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The Expansion of the Papua Region, Following Law Number 2 of 2021

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Abstract:

This article discusses the ideal policies to be applied to the Papua Special Autonomy issues. The regional expansion policy prepared by the central government is a policy that has the aim of encouraging community participation in the implementation of regional government. The approval of the Papuan People's Council (MRP) and the Papuan House of Representatives (DPRP) in deciding on the expansion of the region to encourage community participation can be ruled out considering that the central government is the party that has the authority to determine the extent to which the expansion policy is implemented or not. Through the normative approach in this study, it was found that the central government's policy was not arbitrary in implementing the determination of the regional expansion policy. There are limitations to the orientation direction of regional expansion, including the readiness of human resources and economic capacity, which must still be considered so that the objectives to be achieved from regional expansion can be implemented properly.

Keywords: regional expansion, the Papua Region, the law.

根据2021年第2号法律，巴布亚地区的扩张

摘要:

本文讨论了适用于巴布亚特别自治问题的理想政策。中央政府制定的区域扩张政策是一项旨在鼓励社区参与实施区域政府的政策。考虑到中央政府是有权决定扩张政策实施与否的一方，可以排除巴布亚人民委员会（MRP）和巴布亚众议院（DPRP）在决定扩大该地区以鼓励社区参与方面的批准。通过本研究中的规范性方法，发现中央政府的政策在实施区域扩张政策的确定方面并不武断。区域扩张的方向存在局限性包括人力资源和经济能力的准备情况仍须加以考虑以便能够适当落实区域扩张所要实现的目标。

关键词: 区域扩张，巴布亚地区，法律。

1. Introduction

In the mandate of the 1945 Constitution, the government's authority has been established which is then divided into two, namely the central government and local government, which is known as the vertical division of power (Marlina, 2018). The idea of dividing the government system into basic ideas of centralized and decentralized approaches is better known by its technical idea, regional autonomy (Habibi, 2016),

which also does not rule out the task of co-administration as stated in Article 18 of the 1945 Constitution of the Republic of Indonesia.

The concept of regional autonomy contained in the law is actually not based solely on the principle or principle of decentralization in a partialist sense. In implementing the regional autonomy policy, it must be guided by the principle of autonomy. The principle of autonomy is the basic principle of implementing

regional government based on regional autonomy. The elaboration of the principle of autonomy in the end gave birth to three main principles or principles that must be implemented by each autonomous region in managing its respective regional households. The three main principles consist of (a) the principle of decentralization; (b) the principle or principle of deconcentration; and (c) the principle of co-administration (Sulaiman, 2017). These three things can be applied by emphasizing the role of the community in supporting good governance activities (Seymour & Turner, 2002).

In this study including regional autonomy in the administration of regional government, regional autonomy provides freedom in developing programs and submitting them to the central government. This will have a very positive impact and can advance the area if the person/agency that composes it has good skills in planning a program and has an analysis of what will happen in the future (Safitri, 2016). Therefore, it is stated in Article 18 of the 1945 Constitution that the system of government administration plays a role in determining the existing government.

This agrees with the implementation of the first regulation related to regional autonomy, where in Law Number 22 of 1999, which has the spirit to provide the widest possible autonomy for regions in running their own households. It can be seen in Article 7 Paragraph 1, which reads, "The authority of the regional government includes authority in all areas of government, except foreign policy, defense and security, judiciary, monetary and fiscal, as well as religion, as well as authorities in other fields." In this article, it is very clear to give trust to all regions so that they can conduct autonomy to develop regions with local wisdom possessed in each region. However, the six reasons the central government used not to take care of it were to avoid problems that would arise when the regions felt they were already established and could no longer be regulated because they felt they were a State within a State (Arifin, 2019).

This is also included in the provisions of Law Number 23 of 2014 concerning Regional Government as amended several times, most recently by Law Number 11 of 2020 concerning Job Creation. The Regional Government Law provides the basis for how regions apply the concept of regional government to be carried out aspirationally in accordance with the interests of the community in the region by prioritizing community participation.

In the context of accelerating development, especially in areas experiencing developmental retardation, there are specificities in the implementation of development, one of which is contained in Law Number 21 of 2001 concerning the Special Autonomy for the Province of Papua. This becomes important as a form of developing an approach to handling Papua that no longer uses a military approach but uses a structured welfare approach within the framework of regional autonomy.

The problems faced later were related to the acceleration of special autonomy that is currently still a problem (Mutaqin, 2013) as outlined in Law Number 21 of 2001 concerning Special Autonomy for the Papua Province which has not been considered capable of solving the problem of access to welfare for the community to obtain. So the government then changed

the previous law into the Law of the Republic of Indonesia Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua.

One of the parameters used in the concept of the Law of the Republic of Indonesia Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for the Papua Province is to expand the territory. Regional expansion is used in accelerating development and achieving prosperity in Papua.

The results of previous studies show that regional expansion is more likely to use a political approach than a technocratic (Muqoyyidin, 2016) approach. This is of course a problem where the political approach tends to be considered negative so far. So that this is what then becomes a further study in the extent to which the approach used in regional expansion is in accordance with the Law of the Republic of Indonesia Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua.

Through a normative study approach, this question wants to be answered objectively in this research later. The support for normative legal research is strengthened mainly by secondary data selected with strict data selection in support of the extent to which this research can be carried out properly. In the final stage, the analysis used to answer the questions is a qualitative analysis with the aim of producing objective thoughts on the ideal policies to be applied to the Papua Special Autonomy issues discussed.

2. Discussion

Decentralization is a concept that is sometimes opposed to democracy or, in other words, is the same form that was born out of democracy (Rahmatunnisa, 2011). This, of course, does not need to be contradicted by considering the complexity of the problems currently faced in a country, how the relationship between decentralization and democracy is perfectly intertwined.

Decentralization itself, as the main concept of regional autonomy as stated above, is a governance mechanism that involves the pattern of relations between national government and local government. In this mechanism, the national government delegates authority to the government and local or local communities to be carried out to improve the welfare of the community. Of course, there are many reasons why it should be chosen as a pattern of relationship between national government and local government. Government and political scientists identify many reasons why decentralization is implemented in a country:

1. In the context of increasing the efficiency and effectiveness of the government administration;
2. As a vehicle for public political education in the region;
3. To maintain the integrity of the unitary state or national integration;
4. To realize democracy in the administration of government starting from the regions;
5. To provide opportunities for the community to form careers in politics and government;
6. As a necessary vehicle to provide opportunities for the community to participate in the process of planning and implementing government;

7. As a necessary means to accelerate development in the region;

8. In order to realize a clean and authoritative government. Of course, there are many more reasons put forward by many government and political scientists in assessing the need for decentralization in the field of government (Taib, 2017).

The expected goal is, of course, critical to be realized as it should be, namely, how welfare can be achieved through the idea of decentralization. The concept of a welfare state can be achieved and is very close to the idea of regional autonomy. The delegation of authority from the regional government to the central government is a form of encouragement from the central government to encourage the active role of regional governments in seeking all actions for the welfare of the community as they should be (Suhartono, 2013).

Among scholars, the concept of decentralization is distinguished from various perspectives. Amrah Muslimin distinguishes decentralization on the following:

a. Political decentralization is the delegation of authority from the Central Government, which produces the right to manage their own household interests for political bodies in the regions, which are elected by the people in certain regions;

b. Functional decentralization is the granting of rights and authority to groups to manage various interest groups in society, whether bound or not to a certain area, for example, managing irrigation interests for farmer groups in one or several certain areas (waterschap; subak Bali);

c. Cultural decentralization (culture decentralization) gives rights to small groups in society (minorities) to organize their own culture (regulating education, religion, and so on) (Monteiro, 2016).

Additionally, according to Josef Riwu Kaho, decentralization is usually divided into two types:

a. Deconcentration (deconsentrasi) or "embtelijke decentralisatie" is the delegation of power from higher-level state equipment to their subordinates to facilitate work in carrying out government duties, for example, the delegation of power and authority of ministers to governors, from governors to governors, regent/mayor, and so on. In this decentralized model, the delegation of power excludes the people;

b. The decentralization of state administration (staatkundige decentralisatie) is also called political decentralization, namely, the delegation of legislative and governmental power (regelende en besturende bevoegheid) to autonomous regions within their environment. In this political decentralization model, the people by using certain channels (representatives) participate in the government, with their respective regional boundaries (Monteiro, 2016).

Furthermore, constitutional decentralization is further divided into two types:

1. Territorial decentralization (territoriale decentralisatie), is the delegation of power to regulate and manage the household of each region (autonomous);

2. Functional decentralization (functionele decentralization), is the delegation of power to regulate and manage something or certain interests. Such decentralization is required so that certain interests are satisfied by the groups concerned themselves

(Monteiro, 2016).

However, it should be noted here that if the local government has been given the authority to draft regional regulations, the material values contained in the mandatory regional regulations must not override the sovereignty of the people. The meaning of sovereignty is not only local regulations for the benefit of the community, but what is more important is understanding the unified direction of the regulations above.

It should be kept in mind that, in fact, the notion of sovereignty in the history of thought about the state and law has never received a unified opinion. Each scholar provides a formulation of the notion of sovereignty according to their own opinion. Also, is the notion of sovereignty the same as the notion of sovereigniteit? According to Jean Bodin, sovereignty is the highest power to make laws in a country, which are:

1. *Single*: This means that only the state has. So in that country, there is no other power that has the right to determine or make laws, or laws.

2. *Original*: This means that power does not originate from other powers. It is not passed down or given by other powers. So, for example, a province or municipality does not have sovereignty, because the power that is in it is invalid, because it is obtained from the center.

3. *Immortal*: This means that the one who has the highest power or sovereignty is the state, which in Jean Bodin's opinion is eternal

4. *Indivisible*: This means that the sovereignty cannot be transferred to another person or entity, either partially or wholly (Soehino, 1996).

The existence of a tug-of-war concept of sovereignty is actually not an essential thing to discuss considering that the most important thing is actually that decentralization is seen from the relationship between the center and the regions, which refers to the 1945 Constitution, then: First, the form of relationship between the center and the regions should not reduce the rights of local people to participate (freely) in the administration of local government. Second, the form of relationship between the center and the regions should not reduce the rights of the regional (people) to take the initiative or take initiatives. Third, the form of the relationship between the center and the regions may vary from one region to another. Fourth, the form of relationship between the center and the regions is in the context of realizing justice and social welfare in the regions (Barama, 2016).

3. Regional Expansion in the Concept of Special Autonomy Regulations for the Papua

In national development, there are constructive efforts in developing the community, one of which is carried out through regional expansion. Regional expansion is one of the instruments and approaches in building community welfare and bringing people's access closer to comprehensive national development in accordance with community aspirations.

The 1945 Constitution of the Republic of Indonesia does not regulate the formation of regions or the expansion of a region in particular, but it is stated in Article 18B paragraph (1) that, "The State recognizes and respects special regional government units, which

are regulated with the law. However, even so, of course, the division of territory becomes a characteristic of the unitary state system, which is emphasized in Article 18 of the 1945 Constitution, as a form of a legal community unit that stands and cannot be separated from one another.

Regional expansion is a potential in the context of accelerating development because, in the regional expansion policy, the development subsystem is considered to be easily achieved because of the closeness of the government to the governed, namely, the community. This, of course, becomes critical to fulfil the principle of autonomy, which is the essence of the extent to which the implementation of the public interest is achieved through aspirational policies.

However, regional expansion is aimed at accelerating equitable development in an area (Muqoyyidin, 2016). These considerations become the basis for maximizing regional autonomy, which is oriented toward the aim of building community interests and/or welfare for the community. In such a concept, the orientation has been changed previously in accordance with Article 76 of Law Number 21 of 2001 concerning the Special Autonomy for the Papua Province, which states that the division of Papua Province into provinces is carried out with the approval of the Papuan People's Council (MRP) and the Papuan People's Representative Council (DPRP) after paying close attention to socio-cultural unity, readiness of human resources and economic capabilities, and future developments. The word or sentence with approval means that it becomes a mandatory instrument to be applied. In the aspect of civil law, consent is certainly a legal requirement of the agreement in implementing joint decisions (Seran & Setyowati, 2006).

It is different from the regional expansion as the concept in the approach used in regional expansion is in accordance with the Law of the Republic of Indonesia Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua. Article 76, Paragraph (1) of the Law of the Republic of Indonesia Number 2 of 2021 states that the division of provinces and districts/cities into provinces and districts/cities can be carried out with the approval of the Papuan People's Council (MRP) and the Papuan People's Representative Council (DPRP) after paying close attention to socio-cultural unity, readiness of human resources, economic capacity, and future developments. The word can, of course, have a different meaning from the word consent. The legal consequences of the word can be more flexible, meaning it can be done or not done. However, even though there is flexibility of policy, the norms in the next article have clear limitations on the authority of the central government, which can use the considerations of the Papuan People's Council (MRP) and the Papuan People's Representative Council (DPRP) or not.

This limitation of the word can, as stated in Article 76, Paragraph (4) of the Law of the Republic of Indonesia Number 2 of 2021, states that the division must guarantee and provide space for the Papuan people in political, governmental, economic, and socio-cultural activities. This idea almost seeks to accommodate the potential of people who want to separate themselves from their areas of origin to develop (Argama, 2005). Based on and postulating this, the central government's

policy as stated in Law Number 21 of 2001 concerning Special Autonomy for the Papua Province and Law of the Republic of Indonesia Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Autonomy Especially for Papua Province, it has been very aspirational in accordance with the decentralization policy.

Ideally, the regional government is no longer debating the relevance of regional autonomy policies in the context of regional expansion because it is not a final concept for the welfare of the community, like the comparison of regional expansion in other countries, which can become a failure if it is not managed properly. The positive and negative sides are one of the positive and negative effects of causality that occur due to the implementation of regional expansion (Akbar, 2019).

In this opinion, the regional expansion is considered able to bring the government closer to the community, but, according to Kerlin (2006), the goal of increasing administrative efficiency, which is equally important, has not been achieved. This is where the failure to achieve the objectives of the regional expansion policy is seen. A study by de Carmo Oliveira and Martinez-Vazquez (2001) in the Czech Republic has revealed the failure of pemekaran. In the Czech Republic after leaving the communist state, many small regions (districts/municipalities) experienced a very high spike, which was driven by public pressures that wanted an increase in democracy. The government has a hard time trying to slow this growth. This is followed by fragmentation, which causes local tax revenues to be small (thus causing a high dependence on transfers), as well as the inability to maintain a quality apparatus and create a balanced economic situation in terms of providing public services. This small area was also unable to cooperate and failed to use third parties effectively (Riani & Pudjihardjo, 2012).

Nevertheless, the idea of regional expansion is the instrument that is considered the most appropriate at this time, even though there are shortcomings here and there in its implementation. Regional expansion is a simple part of the activity, given that it only considers the policy of increasing the number of governments that separates the previous government into several parts, but the essence that exists is of course not only quantitative requirements as a policy but also qualitative requirements as a consideration. In this case, it clearly needs to be understood if understanding and belief in conducting something that is understood by citizens is a parameter that must be met in the welfare of society (Junaidi, 2021).

The most important thing is the extent to which the division of territory must make it easier for the community to participate in the administration of the government. This is in accordance with the actual opinion that decentralization is an instrument for bringing community participation closer in conducting development as well as possible.

4. Conclusion

Decentralization in the administration of government in Indonesia has long been implemented. However, the existing application continues to experience the dynamics of changing concepts and ideas and tries to adapt the formulation to the situation and conditions in the context of the government's goal of prospering the

community. Although there are differences in the framework of implementing Law Number 21 of 2001 concerning Special Autonomy for the Papua Province as well as in the Law of the Republic of Indonesia Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for the Papua Province, the What should be seen objectively is that the purpose of all of this is that the authority to encourage public participation is an authority that is absolutely the responsibility of the central government to implement it properly through the instruments of applicable laws and regulations.

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