

## THE DIRECTION OF THE NATIONAL AND REGIONAL RELATION'S DEVELOPMENT ACCORDING TO THE INDONESIA 1945 CONSTITUTION

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**Abstract** - *The enactment of Law Number 23 of 2014 concerning Regional Government to replace Law 32 of 2004 is no longer following the development of the state administration, and demands for the implementation of regional government. The contents of the Law on Regional Government brought many changes in the administration of government. One of these changes is the division of government authority affairs between the national government and regional governments showing significant differences, even though the basis or source of its formation is the same, namely Article 18 of the 1945 Constitution. The regional government laws above contradict each other even though they are all made based on the 1945 Constitution. This condition shows that the politics of the regional autonomy legislation. The politics of the regional autonomy legislation tends to harm regional interests, and there needs to be a more substantial and more detailed constitutional basis in formulating national and regional government's relations.*

**Keywords:** *regional government; authority affairs; national and regional relational; legislation politics.*

### INTRODUCTION

Reformation has ushered in changes to the 1945 Constitution, including changes in concepts related to regional autonomy.<sup>1</sup> According to Bagir Manan: "...From the various discussions that were held, it seemed that there was very little attention to reforming the provisions of regional autonomy or regional government. Most of the discourses were more interested in discussing state organizational apparatus at the national level such as the President, the People's Consultative Assembly, the House of Representatives, and so on."

Bagir Manan then added, "Regional autonomy or regional government should receive no less important attention in the renewal of the 1945 Constitution. The constitutional history of the Republic of Indonesia has from the beginning placed regional autonomy as one of the important joints in the administration of state government. Regional autonomy is held not only to ensure the efficiency of government administration. It's also not just to accommodate the reality of a vast country, large population, and islands, Regional autonomy is the basis for expanding the implementation of democracy and an instrument for realizing public welfare".<sup>2</sup>

In the amendments to Article 18 of the 1945 Constitution, both the structure and substance of the changes are fundamental. Hal inidikemukakan oleh Bagir Manan: "Secara struktur, Pasal 18 (lama) samasekalidigantibaru, yang semulahan yasatupasal into three articles, namely Article 18, Article 18A, Article 18B. This complete replacement, also affects the elucidation. The elucidation that has been "meddling" as a reference in regulating regional government is no longer valid. Thus, the

<sup>1</sup>Leli Tibaka and Rosdian Rosdian, "The Protection of Human Rights in Indonesian Constitutional Law after the Amendment of the 1945 Constitution of the Republic of Indonesia," *Fiat Justisia: Jurnal Ilmu Hukum* 11, no. 3 (February 28, 2017): 266-88, <https://doi.org/10.25041/FIATJUSTISIA.V11N03.1141>.

<sup>2</sup>Bagir Manan, *Menyongsong Fajar Otonomi Daerah*, Pusat Studi Hukum (PSH) Fakultas Hukum UII, Yogyakarta, 2005. pg. 3



only constitutional sources of regional government are Article 18, Article 18 A, and Article 18 B". Substantially, both conceptually and legally, the news articles on regional government in the Constitution contain new paradigms and new political directions for regional government. As stated by Bagir Manan contains several principles, namely:<sup>3</sup>

1. The principle of the regions to regulate and manage their government affairs according to the principles of autonomy and assistance tasks (Article 18 Paragraph (2)).
2. The principle of exercising the broadest possible autonomy (Article 18 Paragraph (5))
3. The principle of regional specificity and diversity (Article 18 A Paragraph (1))
4. The principle of recognizing and respecting customary law community units and their traditional rights (Article 18B Paragraph (2))
5. The principle of recognizing and respecting memorable and special regional governments (Article 18 B Paragraph (1))
6. The principle of representative bodies being directly elected in one general election (Article 18 Paragraph (3))
7. The principle of relations between the national and the regions must be carried out harmoniously and fairly (Article 18A paragraph (2))

Article 18A of the 1945 Constitution is mandated about the relationship of authority between the national government and local governments (province, district and city, or between provinces, districts and cities) regulated by law by taking into account the specificity and diversity of the region.<sup>4</sup>In addition, financial relations, public services, utilization of natural resources, and other natural resources between the national government and local governments are regulated and implemented fairly and in harmony based on the law.

To further implement the constitutional basis, government units under the national government, namely the provinces and districts/cities, have obligatory and optional functions.<sup>5</sup>Provinces have mandatory and optional affairs.<sup>6</sup>In addition, the authority of the national government is also stipulated to be a government affair which includes:<sup>7</sup>a) foreign policy; b) defense; c) security; d) justification; e) national monetary and fiscal; and f) religion..

After enacting Law 32 of 2004 and then amended by Law 23 of 2014 concerning Regional Government, the definition of regional government in Indonesia has changed.<sup>8</sup>These changes occurred in line with the enactment of the legal basis for administering regional government because, as it is known, the legal basis for administering regional government in Indonesia has changed according to the development and journey of the government itself.

The implementation of regional government experiences ups and downs marked by various autonomy problems and institutional working relationships between the national and the regions that lack synergy. Law No. 23 of 2014 concerning the Regional Government has not been able to resolve these problems but instead adds to the complexity of the relationship between the national and regional authorities. This is not in line with the expectations of making laws and regulations, namely, creating order and legitimacy that considers competence.<sup>9</sup>

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<sup>3</sup>*Ibid.*, pg. 8

<sup>4</sup>I Putu Angga Feriyana, Anis Mashdurohatun, and Arpangi Arpangi, "Development Of The Criminal Justice System: Initiating LPSK As A Criminal Justice Subsystem In Indonesia," *Jurnal Daulat Hukum* 3, no. 1 (April 21, 2020): 123-30, <https://doi.org/10.30659/JDH.V3I1.8386>.

<sup>5</sup>Article 13 paragraphs (1) and (2) and Article 14 Paragraphs (1) and (2) of Law Number 32 of 2004.

<sup>6</sup>Article 13 (1) and (2) of Law Number 32 Year 2004

<sup>7</sup>Article 10 Paragraph (3) Law Number 32 Year 2004

<sup>8</sup>Erna Dewi et al., "Perlindungan Hukum Terhadap Anak Sebagai Saksi Dalam Perkara Tindak Pidana Pemerkosaan," *Ius Poenale* 1, no. 1 (September 10, 2020): 27-38, <https://doi.org/10.25041/IP.V1I1.2042>.

<sup>9</sup>Sabian Utsnab, *Menuju Penegakan Hukum Responsif*, Yogyakarta: Pustaka Pelajar, 2008, pg 37.



## DISCUSSIONS

Law No. 32 of 2004 concerning Regional Government states that Regional Government is: “The administration of government affairs by the regional government and DPRD according to the principle of autonomy and assistance tasks with the principle of autonomy as wide as possible in the system and principles of the Unitary State of the Republic of Indonesia as referred to in the 1945 Constitution, regional government is the governor, regent or mayor, and regional apparatus as an element of regional government administration”.<sup>10</sup>

Meanwhile, according to Law No. 23 of 2014 concerning Regional Government, the definition of Regional Government is government administration by the regional government and the Regional People's Representative Council according to the principle of autonomy and co-administration to the principles of the Unitary State of the Republic of Indonesia as referred to in the 1945 Constitution. The Regional Government leads the implementation of government affairs which are the authority of the autonomous region.<sup>11</sup>

In Law No. 23 of 2014, which has replaced Law 32 of 2004 concerning Regional Government, in Law 23 of 2014, regional governments' government affairs are divided into two types. Article 9 regulates: (1) Government affairs consist of absolute government affairs, concurrent government affairs, and general government affairs; (2) Absolute government affairs as referred to in paragraph (1) are government affairs that are entirely the authority of the National Government; (3) Concurrent government affairs as referred to in paragraph (1) are government affairs which are divided between the National Government and the provincial and district/city-regions; (4) Concurrent government affairs that are handed over to the regions become the basis for the implementation of Regional Autonomy; (5) General government affairs as referred to in paragraph (1) are government affairs which are under the authority of the president as head of government. Article 10 paragraph (1) states that absolute government affairs consist of foreign policy, defence and security, juridical, monetary, fiscal and religious.<sup>12</sup> However, the National Government may delegate its authority to vertical agencies and national government representatives in the regions, namely governors, based on deconcentration. Thus, absolute government affairs are indeed the authority of the National Government and are not related to city and district governments that prioritize the principle of decentralization and are not representatives of the national government.<sup>13</sup>

Based on the explanations above, the relationship between the national and the regions is widely discussed because it causes a spanning of interest between the two government units.<sup>14</sup> First, in a unitary state, the national government's efforts to control various government affairs are evident.<sup>15</sup> A reason to forward is that maintaining the unity and integrity of the state has become one of the reasons for the national government to dominate the implementation of government affairs consistently. This affair comes to the exclusion of the roles and rights of local governments to be directly and independently involved in managing and fighting for the interests of their regions.

In the relationship between the national and the regions, at least four factors determine the relationship between the national and the regions, namely the relationship of authority, financial

<sup>10</sup>Law No. 32 of 2004 concerning Regional Government

<sup>11</sup>Law No. 23 of 2014 concerning Regional Government.

<sup>12</sup>Shandi Patria Airlangga, “Hakikat Penguasa Dalam Negara Hukum Demokratis,” *Cepalo* 3, no. 1 (September 17, 2019): 1-10, <https://doi.org/10.25041/CEPALO.V3NO1.1783>.

<sup>13</sup> Harry Kusuma, Review UU No 23 Tahun 2014 Tentang Pemerintahan Daerah, accessed on 12-03-2020.

<sup>14</sup>Leonardo Adiguna, “The Prosecutor’s Authority to Conduct a Criminal Investigation Based on The Government Administration Law,” *Administrative and Environmental Law Review* 2, no. 1 (May 21, 2021): 11-20, <https://doi.org/10.25041/AELR.V2I1.2214>.

<sup>15</sup>RiskiFebriaNurita., *Hubungan Pusat dan Daerah Di Era Otonomi Daerah*, [Rhttps://id.scribd.com/doc/252517427/Hubungan-antara-Pemerintah-Pusat-dan-Daerah-txt](https://id.scribd.com/doc/252517427/Hubungan-antara-Pemerintah-Pusat-dan-Daerah-txt). Accessed on 12 Mach 2020.



relations, supervisory relationships, and relationships arising from the organizational structure of government in the regions.<sup>16</sup> Authority comes from the word "authority", which is legal language is not the same as power (*macht*). Power only describes the right to do or not to do.<sup>17</sup> Moreover, power is the ability to carry out the will. In law, power serves as an authority and rights and obligations (*rechtenenpflichten*).

The basis for the birth of the regional government Law No. 23 of 2014 is to correct problems in local government administration. Regarding the revised content, Law no. 32 of 2004 covers 22 strategic issues.<sup>18</sup> From these problems, the government realizes that many shortcomings need to be evaluated in the Regional Government Law No. 32 of 2004, which often has multiple interpretations between stakeholders, becoming one of the sources of conflict in the government structure.<sup>19</sup> One of them is related to the authority and division of affairs, the lack of clarity between the composition of the government, which is still a severe problem faced in the implementation of decentralization.

With the enactment of Law Number 23 of 2014 concerning Regional Government to replace Law 32 of 2004, the law no longer focuses on the state administration's development, yet demands for regional government's implementation.<sup>20</sup> The contents of the Law on Regional Government brought many changes in the administration of government. One of them is the division of government affairs between the national government and regional governments. The background of the need to enact Law No. 23 of 2014, among others: (a) Ensure the effectiveness of local government administration to improve people's welfare; (b) Organizing local government management that is more responsive, accountable, transparent, and efficient; (c) Arranging the balance of responsibilities between levels/compositions of government in carrying out government affairs; (d) Organizing regional formation to be more selective following regional conditions and capabilities; and (e) Organizing national and regional relations within the system of the Unitary State of the Republic of Indonesia.<sup>21</sup>

Law Number 23 of 2014 concerning Regional Government which was promulgated on October 2, 2014, changed the face of the relationship between the National Government and Regional Governments.<sup>22</sup> By law, Law Number 32 of 2004 is declared no longer valid, and in the future, all changes and implementing regulations stipulated in Law Number 23 of 2014 must be enacted. Regional autonomy that has been carried out so far has only been understood as a transfer of obligations from the national government to local governments for the community. The vital substance of regional autonomy is the political and economic delegation of authority from the national to the regions so that development and economic growth take place fairly and equitably in

<sup>16</sup>Yogi Prasetyo, "Local Autonomy As a Form of Constitutional Reform In Aspirational Governance," *Pancasila and Law Review* 2, no. 1 (April 29, 2021): 49-60, <https://doi.org/10.25041/PLR.V2I1.2248>.

<sup>17</sup>Hadi Prabowo, "Influence of Implementation of Development and Supervision Policy to the Effectiveness of Regional Autonomy in Indonesia," *Jurnal Bina Praja: Journal of Home Affairs Governance* 11, no. 1 (May 31, 2019): 63-73, <https://doi.org/10.21787/JBP.11.2019.63-73>.

<sup>18</sup>Academic Paper on the Draft Law on Regional Government made by the Ministry of Home Affairs in 2011, pg. 54.

<sup>19</sup>Cynthia Hadita, "Regional Autonomy Political Politics Of Regional Liability Reports To Regional Representatives In The Implementation Of Local Government," *NOMOI Law Review* 1, no. 1 (July 2, 2020): 89-100, <https://doi.org/10.30596/NOMOI.V1I1.4645>.

<sup>20</sup>Sondang S Erwin, "Local Government Challenges' to Implement Public Private Partnership Projects in Indonesia," *HOLISTIC* 8 (2017): 83-96, <https://doi.org/10.1515/hjbpa-2017-0026>.

<sup>21</sup>Andi Yakub et al., "Urgency of Political Decentralization and Regional Autonomy in Indonesia: Local Perspectives," *Journal of International Studies* 14 (December 31, 2018): 141-50, <https://doi.org/10.32890/JIS2018.14.9>.

<sup>22</sup>Nurul Listiyani et al., "Political Law on the Environment: The Authority of the Government and Local Government to File Litigation in Law Number 32 Year 2009 on Environmental Protection and Management," *Resources* 2018, Vol. 7, Page 77 7, no. 4 (November 23, 2018): 77, <https://doi.org/10.3390/RESOURCES7040077>.



the regions.<sup>23</sup> Therefore, the concept of regional autonomy within the Republic of Indonesia is emphasized more sharply in Law Number 23 of 2014.<sup>24</sup> Other fundamental changes that do not exist in Law Number 32 of 2004 are the stipulation of Mandatory Regional Affairs and the pattern of relations between the National, Provincial, and Regency/City Governments. These regulations are directly included in the Attachment of Law No. 23 of 2014, not made into a Government Regulation as Law No. 32 of 2004 (Government Regulation Number 38 of 2007), which regulates the relationship between national, provincial and regional governments.<sup>25</sup>

The classification of government affairs consists of 3 affairs, namely absolute government affairs, concurrent government affairs and general government affairs. Absolute government affairs are government affairs that are entirely under the authority of the national government. Concurrent government affairs are government affairs that are divided between the national and provincial governments and districts/cities.<sup>26</sup> General government affairs are government affairs that are under the authority of the president as head of government.

This division of 3 affairs creates a new relationship between the national government and local governments, especially its implementation. There is an obligatory priority scale of government affairs. The national government controls the division of authority affairs by applying norms, standards, procedures, and criteria in administering government affairs. The national government carries out guidance and supervision of the administration of government affairs, which are the authority of the regions.<sup>27</sup> In the national and regions relation's pattern after the reformation from 1999 to the present, it is regulated in 2 (two) laws, namely:

1. Law no. 32 of 2004 concerning Regional Government and its amendments
2. Law no. 23 of 2014 concerning Regional Government.

The relationship between the national and the regions after the reforms regulated in 2 (two) laws shows significant differences, even though the basis or source of its formation is the same, namely Article 18 of the 1945 Constitution. The regional government laws above contradict each other even though they are all made based on the 1945 Constitution.<sup>28</sup> This condition shows the politics of regional autonomy (particularly the relationship between the national and the regions looks zigzag. Such an arrangement shows that the tug-of-war relationship gives rise to what Bagir Manan calls the spanning between the national government and the Regional Government.<sup>29</sup> Bagir Manan thinks that the politics of regional autonomy tends to harm regional interests, and there needs to be a stronger and more detailed constitutional basis.<sup>30</sup> In the scope of statutory politics, according to Sri Soemantri, politics is defined as policy and statutory politics is defined as policies relating to laws and regulations and what is meant by statutory regulations according to Sri Soemantri is:

<sup>23</sup>Kexia Goutama et al., "The Effectiveness in the Implementation of Mining License Business in Indonesia (Based on Law Number 23 of 2014 Regarding Region Government)," *Advances in Social Science, Education and Humanities Research*, May 20, 2020, 511-18, <https://doi.org/10.2991/ASSEHR.K.200515.087>.

<sup>24</sup>Tri Wahyuningsih, Mohammad Bugis, and Saidna Zulfiqar Bin-Tahir, "Analysis of the Inequality on Inter-Regional and Inter-Time Income Distribution in Indonesia," *The Journal of Social Sciences Research* 5, no. 1 (2019): 1-8, <https://ideas.repec.org/a/arp/tjssrr/2019p1-8.html>.

<sup>25</sup>[http:// birokrasi.kompasiana.com/2014/12/24/enam-perda-urusanwajib-pemerintah-daerah-698638.html](http://birokrasi.kompasiana.com/2014/12/24/enam-perda-urusanwajib-pemerintah-daerah-698638.html), diakses pada tanggal 08 Februari 2020

<sup>26</sup>Muhammad Risnain, "The Concept of the Archipelagic Province and Archipelagic State in the Perspective of National and International Law," *Lampung Journal of International Law* 3, no. 2 (November 1, 2021): 73-84, <https://doi.org/10.25041/LAJIL.V3I2.2367>.

<sup>27</sup>Septi Nur Wijayanti, *Hubungan Antara Pusat dan Daerah DalamRangka Negara KesatuanRepublik Indonesia Berdasarkan UU No. 23 Tahun 2014*, Jurnal Media Hukum, 2016. Pg 187 -188.

<sup>28</sup>M. Gian Tanyo, "Prevention of Corruption, Collusion and Nepotism in Government Procurement of Goods and Services in Lampung Province," *Corruptio* 1, no. 2 (November 10, 2020): 117-28, <https://doi.org/10.25041/CORRUPTIO.V1I2.2098>.

<sup>29</sup>Bagir Manan, *Hubungan Antara Pusat dan Daerah Menurut UUD 1945*, Pustaka Sinar Harapan, Jakarta, 1994. Pg. 22-23.

<sup>30</sup>*Op.Cit*, pg 5.





1. The form and order of laws and regulations/.
2. Contents and procedures for the preparation and formation of laws and regulations<sup>31</sup>

From the political understanding of legislation conveyed by Sri Soemantri, the researcher will examine from the material aspect of the content of the Regional Government Law. This law regulates the relationship between the national and the regions from time to time, not only different but contradicting each other even though its formation was made based on the 1945 Constitution.<sup>32</sup>The author observes the need to emphasize the national and regions' relation according to the 1945 Constitution relating to the national and the regions' relation in forming laws and regulations. In terms of the legislation, material content, and procedures for the laws and regulations' preparation and establishment, regional affairs and national affairs aligned with Article 18 of the 1945 Constitution and the principles of autonomy.

### CONCLUSION

After the reformation from 1999 to the present, the national and the regions relation's pattern is regulated in 2 (two) laws, namely: Law no. 32 of 2004 concerning Regional Government and its amendments, and Law no. 23 of 2014 concerning Regional Government. The relationship between the national and the regions after the reforms regulated in 2 (two laws) shows significant differences, even though the basis or source of its formation is the same, namely Article 18 of the 1945 Constitution. The regional government laws above contradict each other even though they are made based on the 1945 Constitution. This condition shows the politics of regional autonomy (especially the relationship between the national and the regions looks zigzag. Such arrangement shows that the attraction of the relationship then gives rise to what Bagir Manan calls spanning between the National Government and the Regional Government. The politics of regional autonomy tend to be detrimental to regional interests, and there needs to be a more robust and more detailed constitutional basis.

### SUGGESTIONS

In the future, in reorganizing the national and the regions relation's pattern as mandated by Article 18 of the 1945 Constitution and principles of autonomy, the political direction is from the content and procedures for the preparation. These relations determine the concept of the division of authority affairs between the national and the regions, which can be divided into 3 categories by considering regional capabilities in terms of Regional Original Revenue or *Pendapatan Asli Daerah*(PAD).

Suppose the capacity of the region is low. In that case, the affairs of regional authority are below average, if the ability of the region is moderate, so is the authority, and if the capacity of the region is high, then the region's authority is seen from the formation of laws and regulations governing the affairs of the region. Regional government authority in local government laws and other mineral and coal laws regulates regional authority affairs.

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<sup>31</sup>Sri Soemantri, *Hukum Tata Negara Indonesia Pemikiran dan Pandangan*, Rosda. Bandung. 2014. Pg.123

<sup>32</sup>Muhammad Suhardi, L Husni, and R. R. Cahyowati, "Financial Central and Regional Relations within the Government Enforcement in Indonesia," *Journal of Liberty and International Affairs* 5, no. 2 (2019): 106-16, <https://www.ceeol.com/search/article-detail?id=800063>.

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