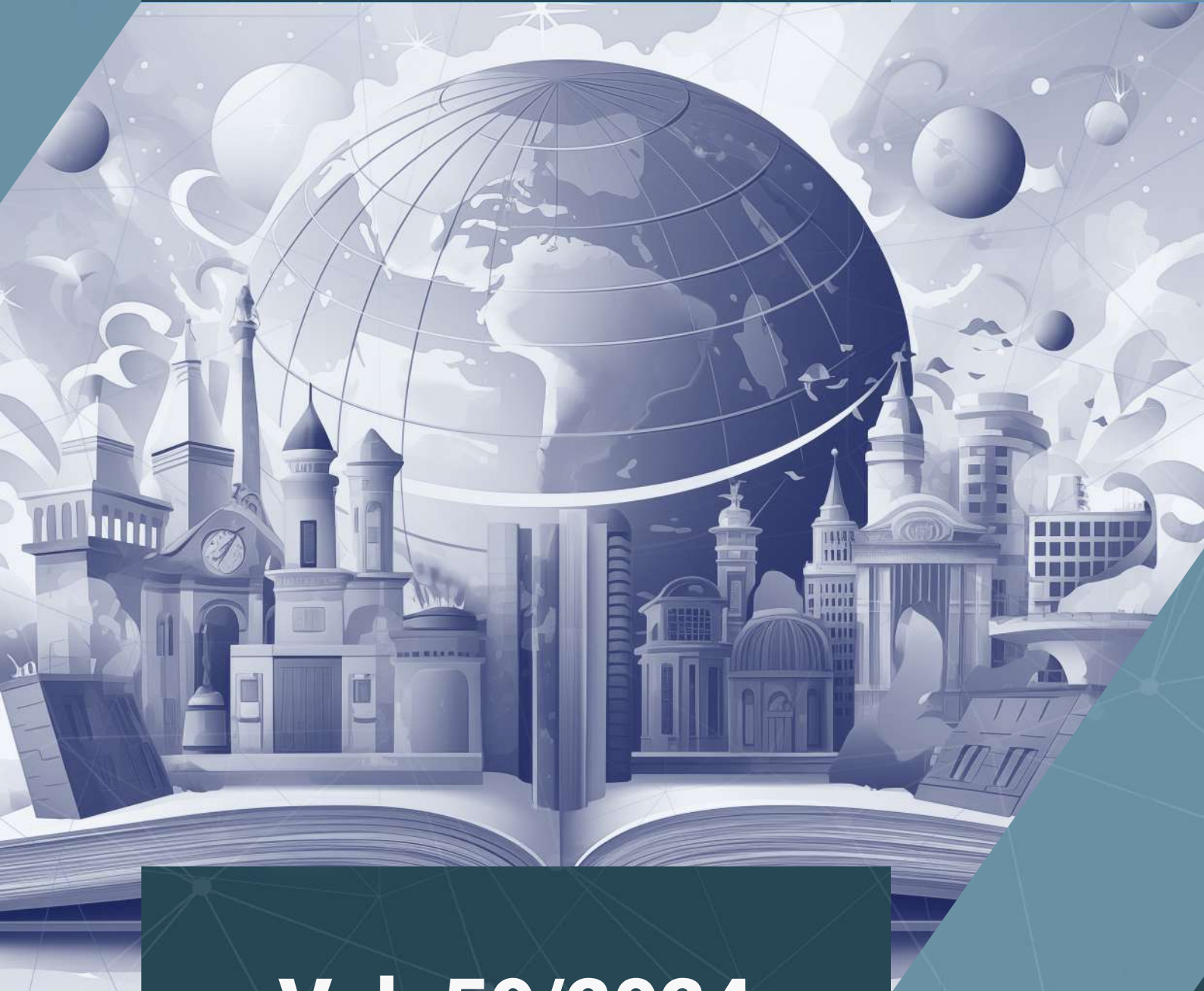




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Legal politics of the governor's position in *ratio legis* on the regulatory aspects of regional government

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Abstract. In formation of laws and regulations, Article 18 paragraph (1) of the 1945 Constitution shows that relationship between the central government and provincial government is a multilevel relationship. The governor runs the government in provincial area based on principle of deconcentration, namely the delegation of authority from central state equipment to subordinate agencies to carry out certain work in administration of government. Article 18 paragraph (2) of 1945 Constitution Republic Indonesia shows that relationship between the provincial government and regency/city government is an equal relationship because the Governor and Regent/Mayor both run government in their respective regions based on principles of decentralization (regional autonomy) and assistance tasks. The Governor has a dual position or role, namely as the head of provincial region (Local Self Government) as well as the Regional Head/Representative of Central Government in the region (Local State Government). The governor has a dual role as head of the province and head of the region (representative of the central government). Law 23/2014 on Local Government tends to emphasize the role of governor as a representative the government through of administration government based on principle of deconcentration. The task of maintaining integrity of government system is a goal. The strengthening of governor's role as the government's representative through several forms of governor interference in implementation government in district/city aims to maintain the balance and harmony of government relations. The central government must prevent country from disintegration by controlling all forms of local government activities. The central government is fully responsible for implementation of government both at center and in the provinces and districts / cities.

Keywords. legal; politics; governor

Introduction

In formation of laws and regulations, Article 18 paragraph (1) of the 1945 Constitution shows that relationship between the central government and provincial government is a multilevel relationship. The governor runs the government in provincial area based on principle of deconcentration, namely the delegation of authority from central state equipment to subordinate agencies to carry out certain work in administration of government. Article 18 paragraph (2) of 1945 Constitution Republic Indonesia shows that relationship between the provincial government and regency/city government is an equal relationship because the Governor and Regent/Mayor both run government in their respective regions based on

principles of decentralization (regional autonomy) and assistance tasks. The Governor has a dual position or role, namely as the head of provincial region (*Local Self Government*) as well as the Regional Head/Representative of Central Government in the region (*Local State Government*) [1].

Dual position of governor on the one hand can lead to conflicts between provincial government and district/city government but on the other hand it is very strategic to maintain balance of relations between the central government and local governments, especially between central government and the district/city government. The implementation of position the governor in accordance with mandate of Article 18 paragraph (1) the 1945 Constitution Republic of Indonesia is further regulated in Law No. 23 of 2014 concerning Regional Government (Law 23 of 2014 concerning Regional Government). Article 4 paragraph (1) of Law 23 of 2014 concerning Regional Government confirms the status of the governor, which in addition to being head of the provincial region is also the head of administrative region. The governor here is a position and its officials who carry out certain duties and authorities (functions). Position is a juridical definition of function, while function is a sociological definition.

The portion of governor's duties as a representative the government is clearly regulated in Article 91 paragraphs (1) to (5) related to the authority, finance, and supervision of district / city governments. In the regional household system, the position of each party in implementation of government affairs will appear. In addition, the relationship in field of autonomy will also be related to organizational, financial and supervisory arrangements.

In principle, in maintaining balance of the relationship between central government and local governments, the Governor adheres to *Integrated Perfectoral System* as a form of consistency in maintaining a unitary state so as not to cause overlapping (*spanning*) government affairs between central government and district/city local governments and balance between district/city local governments. Therefore, efforts to build balance must be considered in the context of power relations between the center and the regions. This means that the region must be viewed in two positions, namely as a regional organ to carry out autonomy tasks and as an agent of the central government to organize central affairs in the region [1].

The position of governor as the representative of central government is ineffective due to 6 (six) *determinant factors*, namely weak support of policy instruments, the absence of institutional institutions, the absence of apparatus personnel, budget uncertainty, leadership, and government political will. The research results formulated two designs of local government systems. First, the province of administrative regions and autonomous regions in the district / city autonomous regions. Second, the province of administrative regions and autonomous regions in the district/city of administrative regions and autonomous regions. Both designs place deconcentration and decentralization in province and place the governor both as a representative of central government and as head of region. The results also show the need for institutional institutions for governors as representatives of central government, which in this study is formulated as an *intermediate government* in the form of a directorate of deconcentration.

The implementation of regional autonomy through Law of Republic Indonesia Number 32 of 2004 which was later amended to Law of Republic Indonesia Number 23 of 2014 concerning Regional Government (hereinafter referred to as Law of the Republic of Indonesia No.23 of 2014) further emphasized regional authority in making regional legal products, both regional regulations and regional head regulations. The authority given to regions to form legal products further emphasizes that Indonesia is a state of law.

Another aspect concerns the supervision of local regulations both at the provincial and regency/city levels that has not been maximized, not to mention the limited number of legal drafters in the regions (*legal drafter*) in designing local regulations. Furthermore, the unsolved problem is the governor's authority given by the central government in canceling a district/city regulation with a governor's decree. [2].

The State of Indonesia is a unitary state in the form of a Republic, as affirmed in Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which is then confirmed again through Article 37 paragraph (5) of the 1945 Constitution after the amendment, it is expressly stated that specifically the form of the Unitary State of the Republic of Indonesia cannot be changed. This provision emphasizes the determination to maintain the establishment of a unitary state in the Republic of Indonesia. In the context of this unitary state, all government responsibilities are held by the central government.

Given the vast territory of the country, with a very heterogeneous society, both in terms of ethnicity, religion, culture and life background in the economic field and so on, the administration of government is carried out with a decentralization system which has the main core of autonomy. namely the freedom for autonomous regions to regulate and manage their own government affairs submitted by the central government, as reflected in Articles 18, 18 A and 18 B of the 1945 Constitution.

The Governor's position as head of the province also functions as the representative of the Central Government in the region. In its status as an autonomous region, the authority of the province regulated in the Law is all-round responsibility because the autonomous affairs are unclear and give rise to overlapping authority between the province and the regency and in turn cause disharmony between the Governor and the Regent / Mayor. In addition to clarifying and emphasizing the duties and authority of the governor as the representative of the central government, the Local Government Act should also determine the focus of autonomy in the province so that the position of district / city autonomy is under the autonomy of the province [3].

The vagueness and ambiguity contained in Law No.23/2014 makes the relationship between governments only between spheres of government, not hierarchical. Meanwhile, when referring to 1945 Constitution of Republic Indonesia (UUD NRI 1945), the relationship between governments is a hierarchical relationship, so that pattern of intergovernmental relations is a continuum line, not contra each other and has no relationship [4].

The construction of laws and regulations that tend to distort intergovernmental relations means that these two functions cannot currently be carried out properly. This is because the impact of this distortion is that the position of the province in government relations is unclear, weak and tends to be invisible. This causes tasks as a representative the center, namely coordination, guidance and supervision, cannot be carried out by the Governor [5].

The weak position of the provincial government is also exacerbated by the direct relationship between the central and regional governments without involving the provincial government as the representative of the central government, especially the ministries. The reason for this is found in the Law of Republic Indonesia No. 39/2008 on State Ministries (hereinafter referred to as Law No. 39/2008) which regulates ministries, where ministries are not required to coordinate with provincial governments. Many programs created by ministries do not involve provinces in their implementation. The lack of provincial involvement has resulted in a lack of synchronization and coordination policies between provinces and regencies/cities.

Government Affairs consist of Absolute Government Affairs, Concurrent Government Affairs and General Government Affairs. However, it should be remembered that in the principle of a unitary state, regions do not have absolute authority in managing their regions. Central government intervention is still needed as a function of forming national regulatory standards, monitoring, evaluating, empowering and controlling functions [6].

Research Method

The research used in this research process uses a type of normative legal research.[7]

Result and Discussion

Political Legal Arrangements of the Governor in the Framework of the Ratio Legis of the Regional Government Law

Regarding the hierarchy of laws and regulations, there is an expert's opinion that there is no system in the world that positively regulates the order of laws and regulations. Even if there is, the arrangement is only limited to the principle that states for example: "Local regulations may not conflict with higher-level laws and regulations", or in the case of the Constitution there is the phrase "the supreme law of the land". From this opinion, it can be illustrated that the hierarchy of laws and regulations in the form of a hierarchy of types as applicable in Indonesia positively does not exist. Although in general the legislation is tiered and multileveled [8].

Public law norms are formed by state institutions, which have a higher position than private law. Public law has a role to regulate society at large while private law is a law that is more about the interests of the community in interacting with other communities. From this explanation, it can be seen that hierarchy of laws and regulations also applies to the classification of private law and public law. This is done to get a complete understanding by system or hierarchy of laws and regulations in Indonesia [9].

By displaying the development of hierarchy in laws and regulations, a solution will be produced to make improvements to the arrangement in order to create an ideal system or hierarchy of laws and regulations. Basically, it is intended to form a standard provision regarding the procedures for formation of laws and regulations both at the central and regional levels, and also to become a complete and integrated regulatory tool both from the planning stage which is regulated through the national legislation program and regional legislation program, system, principles, types and content material of each legislation, preparation stage, discussion, ratification, promulgation and dissemination, as well as public participation.

The types of regulations accommodated in Law 10/2004 as specified in Article 7 paragraph (1), include: 1.the 1945 Constitution of Republic Indonesia; 2.laws/government regulations in lieu of laws; 3. government regulations; 4. presidential regulations; 5. regional regulations; 6. provincial regulations; 7. regency/city regulations; and 8. village regulations [10].

Law formation and reform of legal materials must be aimed at realizing (*social equilibrium*), namely an orderly, just and prosperous life. The style of communication or dialog and dialectics that take place in the process of forming legislation will affect the character of the law, the more transparent and participatory will make the law more responsive.

The function of law and politics in the view of Philip Nonet and Philip Shelnick is a very familiar relationship, the law is legislation which is actually a crystallization of political wills that interact and influence each other. Legal politics is defined as the official line of state policy to make and stipulate laws and regulations in order to achieve the ideals and goals of the

state as contained in the preamble of the 1945 Constitution of Republic Indonesia, paragraph IV [12]. The implementation of legal politics is in the form of establishment of legislation that is used as a tool to achieve state goals, which is in accordance with basic framework of national legal politics, which can be seen in Prolegnas and Prolegda.

The Position of Governor in Constitutional Context of Republic Indonesia

The Constitutionality of Governor's Position in Indonesian Constitution, then the position of Governor as a Representative of the Center Region. The principle of a unitary state is that highest authority over all state affairs is the central government without any delegation or delegation of power to regional government.[11]

According to Article 1 Point 6, Regional Autonomy is the right, authority and obligation of autonomous regions to regulate and manage their own government affairs and the interests of local communities within the system of the Unitary State of the Republic of Indonesia. Autonomy in the context of Hierarchical relations associated with the vertical division of power, is defined as: Submission to or allowing each lower government to regulate and manage certain government affairs in full both regarding the principles and how to carry them out (authority to regulate and manage the principles, and how to carry them out).

The division of government units (autonomous regions) in a hierarchical relationship is a logical consequence of unitary state form, and on the other hand it also brings consequences to relationship of authority through coordination and supervision, in addition to guidance and cooperation (Elcaputera, 2020). The consequence of vertical distribution by power to regional government units (as autonomous regions) in the context of decentralization is also distribution of income, which is received by regions as regional income.

In Article 1 point 9 of Law No.23/2014 on Regional Government, it can be interpreted that deconcentration reaches the district /city level in its position as an administrative area to carry out general government affairs as a representative of the central government. It can be interpreted that regulation of Deconcentration principle makes Governor and Regent/Mayor function not only as regional heads but also as regional heads (Dkk, 2016).

The Deconcentration principle based on Regional Government Law emphasizes that it is clearly a delegation of government authority. So the dimension of meaning created is the functional delegation of authority from top officials or from central government to officials in the regions.

The status of the governor's position as head of the regional government has been regulated in Article 59 paragraphs 1 and 2 of Law No. 23 of 2014 concerning Regional Government where the head of region in question is the provincial region called governor, while for regency area it is called the regent and city area is called mayor.

Basically, the authority of the regional head is regulated in article 65, including leading the implementation of government affairs which are the authority of the region based on the provisions of laws and regulations, compiling and submitting draft regional regulations on RPJPD and draft regional regulations on RPJMD to DPRD for discussion with DPRD and compiling and determining RKPD. In general, the duties and functions of regional heads, namely governors, regents / mayors, are almost the same, it's just that scope of work space and place of accountability are different.

Conclusion

The governor has a dual role as head of the province and head of the region (representative of the central government). Law 23/2014 on Local Government tends to emphasize the role of governor as a representative the government through of administration

government based on principle of deconcentration. The task of maintaining integrity of government system is a goal. The strengthening of governor's role as the government's representative through several forms of governor interference in implementation government in district/city aims to maintain the balance and harmony of government relations. The central government must prevent country from disintegration by controlling all forms of local government activities. The central government is fully responsible for implementation of government both at center and in the provinces and districts / cities.

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