



Reconstruction of regulation on requirements for formation and expansion of new province in Indonesia based on justice value

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Abstract

In order to realize the formation and expansion of regions, especially in provincial areas, reconstruction needs to be done. After being reconstructed Article 5 paragraph (1) Government Regulation Number 78 Year 2007 concerning Procedures for Formation, Elimination and Merger of Regions. Administrative requirements for the formation of provincial regions as referred to in Article 4 paragraph (1) include: a. The aspirations of proposals from the community of each region which will become the scope of the prospective new provincial area; b. Decision of each regency / city DPRD which will be the scope of the area of the prospective province on the approval of the formation of provincial candidates based on the results of the Plenary Meeting; c. Decisions of regents / mayors are determined by joint decisions of regents / mayors of the province's prospective territories regarding approval for the formation of provincial candidates; d. Decision of the parent province DPRD regarding approval of the formation of provincial candidates based on the results of the Plenary Meeting; e. Decision of the governor regarding approval for the formation of provincial candidates; and f. Minister's recommendation.

Keywords: rekonstruksi regulasi, syarat pembentukan dan pemekaran provinsi

1. Introduction

That the demands of the community from various circles will be of importance and the immediate realization of regional autonomy, as part of the widespread democratization since the Reformation Era, is not only due to the influence of global trends ^[1], but even more fundamental because of the demands for change to the reality of the national system established by the New Order developmentalist regime which is based on the political system, in addition to the economic system and the legal system. The New Order political system is centralistic, authoritarian, repressive, non-participatory, not aspirational, relies on its dynamics on the government bureaucracy and not on the political power that lives in society, as well as the dominance of executive power over the legislative body ^[2]. The New Order political system developed by the New Order regime aims to create stability in supporting

economic development, inspired by a spirit of unity and unity, and based on a centralized pattern of power, everything including culture must be uniformed, lack tolerance for diversity, without a deep understanding about the objective conditions of Indonesian society as a pluralistic society both horizontal and vertical pluralism ^[3]. As stated at the beginning of this paper, the demand for the realization of regional autonomy as part of democracy in the country, and this problem is a "regional problem", as a result of a centralized, authoritarian and repressive political system. This tendency, not only happens in Indonesia, but has previously become a global phenomenon. Since the last decade of the 20th century, the global geopolitical stage has been characterized by "regional problems", which ended with national disintegration as in the former Soviet Union, Yugoslavia and Czechoslovakia ^[4]. Law No. 32 of 2004 concerning Regional Government is a revision of Law No. 22 of 1999 concerning Regional Government, and Law No.33 of 2004 concerning Financial Balance between the Central Government and Regional Governments as a revision of Law No. 25 of 1999. This study focuses on Government Regulation (PP) No. 129 of 2000 concerning the Requirements for the Establishment and Criteria for the Expansion, Elimination and Merger of Regions in relation to the possibility of the formation of "Tapanuli Province". If PP No. 129/2000 has not been

¹See : Samuel P Huntington, *Gelombang Demokratisasi Ketiga*, cet. kedua, (Jakarta: Grafiti, 1997), p. 34

²See : Herbert Feith · *Repressive - Developmentalist Regime in Asia* , unpublished paper, 1978; HJ Benda, "The pattern of Reform in the Closing Years of Dutch Rule in Indonesia", in *Journal of Asian Studies*, 1966; Heather Sutherland, *The Making of a Bureaucratic Elite*, Singapore Heinemann Education Books (Asia) Ltd, 1979, Ruth T MeVey , "The Beamtenstaat in Indonesia", in Benedict Anderson and Andrey Kalim (eds), *Interpreting Indonesia Politics Thirteen Contribution in Debate*, Ithaca; Cornell University Press, 1982; Fred Riggs, *Thailand; Modernization of Bureaucratic Polity*, Honolulu; East-West Center press, 1960; Karl, D.Jackson and Lucien W Pye , (ed), *Political Power and Communication in Indonesia*, Berkeley; California University Pree . 1978; Dwight Y. Kong, "Indonesia New Order as a Bureaucratic Polity, a Neopatrimonial Regime or a Bureaucratic Authoritarian Regime; Differences What Does it make, unpublished paper nd ; also Widi Krestawan and Frans M Parera , " The growing desire to participate and the weakening of the Power of Representation ", in *Towards a Society New Indonesia: Anticipation of the challenges of the XXI Century*, (Jakarta, Kompas and PT Gramedia , 1990)

³ Edy S. Wirabumi dan Basuki Yusuf Iskandar, *Peranan Nilai-nilai Tradisional dalam Kehidupan Modern dan Itegritas Bangsa,Laporan Simposium Nasional, Kementerian Perencanaan Pembangunan Nasional/BAPPENAS-* (Jakarta: Forum Komunisasi dan Informasi Karaton Nusantara, 2003), p.99-102

⁴ F. Stilwell, *Understanding Cities and Regions : Spatial Political Economy*. (Leichardt: Pluto Press, 1992), p. 16

replaced by new government regulations, the regulation in question still applies.

Suppose a new PP is issued replacing PP No. 129/2000, the results of this study will be a study of legal history in accordance with the focus and object studied. For this study, the issuance of PP No. 32/2004 and PP No.33 / 2004 intend, can increase the enrichment of study results especially in the macro perspective. As stated in Article 2 of Government Regulation 129/2000, Regional Expansion aims to improve community welfare through: a. Improving services to the community; b. Accelerating the growth of democratic life; c. Accelerating the implementation of regional economic development; d. Acceleration of Regional Potential Management; e. Enhancing security and order f. Enhancing harmonious relations between the center and the regions. As seen in Article 13 Government Regulation (PP) RI No. 129 of 2000, that regional expansion can be carried out based on the following criteria: a. Economic capability; b. Regional Potential; c. Socio-cultural; d. Social politics; e. Total population; f. Area of Region; g. Other considerations that allow the implementation of regional autonomy. The seven criteria are complemented by 19 indicators and 43 sub-indicators (see; Annex (PP) RI No. 129 Th 2000, Date 13 December 2000). The seven criteria, indicators and sub-indicators are the terms of reference (TOR) for carry out preliminary research on implementation by the Regional Government or other designated institution / body, as one of the points for submitting the proposal for Regional Formation or Expansion. In addition, as stated in the Explanation of PP No. 129/2000, in part I. General, among others, it was stated that: "... The formation of a region also implies that the Region must also implement regional autonomy according to the conditions, potential, needs and capabilities of the region concerned. The establishment of a New Autonomous Region may not result in the parent region being unable to carry out its Regional Autonomy anymore. The legal problem that arises is how the reconstruction of the regulation of the requirements for formation and expansion as a new province.

Method of Research

Research is a research qualitative , though studies have tended as a study rooted , but the nature of holistic still accompanies the process of research. Research is moved from the symptoms of the micro to the macro, which subsequently also from the macro to mikro. thus patterns of thinking in research this is inductive-deductive, which subsequently can also be deductive-inductive .

This research belongs to the category of sociolegal *research* , that is, an alternative approach that tests doctrinal studies of law. The word '*socio*' in *sociolegal* represents the relationship between the context in which the law is located (*an interface with a context within which law exists*)^[5].

Discussion

According to Rasyid^[6], one way to bring the government closer to the people is to implement a decentralization policy, meanwhile Riwu Kaho^[7] stated that "as a result of

the implementation of decentralization there arose an autonomous region". According to Law Number 32 of 2004, that an autonomous region is a "legal community unit that has certain regional boundaries, which has the authority to regulate and manage the interests of the local community according to the initiatives in the Unitary State of the Republic of Indonesia. Ndraha^[8] states that there are five regional positions, namely: (1) as a legal community, (2) as an economic business unit, (3) as a cultural environment, (4) as an environmental unit, and (5) as a political subsystem. Ramses^[9] said that "the division of regions or precisely dividing an autonomous region into several regions, aims to bring closer and optimize government services to the community, accelerate the growth of development in order to improve the welfare of the people in the area. Community participation will increase due to more open access and more effective supervision because the area of supervision is relatively narrow".

According to Kristiadi^[10] that the benefits of lean organizations include: (1) service to the community will be better because of shorter procedures and faster decision making, (2) communication between management levels becomes smoother, and (3) coordination will be smoother. But in addition to the three reasons above, based on the experience and observations of the authors in each providing consultations in the formation of autonomous regions, almost all newly formed autonomous regions create many new organizations that are over weight (fat organizations) so it is suggested that if later Tapanuli Province candidates need to be created with a good commitment from village / sub-district, sub-district, district and provincial levels to adopt a lean paradigm of functionally rich structures so that the 100% DAU (General Allocation Fund) received by candidates for the Tapanuli province will not only be used up for civil service expenditure but will further optimize development spending. Based on the opinion above, the main dimension that explains the effectiveness of regional expansion is supervision, communication and coordination, all of which also determine the level of community service. The farther the population from the center of government, the smaller the touch of service. The demand for services is increasingly demanding that government centers expand their service areas. However, service centers have limited (radius) outreach, so other service centers are needed that can meet community service needs. Thus, the expansion of the region means adding government centers so that services can reach previously remote settlements and government services can be evenly touched throughout the community which will ultimately improve the welfare of the community. There has not been any firmness from all parties related to the proposed regional expansion based on regulations that have been available so far. To date there have been no strict sanctions imposed on DOB that have failed to carry out the activities promised in the expansion proposal. Sanctions such as the incorporation of new autonomous regions into parent regions of pemekaran need to be applied to reduce the proliferation of proposed expansion. In addition, limiting DOB should be considered by referring to the amended

⁵Sulistyowati Irianto dan Shidarta (ed), *Metode Penelitian Hukum, Konstelasi dan Refleksi*, (Jakarta: Yayasan Obor Indonesia, 2009), p. 175

⁶Rasyid dalam Sadu Wasistiono, *Kapita Selekta Penyelenggaraan Pemerintahan Daerah*, Edisi Ketiga, (Bandung: Penerbit Fokusmedia, 2003), p. 29

⁷*Ibid*

⁸*Ibid*

⁹ Andi Ramses, *Pemilihan Kepala Daerah Langsung*, (Jakarta: Jurnal Ilmu Pemerintahan, 2003), p. 93

¹⁰ Kristiadi dalam J. Kaloh, *Mencari Bentuk Otonomi Daerah*, (Jakarta: Rineka Cipta, 2005), p. 64

regulation, namely Government Regulation No. 78 of 2007. However, PP 78 of 2007 apparently has not been able to fulfill all aspects contained in the criteria and requirements of the proposed DOB. The current discourse is to revise PP 78 of 2007 more comprehensively and expressly in its requirements. In addition to the Government Regulation that needs to be revised, amendments to Law 32 of 2004 concerning Regional Government and Law 33 of 2004 concerning Fiscal Balance between the Central Government and Regional Governments are also currently being carried out ^[11].

The requirements and criteria stated in Government Regulation 129 of 2000 include: (i) regional capacity, (ii) regional potential, (iii) social culture, (iv) social politics, (v) population and area, and (vi) other considerations that enable the implementation of Regional Autonomy. Regional potential will be measured by the availability of (i) financial institutions, (ii) economic facilities, (iii) educational facilities, (iv) health facilities, (v) transportation and communication facilities, (vi) tourism facilities and (vii) employment. The same is true of social culture which is only measured by the availability of (i) places of worship, (ii) places / activities of social and cultural institutions and (iii) sports facilities. Likewise, socio-political can be measured from (i) community participation in politics and (ii) community organizations ^[12].

The government is aware that the requirements stipulated in PP 129 of 2000 still have weaknesses. Therefore, in 2007 the Government made improvements to the PP with PP 78 in 2007. The additional conditions set included (i) regions that could be expanded after reaching the minimum age of 10 years for the administration of the province and seven years for the regencies and cities, (ii) the formation of provincial / district / city regions in the form of district / city division and the merging of several contiguous sub-districts in different provincial / district / city areas must meet regional administrative, technical and physical requirements ^[13].

The results of evaluations carried out by Bappenas, UNDP, LAN, and the Ministry of Home Affairs stated that more than 80 percent of the region resulting from the division had not been able to show an increase in local development so that the implementation of regional expansion had not yet reached the goal of regional autonomy. Bappenas Study (2008), DOB as a sample study shows that initially the condition of the regions resulting from the expansion, such as the regional economy, regional finance, community services and local government apparatus, is still worse than the parent region of expansion. Over time up to five years after pemekaran, in general the performance indicators mentioned earlier are still below the performance of the Expanded region ^[14].

The newly created regions have not been able to utilize the transition period to improve their performance. This can be seen from the slow economic growth in new autonomous regions, the economic potential still depends on the agricultural sector, the number of poor people is still concentrated in new autonomous regions and ultimately has

not been able to catch up with the parent regions of the division. Limited natural resources (SDA) also adds to the problem of the area resulting from the division.

Almost all parent regions object to regions rich in natural resources entering DOB. Capital selection is often a convoluted issue for historical reasons and pride, but it does not take into account that the DOB capital is the center of the economy. During 2001-2005, the performance of DOB public services was still relatively low and tended to decline compared to the parent of expanded regions. This is due to (i) not being able to use optimally the available funds, (ii) the minimal number of DOB personnel and government officials to serve the community, (iii) the minimal number of education and health facilities, (iv) the low utilization of community services provided by the government DOB, and (v) poor quality of government officials in DOB. Human resources that have high quality are still concentrated in the parent region of expansion ^[15].

The EDOHP results (2011) in general show that the initial purpose of establishing DOB is not in accordance with reality. DOB performance is still far from the fire compared to before the division. The new things done by the DOB government are (i) institutions dealing with gender equality, (ii) publications on regional budgets and procurement of goods and services, and (iii) publications on accountability for implementing regional budgets. Whereas things that have not yet been difficult to achieve by DOB include (i) the availability of adequate road infrastructure in accordance with the length of the road per area, (ii) the percentage of the population that has a Citizen ID ^[16].

In PP 78 of 2007 it was not explained about the transition period of the region resulting from the expansion of the length of time since it was determined by law until the DOB was actually able to carry out public service activities. This is the reason why many DOBs ultimately fail to improve their society. Some opinions from academics and bureaucrats suggest that regions which fulfill the requirements to become DOBs are not necessarily stipulated in the laws on regional formation. The DOB should be given a transition period or a preparation period of several years, namely 3-5 years under the name of the administrative region. The transition area is expected to be able to solve the problems that arise such as the placement of the capital in accordance with the mapping, disputed boundaries and the transfer of assets from the parent region of expansion.

Conflict boundaries between the divided regions and the parent regions of division often occur. As a result of the mild requirements for regional expansion proposals, namely the assertion of territorial boundaries, it is often ruled out and not a major requirement. This can be seen from the determination of DOB not accompanied by (i) division of DOB assets and the parent regions of expansion and (ii) affirmation of the territorial boundaries between the DOB and the pemekaran parent regions. The problem of territorial boundaries arises and is difficult to solve if the area has natural resource potential. The parent of expanded region and DOB feel entitled to natural resources located in the border area ^[17].

Proposed regional expansion should be accompanied by DOB assets and regional boundaries. The regional criteria

¹¹ Agunan P. Samosir, *Pemekaran Daerah: Kebutuhan atau Euforia Demokrasi? Mengurai Regulasi Pemekaran*, Kajian PKAPBN Mengurai Regulasi Pemekaran, 2013, p. 2

¹²*Ibid*

¹³*Ibid*, p. 3

¹⁴*Ibid*, p. 4

¹⁵*Ibid*

¹⁶*Ibid*

¹⁷*Ibid*, p. 7

prepared as DOB candidates have already taken into account the criteria and indicators set out in PP 78 of 2007. Preferably, Article 33, namely the limitation of the assets of the parent region of division and DOB up to Article 35, which is the boundary of the DOB region and the expansion of the parent region is an inseparable requirement when it is submitted to the President in Article 17. Clearly clear requirements will open the way for expansion. Other requirements that need to be added to the DOB proposal are (i) the poverty level of the DOB, (ii) illiteracy, and (iii) the amount of unemployment. This is needed for DOB candidates to be better equipped to achieve the goals set in the DOB proposal. In addition, the success of DOB will be more easily measured and evaluated^[18].

Criteria and requirements for DOB candidates need to be improved and revised so that DOB candidates do not experience failure in the future. The performance and benefits of DOB have been evaluated since 2008 to date, but the results cannot be followed up because there are still many parties who object. Therefore, it is necessary to add conditions that can be used as indicators to improve people's welfare and public services for prospective DOBs. These requirements include: indicators of poverty, the number of unemployed people, the boundaries of the new autonomous regions with the parent regions of expansion and the limits of the assets of the new autonomous regions with the parent regions. All requirements need to be verified in the field to match the data in the proposal with the real conditions in the field.

The Central Government discusses a moratorium on regional expansion policies based on the results of evaluations conducted so far namely high social costs, political resistance, and the impact of the budget due to the DOB. However, the House of Representatives and the Regional Representatives Council (DPD) continue to open proposals for regional expansion. This can be seen from the DPR's approval of the 2012 DOB, which is North Kalimantan Province and four new districts namely (i) Pangandaran Regency, (ii) Pesisir Barat Regency, (iii) South Manokwari Regency, and (iv) Arfak Mountains Regency. The granting of DOB to the Province of North Kalimantan is thought to have a negative impact, namely the exploitation of mining products to increase local revenue. However, large-scale excavation will damage the environmental conditions around North Kalimantan. If left unchecked like East Kalimantan, North Kalimantan will face continuous flooding. In addition, the ratio of total population compared to the area is not in accordance with reality^[19].

In order to realize the formation and expansion of regions, especially provincial areas, it is necessary to carry out reconstruction of Article 5 paragraph (1) of Government Regulation No. 78/2007 concerning Procedures for Formation, Elimination and Merger of Regions related to the requirements for the formation and expansion of provincial areas, namely :

1. Before reconstruction

Article 5 paragraph (1) Government Regulation Number 78 of 2007 concerning Procedures for Formation, Abolition and Merger of Regions

Administrative requirements for the formation of provincial regions as referred to in Article 4 paragraph (1) include:

- a. Decision of each regency / city DPRD which will be the scope of the area of the prospective province on the approval of the formation of provincial candidates based on the results of the Plenary Meeting;
- b. Decisions of regents / mayors are determined by joint decisions of regents / mayors of the province's prospective territories regarding approval for the formation of provincial candidates;
- c. Decision of the parent province DPRD regarding approval of the formation of provincial candidates based on the results of the Plenary Meeting;
- d. Decision of the governor regarding approval for the formation of provincial candidates; and
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Article 5 paragraph (1) Government Regulation Number 78 of 2007 concerning Procedures for Formation, Abolition and Merger of Regions

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The increase in regional expansion has become concrete evidence that there are serious problems with regional regulation. Seeing the ballooning of the region of expansion in Indonesia will certainly, lead to high costs and waste, because of the increasing costs incurred to finance the rotation of the bureaucratic wheel. From official letters submitting regional expansion to the DPR and DPD the normative reasons proposed are: First, the aspirations of the community in the administration of regional government are more easily channeled. With the expansion of the territory, the scope of the new government will be closer to the people, so that the service will be closer, which in turn will lead to the aspirations of the people in the administration of regional government.

Second, the equal distribution of regional government expenditure will divide regional government into two, so that some regions will be divided into two governments. The government budget allocation will certainly be divided into these two governments. So it is expected that the distribution of regional government spending can be better, so that the people sheltered by the parent regional government and the regional government resulting from the division become more prosperous, because the budget

¹⁸Ibid

¹⁹Ibid

allocation has been evenly distributed.

Third is improving the management of government services and regional development. One of the main objectives of regional expansion is to bring government closer to the community, so that government management is expected to run more effectively and efficiently, better service to the community and regional development can run smoothly.

Fourth, routine expenditure and development are more evenly distributed, regional expansion will have a direct impact on the separation of the parent regional government and the resulting regional government. With this condition it is expected that there will be an even distribution between routine spending and development carried out by the two regional governments so that in turn the distribution of the budget is more equitable between one region and another.

Conclusion

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