

## REGIONAL AUTONOMY AS A CONTROL SYSTEM IN PREVENTING CORRUPTION OF REGIONAL BUDGET

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### ABSTRACT

*The amendment to the 1945 Indonesian Constitution (UUD 1945) on local government has given authority to the local government to carry out its own regional autonomy. Article 18 paragraph (2), (4), and (6) of the constitution is the highest legitimacy related to regional autonomy. The dynamics of governance and regulations related to regional autonomy often change. The existence of Law No.23 of 2014 on Local Government is the last legal protection for the legitimacy of the local government to run its regional autonomy. Without any good regulations, the implementation of regional autonomy will be vulnerable to corruption. Robert Glitgaard defines corruption in a mathematical proposition with the following formula: (C = M + D-A) Corruption = Monopoly Power + Discretion by Official – Accountability. In carrying out the function of regional autonomy policy, the Regional Head has a big duty and authority. The duty of the Regional Head includes actively participating in issuing local legal products in the form of local regulations. The existence of this regulation can be used as a bastion for the Regional Head to manage the regional finances in the form of Regional Budget so as not to be corrupted. The type of research used in this study is normative perspective research. For the analysis, the author uses the formula of the principle of regional autonomy in the form of decentralization. The correlation of attribution, delegation, and mandate is used to examine the duties and authorities of the Regional Head in using the law. Based on the above background, the formulation of the problems includes: What is the correlation of the principle of regional autonomy for the Regional Head to avoid the abuse of authority and to prevent the occurrence of corrupt behavior? And, what is the ideal concept in the application of the Regional Regulation to prevent corruption of Regional Budget (APBD)? Correlation between regional autonomy policy and Regional Budget management cannot be separated from the existence of*

*decentralization principle and policy pattern taken by the Regional Head. The parameters of Regional Budget change should be more detailed and studied deeply through Local Regulation as the highest legality, so that the potential for corruption will not occur.*

## INTRODUCTION

### A. Background

Corruption is an act of abusing authority or office within government by exploiting existing bureaucratic gaps to gain profit or wealth.<sup>1</sup> Corruption is increasingly prevalent not only at the central government level, but also at the local government level. The increased corruption crime may cause problem not only to the finance, economy, and development of the state, but also to the life of the nation.<sup>2</sup>

The local government shall administer the governmental affairs under its jurisdiction.<sup>3</sup> The policy of regional autonomy shall have a pre-condition in which there is recognition of the political right of the regional community to determine the pattern of relations between the central and the local governments.<sup>4</sup> Regional autonomy is a direct mix of decentralized ideas with democratic ideas.<sup>5</sup> Regional autonomy is a self-ruling.<sup>6</sup> In a brief and straightforward

interpretation, autonomy means self-welgeving.<sup>7</sup> Regional autonomy is the authority and obligation of the region to regulate and manage its own household according to the prevailing laws.<sup>8</sup> Autonomy is not only about delegating or receiving authority, but also about the existence of the relationship between central government and local government (materick taak verdeling).<sup>9</sup>

Speaking of regional autonomy can not be separated from the issue of financial capacity of each region. Regional autonomy, in the material sense, is *materiele huishouddingsbegrip* and, in the formal sense, is *formaele huishouddingsbegrip*.<sup>10</sup>

The more democratic the political system, the stronger the decentralization and the autonomy will be.<sup>11</sup> Decentralization has a strong relationship with democratization based on the assumption that it can open up more space for the community to engage in political decisions in the region.<sup>12</sup> Basically, regional autonomy is granted to region in order to be able to dig its source of funds to finance all its activities. The greater the funds excavated through regional autonomy, shown by the proportion of Locally-Generated Revenue (PAD) to the Regional Budget (APBD), the wider the regional autonomy granted<sup>13</sup>. Decentralization is a part of regional autonomy principles. Indonesia, as a unitary state, embraces the

<sup>1</sup> Harum Pudjiarto, "Memahami Politik Hukum di Indonesia" (Yogyakarta: Atma Jaya, 1997), p. 26, see also Articles 2 and 3 of Law No.31 of 1999 in conjunction with Law No.20 of 2001 on the Eradication of Corruption .

<sup>2</sup> Dudu Duswara Machmudin, "Konsepsi, Visi, Misi dan Strategi Tentang Pemberantasan Tindak Pidana Korupsi di Indonesia", Law Magazine, Year XXII No. 257 (April 2007), p. 19.

<sup>3</sup> BN Marbun, "DPRD dan Otonomi Daerah" (Jakarta: Sinar Harapan, 2005), p. 9.

<sup>4</sup> Tim lapera, "Otonomi Versi Negara"Demokrasi dibawah Bayang-Bayang Otoriterisme" (Yogyakarta : Lapera Pustaka Utama, 2000), p. XXX.

<sup>5</sup> Ni'matul Huda, "Problematika Pembatalan Peraturan Daerah" (Yogyakarta: FH UII Press, 2010), p. 39.

<sup>6</sup> Sidik Jatmika, "Otonomi Daerah Dalam Perspektif Hukum Internasional" (Yogyakarta: Bigraf Publishing, 2001), p. 1, see also Article 1 paragraph (6) Law No.23 of 2014 of Local Government.

<sup>7</sup> Hasan Shadily. 1990. "Ensiklopedia Indoensia" (Jakarta: Ichtisar Baru Van Hoeve, 1990), p. 2490.

<sup>8</sup> Yan Pramudya Puspa, "Kamus Hukum Lengkap" (Semarang: Arca Ilmu, 1977), p. 64.

<sup>9</sup> Sarundajang, "Arus Balik Kekuasaan Pusat ke Daerah" (Jakarta: Pustaka Sinar Harapan, 2001), p. 38.

<sup>10</sup> Darumurti, Otonomi Dearah (Bandung: PT Citra Raya Bakti, 2000), p.2.

<sup>11</sup> Mahfud, MD, "Pergulatan Politik dan Hukum di Indonesia" (Yogyakarta: Gama Media, 1999), p. 183.

<sup>12</sup> Ni'matul Huda, "Dinasti Politik, Otonomi Daerah dan Good Governance", Paper presented in National Seminar "Dinasti Politik Dalam Pilkada dan Potensi Korupsi di Daerah", Departemen HTN FH UII, Yogyakarta, May 20, 2017, p. 6

<sup>13</sup> Syaukani at al, "Otonomi Daerah Dalam Negara Kesatuan" (Jakarta:Pustaka Belajar, 2002), p. 204.

principle of decentralization in administering local governance. The process of formulating, setting and determining the Regional Budget (APBD) is conducted through the mechanism of Local Regulation (Perda) discussed by the Regional Parliament (DPRD) and the Regional Head. In this condition, the Regional Head has great authority in determining the size of Regional Budget (APBD).

## B. Formulation of the Problem

Based on the above background, the problems can be formulated as follows:

1. What is the correlation of the principles of regional autonomy for the Regional Head to avoid the abuse of authority and to prevent corrupt behavior?
2. What is the ideal concept in the application of the Local Regulation (Perda) to prevent corruption of Regional Budget (APBD)

## CHAPTER II DISCUSSION

### A. Correlating the principle of autonomy to avoid abuse of authority is an effort taken by the Regional Head to prevent corrupt behavior

#### 1. *The principle of regional autonomy and potential abuse of authority*

Article 18 of the 1945 Constitution of the Republic of Indonesia stipulates the regional division.<sup>14</sup> In line with the division of authority mentioned above, regional financing arrangements are based on the principles of

<sup>14</sup> Achmad Sodik Sudrajat, "Hukum Administrasi Negara dan Kebijakan Pelayanan Publik" (Bandung: Nuansa Anggota IKAPI, 2009), p. 116.

decentralization, de-concentration and co-administration.<sup>15</sup>

Decentralization is a form of delegation of authority in terms of decision-making and management of special functions in institutions under the direct control of central government ministries. In addition, there is also a form of decentralization that seeks to create or strengthen the levels or units of independent government through devolution of roles and authority.<sup>16</sup> Rondinelli, in Cheema and Rondinelli,<sup>17</sup> defines decentralization as the transfer of authority or the sharing of power in government planning and management as well as decision-making from national level to regional level. In relation to delegations to autonomous regions and decentralization, Mustamin argues that decentralization is a principle associated with regional autonomy. Dogma in regional autonomy is in the form of duty and authority of the Head of Region to carry out function of local government.

Based on its source, there are two types of authority: 1) authority attributes which means

<sup>15</sup> Abdul Halim, "Problem Desentralisasi dan Perimbangan Keuangan Pemerintahan Pusat-Daerah, Peluang dan Tantangan Dalam Pengelolaan Sumber Daya Daerah" (Yogyakarta: Postgraduate UGM, 2009), p. 58, see in Jimly Asshidiqie, "Konstitusi dan Konstitusionalisme Indonesia" (Jakarta: Sinar Grafika, 2011), p. 222, see also in Hamid Edy Suandi, "Memperkokoh Otonomi Daerah, Kebijakan, Evaluasi, dan Saran" (Yogyakarta: UII Press, 2005), p. 75.

<sup>16</sup> Ni'matul Huda, *Op,Cit*, p. 29-30.

<sup>17</sup> Agus Dwiyanto, at al, "Reformasi Tata Pemerintahan dan Otonomi Daerah" (Yogyakarta: PSKK, 2003), p. 18-20, see also Article 1 (8) Law No.23 of 2014 on Local Government.

the inherent authority and given to an institution or official based on regulations and legislation; 2) delegative authority is the authority derived from the delegation of authority institutions or higher level officials.<sup>18</sup> Attribution is the granting of government authority by lawmakers.<sup>19</sup> Delegation is the granting of government authority from one government organ to another government organ.<sup>20</sup>

As quoted by Saifudin from Bintan R. Saragih, Gilbert Abcarian states that between the representative and the represented, there is a term 'delegate', in which the representative acts as the delegate of the represented and will always follow the instructions of the represented. However, according to A. Hoogewerger, delegate is the representative who acts as the one who is ruled by charge d'affaires who must execute the order of the represented.<sup>21</sup> Mandate will occur when the organ of government allows its authority to be run by another organ on its behalf.<sup>22</sup> The authority possessed by officials in the region, especially the Regional head, will be a good or bad benchmark of the policy to be taken.

## ***2. Modus of corruption and the role of Head of Region***

Modus operandi means the way or procedure of acting. Modus

<sup>18</sup> Hery Susanto, at al, "Otonomi Daerah dan Kompetensi Lokal" (Jakarta :PT Dyatama Milenia, 2003), p. 93.

<sup>19</sup> Ridwan HR, "Hukum Administrasi Negara" (Jakarta :Raja Grafindo Persada, 2002), p. 104.

<sup>20</sup> Ibid, p. 104-105

<sup>21</sup> Saifudin, "Partisipasi Publik Dalam Peraturan Perundang-Undangan" (Yogyakarta: FH UII Press, 2009), p. 160.

<sup>22</sup> Ridwan HR, *Op.Cit*, hal. 104-105.

operandi is the way how to execute or the way how to act. The modus operandi of corruption is the way how corruption is done.<sup>23</sup> According to Earl R. Sikes in his book '*State and Federal Corrupt Practices Legislation*' modus operandi is "*contractors, hoping to insure the election of friends who will be in a position to awards lucrative agreement between contracts, often contribute generously to the party funds. Through corrupt between public official and contractors, these constructions have at times degenerated into outright stealing from taxpayer*"<sup>24</sup>.

The modus operandi of corruption has evolved rapidly from conventional way to hi-tech utilization which gives rise to new dimension of crime, such as banking crime, crime as business, manipulation crime, corporation crime, custom fraud, money laundering, illegal logging, illegal fishing and other various modes of cyber crimes.<sup>25</sup>

The vast authority possessed by the Regional Head, including the discretion in interpreting the policy, such as local regulation to manage the Regional Budget, can be used as a tool of legitimacy in preventing from all kinds of corruption modes done by other parties. The last bulwark in the endorsement of the size of the Regional Budget is the Head of region. In such a condition, the Head of Region can minimize

<sup>23</sup> Rohim, "Modus Operandi Tindak Pidana Korupsi" (Jakarta: Pena Multi Media, 2008), p.13.

<sup>24</sup> Artidjo Alkostar, "Tantangan Hakim Dalam Era Globalisasi", *Varia Peradilan*, Year XXIII No. 270 (May 2008), p. 36.

<sup>25</sup> Rohim, *Op.Cit*, p. 13.

and even cut efforts from various parties to avoid corrupt behavior toward Regional Budget.

## **B. Ideal concept in the application of Local Regulation (perda) to prevent corruption**

### **1. Legal Norms in Local Regulation**

Legal products that can be produced by local government include: Local Regulation (Perda), Regulation of Head of Region, and Decree of Head of Region. The suitability between material content and institutional formation should be taken into account in order not to cause juridical chaos.<sup>26</sup> In *contradictio in terminis* or in the existence of regulatory policy, the manifestation of the policy of the state administrative officials in a certain formal and standard form is not intended to reduce or narrow the scope of the principle of freedom of action (discretion or *freies ermesen*) of state administrative officials, but to certain more specific purposes and objectives.<sup>27</sup>

In the level of local government, local regulation (Perda) has a positive side that can provide advantages to law enforcement efforts in the region. The advantages include: first, providing legal certainty; second, as it has high force, the violators can certainly be sanctioned with the rationality of order. On the other hand, there are also weaknesses: first, according to MM Djojodigogeno, once introducing the theory of "layon", there will be *rechtsvacuum* (legal vacuum), if the

<sup>26</sup> W. Riawan Tjandra, *Legislative Drafting "Teori dan Tehnik Pembuatan Peraturan Daerah"* (Yogyakarta: Universitas Atma Jaya, 2009), p. 85.

<sup>27</sup> Hotma P. Sibuea, "Asas Negara Hukum, Peraturan Kebijakan, dan Asas-Asas Umum Pemerintahan Yang Baik", (Jakarta: PT Gelora Aksara Pratama, 2009), p. 97.

local regulation is not aligned with the changing of social situation; third, the objectivity of justice is difficult to realize because the viewpoint used by the legislators is the viewpoint of the ruler.<sup>28</sup> Regardless of the good and bad, it is clear that the local regulation is the final bastion of a regulation of Local Government that has an important role to see whether the quality of Regional Budget is misused or not.

### **2. Coalition of executive and legislative bodies**

Due to the distorted understanding of the local government system, it seems that the Regional Parliament (DPRD) has positioned itself as a superior or a higher position than the Regional Head with a strong and decisive bargaining position. With such a position, it is very easy for the Regional Parliament to dictate, suppress, intervene, and give no confidence motion to the Regional Head. With such a position, the potential abuse of authority is wide open. This is evidenced by the practice of money politics and political black mailing, including corruption which is related to the election of regional head, accountability of the regional head, and the right to determine the budget by the Regional Parliament (DPRD). All the corruption involving members of the parliament in various regions stems from a distorted understanding of the local government system and the errors among the members of the parliament who position the Regional Parliament as a higher or superior position than the Regional Head.<sup>29</sup> The opportunities for corruption can be overcome by

<sup>28</sup> Ibid, p. 85-87.

<sup>29</sup> I Gede Pantja Astawa, "Problematika Hukum Otonomi Daerah di Indonesia" (Bandung: PT Alumni, 2009), p. 34.

conducting a good and open relationship pattern between Regional Parliament and Regional Head

According to David B. Truman, the position of DPRD is as follows: “any politician whether legislator, administrator or judge whether elected or appointed is obligated to make the decisions that are guided in part by the relevant knowledge that is available to him”.<sup>30</sup> The relationship between Local Government and DPRD is a working relationship as a partnership and has equal standing.<sup>31</sup>

### ***3. Vulnerable point of joint corruption of regional budget among regional officials***

In the broadest sense, corruption means using a position for personal gain. Position is the occupation of one's belief. A person is given the authority or power to act on behalf of the institution. Corruption means collecting money for services that should be provided or using authority to achieve unauthorized purposes.<sup>32</sup> Corruption of Regional Budget is prone to happen and done jointly by officials in the region.

Basically, regional autonomy is given to the region so that it can dig

the source of funds to finance all its activities. The greater the funds dug through regional autonomy, which can be seen from the proportion of the Locally-Generated Revenue (PAD) towards Regional Budget (APBD), more extensive the regional autonomy given to the region.<sup>33</sup> Besides coming from Locally-Generated Revenue (PAD), regional budget is derived from the General Allocation Fund (DAU) which is budgeted for each region in the State Budget (APBN). Regency, Municipality, or Province can prepare Regional Budget(APBD) after receiving confirmation of General Allocation Fund (DAU) earned in the fiscal year from the central government.<sup>34</sup>

Mark up is a form of change from a budget regardless of the rationality of funding that becomes argumentation for a budget based on an estimated increase in revenue.<sup>35</sup> Mark up is a form of stages in the procurement of goods and services by inflating the money budget that will be submitted in the work of procurement tender.<sup>36</sup> Regional Budget (APBD) mark up is very prone to occur if there is no prevention by policy makers, especially by the Head of Region.

The author tries to cite facts and legal reality related to early embryos of administrative irregularities in exercising corrupt authority. The author quotes from Teten Masduki that has been reapplied by Robert Glitgaard that La Paz City Mayor Maclean-Abaroa mentioned:

<sup>30</sup> Josef Riwu Kaho, “*Prospek Otonomi Daerah di Negara Republik Indonesia*” (Jakarta: PT Raja Grafindo Persada, 1988), p. 75.

<sup>31</sup> In the Author's Review, this partnership relationship is actually a check and balance between the legislative and executive bodies in making policies related to Regional Budget management. Regional regulation as a result of the product is the highest legality and has become a mutual agreement, see also in Ateng Syafrudin, “*Kapita Selekta Hakikat Otonomi Daerah dan Desentralisasi Dalam Pembangunan Daerah*” (Yogyakarta: Citra Media Hukum, 2006), p. 42.

<sup>32</sup> Robert Klitgard, “*Penuntutan Pemberantasan Korupsi*” (Jakarta: Yayasan Obor Indonesia, 2002), p .2-3, see also related to the meaning of corruption and personal gain in Jeremy Pope, “*Strategi Memberantas Korupsi*” (Jakarta: Yayasan Obor Indonesia, 2003), p.30.

<sup>33</sup> Syaukani, at al, *Loc.Cit*, p. 204.

<sup>34</sup> Marbun, *Loc.Cit*, p.139, see also Article 1 (32), (33), (47), and (48) of Law UU No.23 of 2014 on Local Government tentang.

<sup>35</sup> Sony Yuwono, at al, “*Memahami APBD dan Permasalahannya: Panduan Pengelolaan Daerah*” (Malang: Bayumedia Publishing., 2007), p. 488.

<sup>36</sup> Rohim, *Op.Cit*, p.38.

“.... the more I understand from studying the behavior of the city government of La Paz, the more I find suspicious behavior. Therefore, I decided to use the formula of corruption ( $C = M + D-A$ ) as a guide to improve the administration of the city government. I then realized that increasing competition could reduce the authority and the freedom of bureaucracy in decision-making and enhancing accountability is the key to overcoming these institutional barriers and hurdles. According to Darwin's theory of evolution, these sick institutions have evolved to complex and sophisticated corruption machines with the different shape, size, and modus operandi as well as the legal legitimacy that is suitable for corruption ...”<sup>37</sup>

Robert Glitgaard formulates corruption in a mathematical proposition, with the following formula:  $(C = M + D-A)$  Corruption = Monopoly Power + Discretion by Official - Accountability. The author uses this theory as a grand theory in examining the legal ontology in the form of Regional Budget. Monopoly Power is interpreted as the perpetrator in bureaucracy or as the leader in policy making in institution. On the other hand, the discretion by official is the authority that can be taken by the leader in a bureaucracy in making the policy that will be taken. Furthermore, accountability is a form of the absence of responsibility of a leader in the bureaucracy related to the policies that have been taken in the implementation of obligations according to his task and authority

In further analysis, the author tries to use the analogy of

<sup>37</sup> Robert Glitgaard dkk, *Op.Cit*, p. 36, see also in Nur Basuki Minarno, “Penyalahgunaan Wewenang dan Tindak Pidana Korupsi Dalam Pengelolaan Keuangan Daerah” (Palangkaraya: Laksbang Mediatama, 2009) p. 145.

fund transfer from State Budget to Regional Budget, from the central government to the local government, which is interpreted through the paradigm of pyramid law policy theory.<sup>38</sup> There are various styles and ways conducted by the officials to commit criminal corruption in order to obtain personal wealth. Modes of corruption by inflating the Regional Budget funds infiltrate the bureaucracy by camouflaging the real funds to be abstract, so it will be difficult to identify the truth.

## CHAPTER III CONCLUSION AND SUGGESTION

### A. Conclusion

In carrying out regional autonomy, the policy of local government has been guaranteed by the constitution. Decentralization is a principle of regional autonomy which serves as an authority transfer to the Regional Head in carrying out his duties and authority. Local Regulation is part of legal product in the region. The quality of Local Regulation (good or bad) will be determined by the result of discussion between the legislative and executive (the Regional Head and the Regional Parliament). In this joint discussion, there is an initial gap of the quality (good or bad) of Regional Budget

Regional finance in the form of Regional Budget is the central point of life for sustainability in local government. Regional Budget is prone to corruption by officials in the regions. Corruption is done in the name

<sup>38</sup> This theory is the result of study and in-depth study related to political policy of law from central government, misuse of authority and potential corruption of Regional Budget. Commonly used to analyze the effectiveness of the policy and potential corruption of Regional Budget by Regional Head, see also in Z. Sayfudin, “Otonomi Daerah Vs Gurita Korupsi APBD di Indonesia” (Yogjakarta: Total Media, 2013), p. 109.

of power. The concept of misuse of authority and corruption correlation of Regional Budget is identical to the scheme ( $C = M + D - A$ ) Corruption = Monopoly Power + Discretion by Official – Accountability. The Regional Head with high authority in the management of Regional budget is the party that has a major role in preventing the abuse of authority. The deviations and mark up of Regional Budget can be prevented by the legal norms of a good Local Regulation and always within the framework of good governance

## B. Suggestion

- 1) Regional Head and Regional Parliament should be able to cooperate well and thoroughly in formulating the size of Regional Budget.
- 2) Regional Head, with high authority, should prepare the formulation of the size of Regional Budget based on the real needs and not abstract so that the potential gap corruption can be minimized.
- 3) The legal norms of Local Regulation should be based on good governance principles to prevent abuse of power for the Regional Parliament and Regional Head in managing the Regional Budget.
- 4) The preparation, formulation and determination of the size of Regional Budget should not involve any mark up either from the Regional Parliament and the Region Head.
- 5) If the Regional Parliament and the Regional Head involve a third party in the use of Regional Budget, it should be selected first and there should be no nepotism elements from other regional officials in order to avoid the abuse of authority.

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