

Legal Politics of Establishing a New Autonomous Region in the Shape of a City

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Abstract

The establishment of new autonomous regions aims to develop regions and bring public services closer. The formulation of the problem in this article is how the concept of regulating the expansion of new autonomous regions, how to overcome the gap in rights and obligations between the parent district and the new city, and how the legal politics of the formation of a new autonomous region in the form of a city. The method used is a legal approach, a conceptual approach, and a case approach, with a qualitative descriptive analysis. The conclusions of this study are first, there are differences in the special allocations for the division of new provinces and new districts with new cities, and impose obligations on the parent region to provide part of the regional budget and release assets. Second, the solution to the gap in rights and obligations between the parent district and the new city, assets that are handed over to special allocation funds, are collaborated, and assets in need. to be compensated. Third, the legal politics of forming new autonomous regions in the form of cities with legal reforms from existing norms, in the form of arrangements for the transfer of assets belonging to the parent regency that is in the new autonomous regions, the special allocation funds must be handed over entirely, but only to the assets needed.

Keywords: legal, politics, autonomous, regions, expansion, assets, capital, city

1. Introduction

The expansion or formation of a new autonomous region, a new autonomous region, basically aims to develop the region and bring public services closer. The division takes place at the provincial level in the form of division of the main province with new provinces. The territory of the parent province is divided by the new province. The division at the district level is in the form of the division of a district into a new district or a city. The territory of the parent district is divided by the new district or city.

In the case of the division of a district into a city, it is the parent district that moves the center of government to another area. The central government district of the parent district changed its status to the center of the city government. The parent district is burdened with the obligation to move the capital and build from scratch.

In the event of division, the State always directs special allocation fund budget assistance to new autonomous regions, without exception for the division of districts into cities. The city as a new autonomous region has inherited government assets from the parent district. As a result, concerning the division of districts into cities, gaps arise. Cities receive support from special allocation funds from the central government, receive budgetary assistance from the parent government, and receive assets from the parent district in the central government area of the parent district which is transformed into the capital city of the division. Not infrequently, this gap creates a dispute over the transfer of assets between the parent district and the new city.

In the expansion of Kerinci Regency into Sungai Penuh City in Jambi Province, the capital and administrative center of the parent regency are in Sungai Penuh District. The Expansion Law stipulates that the capital of Sungai Penuh City is located in Sungai Penuh District so that the capital of the main district is moved to Siulak District, which does not have any government building facilities and infrastructure.

The gap in the special allocation funds occurred in the division of districts into new districts. For example, the expansion of Bungo Tebo Regency into Bungo Regency and Tebo Regency in Jambi Province. The capital of Bungo Tebo Regency in Bungo sub-district, special allocation funds were handed over as part of the Tebo Regency. Part of the

main regency area is divided into the Tebo Regency area. The capital city of Tebo district is outside the capital of the main district, so there is a problem with the special allocation funds handing over the capital of the parent district. Bungo Regency, the special allocation fund lost the capital of the parent regency, the special allocation fund also lost assets at the center of government.

The legal politics of the formation of a city in which special allocation funds distinguish special allocations with the formation of new districts and/or provinces that create serious gaps for the parent district, it is interesting to examine how the concept of regulating the expansion of new autonomous regions is, how to solve the gap in rights and obligations between parent districts with the expansion city, and how the legal politics of forming a new autonomous region is in the form of a city.

2. Research Methods

2.1 Nature of Research

This writing is legal research because it specifically uses the logic of legal thinking in analyzing the problem. This legal research examines the legal politics of the expansion of the new autonomous region in the form of a city which is needed to prevent the balance of rights and obligations of the parent district and the new city of expansion. As legal research, the approach used is the statutory approach, conceptual approach, and case approach, which are used to answer the object of research.

2.2 Research Method

This writing is normative legal research because the law is conceptualized as what is written in the legislation, or the law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate (Amirudin & Zainal Asikin, 2004. This research can be categorized as normative legal research on legal principles Ronny Hanitijo Soemitro, 1988). Normative research used legal literature research, namely obtaining secondary data with materials or materials in the form of books, articles, research results, judicial decisions, laws and regulations, and expert opinions related to the object of research (Soejono Soekanto & Sri Mamudji, 2007).

2.3 Data Type

As normative legal research that focuses on library law research, secondary data sources are used consisting of primary legal materials, secondary legal materials, and tertiary legal materials.

2.4 Data Analysis

Data analysis is used as a method of how to utilize the collected data to solve research problems or is an explanation of the process of utilizing data used to solve problems. The data processing method used is by collecting relevant data obtained from library research, processed using qualitative methods. Data relevant to the object of the problem was analyzed descriptively qualitatively. The analysis is done by classifying, comparing, and connecting between legal materials and the subject matter (Honest S. Suriasumantri, 1986).

3. Discussion

3.1 The Normative Concept of Forming a New Autonomous Region

The existence of regional government is confirmed in the Constitution, both before and after the amendment of the 1945 Constitution. In the second amendment to the 1945 Constitution, it is emphasized that the Unitary State of the Republic of Indonesia is divided into provincial regions and the provincial regions are divided into regencies and cities, each of which is a province, district, and city has a regional government, which is regulated by law. Provincial, district, and city-regional governments regulate and manage their government affairs according to the principles of autonomy and co-administration. Provincial, district and city-regional governments have Regional People's Representative Councils whose members are elected through general elections. Governors, Regents, and Mayors respectively as Heads of Provincial, Regency, and City Governments are democratically elected. Regional governments exercise the widest possible autonomy, except for government affairs which are determined by law to be the affairs of the Central Government. Regional governments have the right to stipulate regional regulations and other regulations to carry out autonomy and assistance tasks. The structure and procedures for the administration of regional governments are regulated by law.¹

Such arrangements are intended to expedite the course of government and the means to achieve the goals of the state in realizing national unity. About the establishment of an autonomous region, Article 1 paragraph (1) of the 1945

¹ This is regulated in Article 18 paragraph (1) to paragraph (7) of the Second Amendment to the 1945 Constitution of the Republic of Indonesia.

Constitution first stipulates that the State of Indonesia is a Unitary State in the form of a Republic, which is divided into regions (Rustam Paula Mentemas, 2011). On the division of provinces, districts, and cities that have their government, the relationship between the central government and local governments is hierarchical-vertical. Since the second amendment to the 1945 Constitution, there has been a change in the system from centralized to decentralized. With decentralization, the government gives the regions the freedom to carry out regional autonomy.

Regional governments exercise the widest possible autonomy except for the affairs of the central government (Mahfud MD, 2011). The implementation of regional autonomy as mandated by the 1945 Constitution of the Republic of Indonesia is aimed at managing the regional government system by giving the regions the freedom to exercise government authority at the regional level (Busrizalti, 2013).

The autonomy granted to regencies and cities is carried out by giving broad, real, and accountable authority to local governments proportionally. Delegation of responsibilities is followed by arrangements for distribution, equitable utilization of national resources, as well as central financial balance.

The formation of autonomous regions, as regulated in Article 4 paragraph (3) of Law Number 32 of 2004 concerning Regional Government can be in the form of merging several regions or parts of regions that are side by side/expansion of one region into two or more regions. The regional formation is the granting of status to a certain area as a province or regency/city area.²

In the new Regional Government Law, Article 32 Paragraph (1) of Law Number 23 of 2014, the formation of regions is in the form of regional expansion and regional mergers. About regional expansion, Article 33 Paragraph (1) of Law Number 23 of 2014 concerning Regional Government stipulates that regional expansion is the division of a province or regency/city area into two or more new regions or the merging of regional parts of regions that are side by side in one region. province into a new region. Philosophically, the purpose of regional expansion has two interests, namely the approach to public services of government to the community, and to improve the welfare of the local community, and shorten the span of government control (Siswanto Sunarno, 2012).

Likewise with the regional expansion in Kerinci Regency which is then used as a case study of this research, the philosophy of splitting Kerinci Regency into two autonomous regions, namely Kerinci Regency and Sungai Penuh City in Jambi Province,³ is by taking into account geographical conditions, economic capabilities, regional potential, area, population, and considerations of socio-political, socio-cultural, defense, and security aspects as well as by increasing the workload and volume of work in the fields of government, development, and society in Kerinci Regency to bring the government public services to the community, and to improve the welfare of the local community. The establishment of Sungai Penuh City aims to improve services in the fields of government, development, and society and can provide capabilities in the utilization of regional potential.

With the establishment of Sungai Penuh City, the coverage area which consists of 5 sub-districts is determined, namely a. Sungai Penuh District; b. Pesisir Bukit District; c. Hamparan Rawang District; d. Tanah Kampung District; and e. Kumun Debai District. The area of Kerinci Regency is reduced by these five sub-districts. The reduction of the area includes Sungai Penuh District, which since the establishment of Kerinci Regency has become the city center, government center, and economic center.

The three juridical consequences are, *first*, the parent district which is burdened with the obligation to move the district capital to the Siulak District area.⁴ *Second*, the parent district is burdened with the obligation to dispose of assets in the form of includes movable property/controlled property and special allocation funds that are movable and/or utilized by the Sungai Penuh City Government within the Sungai Penuh City area,⁵ which has been the center of government for the city as a new autonomous region. *Third*, assistance for the allocation of balancing funds is only given to Sungai Penuh

² Article 1 Number 7 Government Regulation Number 78 of 2007 concerning Procedures for the Establishment, Abolition and Merger of Regions ("PP No. 78 of 2007").

³ The division is regulated in Law Number 25 of 2008 concerning the Establishment of Sungai Penuh City in Jambi Province, State Gazette of the Republic of Indonesia of 2008 Number 98, Supplement to State Gazette Number 4871.

⁴The relocation of the capital was based on the Government Regulation of the Republic of Indonesia Number 27 of 2011 concerning the Transfer of the Capital City of Kerinci Regency from the Sungai Penuh City Area to the Siulak District, Kerinci Regency, Jambi Province. The article stipulated, "With this Government Regulation, the capital city of Kerinci Regency is moved from the Sungai Penuh City area to the Siulak Subdistrict, Kerinci Regency, Jambi Province".

⁵As stipulated in Article 13 paragraph (7) letter an of Law no. 25 of 2008 concerning the Establishment of Sungai Penuh City in Jambi Province.

City as a new autonomous region.⁶ Thus, the division creates a gap in rights and obligations between the parent district and the new city. The gap occurs in other special allocation funds due to the formation of norms or regulatory concepts for regional expansion, special allocation funds are distinguished by special allocations between the division of provinces into new provinces and districts into new districts with the division of districts into districts and new autonomous regions in the form of cities.

4. Case Study: Solutions to the Gap in Rights and Responsibilities between Kerinci Regency as the Parent Regency and Sungai Penuh City as the New Autonomous Region

The gap, which in its original meaning from the word gap, means a balanced special allocation fund or asymmetrical special allocation fund, is interpreted as a balanced special allocation fund or asymmetrical special allocation fund. In the context of the case study of the expansion of Kerinci Regency, the balance of special allocation funds occurred as a result of the division of districts into cities whose expansion areas took over the capital of the parent district, so that the parent district had to build a new capital. The special allocation fund from the center is only for the expansion city, which is already Seattle. All government facilities and infrastructure are "ready for use".

The gap is felt, because, since the founding of the Pesisir Selatan/Kerinci Regency in 1956, Sungai Penuh has become the center of all government, economic and business activities, education, and health. There are various government and private office buildings in Sungai Penuh and various socio-economic activities take place, some of which are symbols of the existence of Kerinci Regency which has historical value. The assets of the Kerinci Regency Government, in the form of the Regent's Office Building, Regional People's Representative Council, Regional Work Units, Hospitals, Markets, and land, almost most of them are located in areas that have turned into new autonomous regions.

The gap is increasingly visible because the special allocation fund has no rights received by the parent district. The parent district needs funds for the procurement and acquisition of land for the new capital candidate, the construction of road infrastructure, buildings, office buildings, electricity, and other supporting facilities to realize the transfer of the central government of Kerinci Regency in Siulak District.

Regarding the transfer of assets, whether the assets that are handed over include all assets belonging to the parent regency located in the district capital which is converted into a new city area, it can refer to the norms regarding the transfer of assets in Article 13 paragraph (7) letter a of Law Number 25 of 2008 concerning the Establishment of The City of Sungai Penuh in Jambi Province states:

"The assets and documents as referred to in paragraphs (1) and (3) include:

- a. Property/controlled property that is movable and special allocation funds are movable and/or utilized by the Sungai Penuh City Government within the Sungai Penuh City area."

Mean from the application of the *aquo* article can be interpreted, *firstly*, by using a grammatical interpretation, namely interpreting the meaning of the sound of provisions grammatically. The norm of the article means that the property/controlled property is movable and the special allocation fund is movable, and which is utilized by the Sungai Penuh City which is within the Sungai Penuh City area, which is handed over to the Sungai Penuh City Government.

Second, with approach *contrario*, means for assets whose property or goods are controlled and goods whose special allocation funds are utilized by the Sungai Penuh City Government, even though they are in the Sungai Penuh City area, the special allocation funds must be submitted, so that the assets can still be owned by the parent regency. The meaning with a grammatical and a *contrario* interpretation is strengthened by the argument, if the State, CQ Lawmakers, wants a special allocation so that the Kerinci Regency Government is obliged to surrender all assets located in the Sungai Penuh City area, then grammatically, the norm of Article 13 paragraph (7) letter a will read:

"Assets and documents as referred to in paragraph (1) and paragraph (3) include:

- a. *All assets of Kerinci Regency, in the form of movable property/controlled property and movable special allocation funds, are located within the Sungai Penuh City area.*"

Third, based on the principle of expediency, that the assets for which special allocation funds are handed over are still used by the parent district to run the wheels of government, such as the Regent's Building and several Regional Apparatus Work Unit offices which are one building unit or one complex with the Regent's Office. On the other hand, the Sungai Penuh City Government already has its own Mayor's Building and several Office Buildings for Regional Apparatus Work Units.

Fourth, based on the principle of respect for the ownership of land and/or building rights protected by the constitution, so

⁶Article 14 paragraph (1) of Law No. 25/2008 stipulates, "The City of Sungai Penuh is entitled to an allocation of balancing funds by the legislation".

that assets in the form of vacant lands for which special allocation funds stand for buildings whose sales are on behalf of the Kerinci Regency Government, which in the agrarian law of special allocation funds there is a prohibition for legal subjects to own land outside the area of the legal subject domiciled. Same thing too common in the practice of asset ownership outside the district, including:

- (1) The expansion in Padang Pariaman Regency into Pariaman City, several Regency Regional Work Unit offices are located and are located in Pariaman City, including Population and Civil Registration Office, Office of Social Services for Women's Empowerment and Child Protection, Office of Transportation Service, Office of the Investment and Service Agency Integrated Licensing, the Office of the Regional People's Representative Council of Padang Pariaman Regency, are all located in Kota Pariaman.
- (2) expansion Limapuluh Koto Regency has become Payakumbuh City, there are several offices of the Main Regency Regional Apparatus Unit located in Payakumbuh City, although it has been divided since 1956, including the Communications and Information Office, the Agriculture Service, the Population and Civil Registry Service, and the District Health Office. Fifty Cities is located in Payakumbuh City.
- (3) The expansion of Tanah Datar Regency into the City of Padang Panjang, The official house of the Batipuh, Ten Koto and Batusangkar sub-districts in Tanah Datar Regency is located in Padang Panjang District, Padang Panjang City.
- (4) The division of Bekasi Regency into Bekasi City, several office assets belonging to Bekasi Regency are located in Bekasi City, among others; Ai Drinking Tirta Bhagasasi Regional Company, Bekasi Regency, parking area behind the City Government, Bakso Field Shooting Field, Blue Mall area and Juang Tambun Building.
- (5) The division of Tasikmalaya Regency into a City, several assets of the Regency of Tasikmalaya Pendopo, the Office of Archives and Libraries, the former Regional Secretary Building, the former Cilembang Terminal, the Public Library are located in the City of Tasikmalaya.

Fifth, based on respect for historical and cultural values that are upheld by the constitution, that there are several assets of the parent district which have been recognized for generations as the symbol of the establishment of Kerinci Regency since 1956, namely the Regent's Office Building and the State House/Regent's Official House, which attaches to historical aspects and becomes a symbol of the existence or existence of Kerinci Regency, so there is a legal reason to maintain it.

The assets of the Kerinci Regency located in Sungai Penuh City can be classified into 4 (four) categories, namely (1) assets that are handed over; (2) assets to which special allocation funds are transferred; (3) the assets that are cooperated; and (4) assets that need to be compensated. The categories of assets that are handed over are assets that are utilized which are the obligation of the Kerinci Regency Government to submit to the Sungai Penuh City Government, along with the obligations attached to the assets concerned, as referred to in Article 13 paragraph (7) letter c of Law Number 25 of 2008 concerning the Establishment of Full River City in Jambi Province.

If there is still a debt attached to the asset, the obligation to settle the debt is also submitted. The assets of category numbers (2), (3), and (4), which are assets for which special allocation funds are used, can still be owned by the Kerinci Regency Government. As for the assets category number (3) and (4) where special allocation funds are empowered, then the cooperation initiative and/or the provision of compensation is carried out according to need and with the agreement of both parties. The compensation model as referred to in the number (4) category has also been manifested in the submission of the Tirta Saksi Regional Drinking Water Company, the Sungai Penuh City Government providing compensation in the amount of Rp. 6 billion to the Kerinci Regency Government.

In addition to assets, the gap occurs because disharmony of regulation with Law Number 33 of 2004 concerning Financial Balance between the Central Government and Regional Governments. According to this law, to carry out the mandate of the 1945 Constitution of the Republic of Indonesia for the widest possible implementation of autonomy, the Central Government provides funding sources to realize the implementation of regional autonomy, which in special activities, is given wide space to provide funding assistance in the form of special allocation funds. Ideally, in terms of the norms of the article on granting special allocation funds that are fair and protect against discriminatory treatment, then by imposing obligations on the special allocation funds the parent district to provide grant funds, move the center of government by building a new capital in a location that it does not yet own, and the obligation to hand over assets used by the new autonomous region in the expansion area. The state is present to give constitutional rights to the parent district to receive special allocation funds from the Central Government.

5. The Legal Politics of Forming a New Autonomous Region in the Form of a City

Politics and law are two things that are difficult to separate, because both have such a close relationship, that it is difficult to determine which one has the most influence on whether politics affects the law or vice versa (Wahyu Nugroho, 2016).

Mahfud MD defines legal politics as legal policy or official policy lines regarding laws that will be enforced either by making new laws or replacing old laws, to achieve state goals (M. Mahfud MD, 2009). Bintan Ragen Saragih understands legal politics as a policy taken by the state (through its institutions and officials) to determine which laws need to be replaced, or which need to be changed, or which laws need to be maintained, or what laws need to be regulated or issued. so that with this policy the administration of the state and government can take place in a good and orderly manner so that the goals of the state are gradually and planned to be realized (Bintan Ragen Saragih, 2006).

According to Bellefroid, legal politics investigates what changes will be made to special allocations to the existing law, to meet the new requirements of social life. He continued the development of the legal order because he made the *ius constitutum* which was developed from the old legal systems, into *ius constituendum* or law for the future or the law that was aspired to (Abdul Latif, 2014).

In the context of the division of districts into cities, according to the author, some changes refer to Bellefroid's opinion, it is necessary to fund a special allocation from the existing law, to meet the new requirements of social life in the expansion area. From the old legal systems that are still valid to become *ius constitutum*, the idea of legal reform with two alternatives can be proposed.

The first alternative, by emphasizing in the norm of *ius constituendum*, the transfer of assets belonging to the parent regency located in the new autonomous region, the special allocation funds must be handed over in its entirety, but only for the assets needed. In solving asset problems, there are four categories of assets, namely: (1) assets handed over; (2) assets to which special allocation funds are transferred; (3) the assets that are cooperated; and (4) assets that need to be compensated. This is based on three juridical arguments. First, if all assets are handed over and the assets for which special allocation funds are used, the new autonomous region will have double the assets of the Government Building: the Mayor's Building and the Regent's Building. As a result, creating a special allocation fund for justice and discriminatory,

Second, the overall surrender, is inversely proportional to the purpose of expansion, because, with the expansion, public services in the main regency area are constrained by the relocation of the government capital with special allocation funds followed by the provision of special allocation funds. Third, upon the surrender of all assets, the parent regency runs the government by "leasing or borrowing" buildings that are owned by themselves. This is contrary to the principle of ownership of land and/or buildings that are protected by the constitution.

The second alternative is to create norms for the division of new autonomous regions where special allocation funds are used as the capital of the parent district. For example, District X is divided into City Y. District X consists of Districts A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, and T, have the capital of the main district in District E. If the area of City Y with special allocations is set to include Districts A, B, C, D, E, the legislators can take a policy to divide sub-district E into two regions, District E.1. and District E.2., where District E.1. which is the domicile of the capital of the parent Regency, the special allocation funds are included as part of City Y. As for District E.2. handed over to the territory of City Y. With the division of sub-district E.1. and E.2. that, then the capital of the parent district which is located in sub-district E.1. special allocation funds must be transferred. So, the potential for special allocation funds is the transfer of the capital of the main regency, as in the case of the expansion of Sungai Penuh City.

6. Conclusion

The concept of regulating the expansion of new autonomous regions with special allocation funds distinguishes the special allocations for the division of new provinces and new districts from new cities. Each division imposes an obligation on the parent region to provide part of its local revenue budget/APBD (Indonesian: Anggaran Pendapatan Belanja Daerah) and release assets in the expansion area. This arrangement excludes special allocation funds for the division of districts into cities, which imposes the burden on the parent district to move its capital without special allocation funds from the central government, the burden of handing over assets that are located and become the center of the capital of the parent district government to the new division city. The solution to the gap in rights and obligations between the parent district and the new city, by categorizing assets, namely (1) assets that are handed over; (2) assets to which special allocation funds are transferred; (3) the assets that are cooperated; and (4) assets that need to be compensated. The legal politics of the formation of a new autonomous region in the form of a city with the renewal of the existing law or norms, to meet the new requirements of social life in the expansion area. the legal politics of the formation of a new autonomous region in the form of a city with legal reforms from the existing norms, in the form of arrangements for the transfer of assets belonging to the parent regency located in the new autonomous region, the special allocation funds are handed over in its entirety, but only for the assets needed, or by dividing the area where the funds are allocated. the special allocation eliminates the capital of the parent district, by dividing the two sub-districts into the center of government. The legal politics of the formation of a new autonomous region in the form of a city with the renewal of the existing law or norms, to meet the new requirements of social life in the expansion area. The legal

politics of the formation of a new autonomous region in the form of a city with legal reforms from the existing norms, in the form of arrangements for the transfer of assets belonging to the parent regency located in the new autonomous region, the special allocation funds are handed over in its entirety, but only for the assets needed, or by dividing the area where the funds are allocated. The special allocation eliminates the capital of the parent district, by dividing the two sub-districts into the center of government. The legal politics of the formation of a new autonomous region in the form of a city with the renewal of the existing law or norms, to meet the new requirements of social life in the expansion area. The legal politics of the formation of a new autonomous region in the form of a city with legal reforms from the existing norms, in the form of arrangements for the transfer of assets belonging to the parent regency located in the new autonomous region, the special allocation funds are handed over in its entirety, but only for the assets needed, or by dividing the area where the funds are allocated. The special allocation eliminates the capital of the parent district, by dividing the two sub-districts into the center of government.

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