

DESIGN OF THE SPECIAL AREA FOR INCLUSION IN THE SYSTEM OF THE REPUBLIC OF INDONESIA BASED ON 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA

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ABSTRACT - The results showed that (1) the design of specific areas / privilege is granted to provincial-level regions and municipal level area / city. (2) Design of granting the status of specificity / privileges in the State of Indonesia is based on a variety of reasons, namely (a) the granting of special autonomy is more emphasis on the conditions and the real needs of the area so that the necessary implementation of the authority of a special nature, such as its position as the capital of the province of the Republic of Indonesia and as an autonomous region, (b) their resilience and perseverance are sourced from the view of life which is based on Islamic Shariah; (c) the administration and development has not fully satisfied the justice and social welfare, and has not fully supported legal enforcement, and has not yet shown respect for human rights; (d) the history and origins of things, for example Yogyakarta Sultanate and the Duchy of Pakualaman which already have their territory, government, and the population before the birth of the Republic of Indonesia on August 17, 1945 have proved to be instrumental in maintaining, filling, and keeping the integrity of Unitary Republic of Indonesia. (3) theoretically the establishment of special autonomy is one way or a choice made by a country to hold its togetherness (State unity).

keywords: Special Areas, Special District, Law Design of Unitary State

1. INTRODUCTION

Regional autonomy is not just a dispersal of governance to achieve efficiency and effectiveness of government or just to accommodate the fact of a vast nation with many residents and many islands. Autonomy is basically a constitutional order (*staatsrechtelijk*) relating to the basics of state and organizational structures of the state, not just a state administrative order¹. Regional autonomy is the basis for expanding the implementation of democracy and the instrument to realize the general welfare. Local autonomy is a way of maintaining a unitary state. Autonomous regions which freely and independently organize and manage his own household are given a proper place in the life of the nation, so there is no reason to get out of the Homeland².

Republic of Indonesia unitary state is a cornerstone of design in achieving equitable regional autonomy. The 1945 Constitution sets the regional administration of the post-reform that shows clarity of direction with the declaration of decentralization with broad autonomy; the area has broad authority to regulate and manage the household of their own region with its own initiative. For the sake of justice for the region, in addition to the presence of the authority of broad autonomy as well as the recognition and respect for the state of the government unit which is special and privileged. Section 18B of the Act of 1945 provides that "The State recognizes and respects the local government units that are special or specific regulated by law".

Recognition of specific and privilege regions gives an implication that any areas that are special and privileged in certain respects compared with other regions. Specificity and privilege of certain areas are based on the history and origins of rights under the Constitution of the Republic of Indonesia Year 1945

to set up and take care of special authority and privilege, for example Papua, Aceh, YOGYAKARTA.

Special areas in the design of Unitary system is not causing no problem, there are some problems: First, the 1945 constitution does not describe in detail of the design of specific areas, in this case whether or not it is only for provincial-level regions that are obtaining special status, given in the constitutional practice only a few areas are given special status of provincial level only. This raises the level of turbulence for the District and City area which may have specificity properties and privileges, such as Surakarta. This problem will further raise the question, whether or not the special areas and special designs are also given to the district level and the City area.

Second, there is no explanation of the criteria of provincial region, district and city that can be used to determine a special area. This problem remains a political choice of the government, for example due to the failure of the new order in the welfare of the people of Papua whose land has abundant natural resources, the government requires political choices in the reforms era to make Papua as a special area. Moreover, Yogyakarta is given a privilege status in the field of filling the position of Regional Head and Deputy Head of the Provincial level is also a political choice because previously the central government had an intention to delete privileges in the field of filling the post of head of the region. Meanwhile Aceh province was given the privilege relating to the application of Islamic law and the implementation of Islamic justice (e.g. Sharia Court).

Third, in the perspective of a unitary state, the vagueness of rules and criteria for granting the status of a special area to a particular area can cause jealousy for other areas that feel to have special properties and

privileges. This of course will lead to endangerment of a unitary state which has been designed since independence. Therefore there must be a clear position for specific regions in the design of the unitary state. Surely what should be considered further to address the problem is to make the design of an ideal existence in managing specific regions in the framework to strengthen the design of a unitary state that has been agreed.

2. PROBLEM FORMULATION

Based on the above background, the problem formulations of this study are:

1. How does the setting / legality of a particular area within the Unitary State of the Republic of Indonesia under the Act of 1945?
2. How does the ideal design of special areas / privileged in order to strengthen the system of the Republic of Indonesia according to 1945 Constitution?

3. RESULTS AND ANALYSIS

1. The Setting of Special Region in Indonesia

Based on the study of various laws and regulations in force, there are some areas that until now still having the status of a privilege or specificity. Status of privileges and specificity is only owned by the provincial level regions including counties while the regions that have the status of a special area or specific areas, including:

a. Special Province of Jakarta Capital

Provincial Government of Jakarta is the operation of government affairs by the local government and the House of Representatives of Special Province of Jakarta according to the principles of autonomy and assistance with the principle of broad autonomy within the system and the principles of the Republic of Indonesia. Special Province of Jakarta is the province that has the specificity in local governance due to its position as the capital of the Republic of Indonesia. Rationales behind granting the status of specificity for DKI Jakarta are:

- 1) Jakarta as a unit of government that is specific to its position as the capital of the Republic of Indonesia and the autonomous region that has an important function and role of government in support of the Republic of Indonesia based on the Constitution of the Republic of Indonesia Year 1945. Therefore, it is necessary to give the specificity of tasks, rights, obligations, and responsibilities within the regional administration.
- 2) Jakarta province as the capital of the Republic of Indonesia, as the center of government, and as the autonomous region is dealing with a very complex characteristics problem and different from the other provinces. DKI Jakarta is always faced with the problems of urbanization, security, transportation, environment, special area management, and other social problems that require solutions synergistically through various instruments.

The few things related to the specificity of Jakarta, include:

- 1) The authority of the Government of Jakarta as the capital of the Republic of Indonesia which includes the establishment and implementation of policies in the areas of: (a) spatial, natural resources, and the environment; (b) the control the population and settlements; (c) transportation; (d) industry and trade; and (e) tourism.
- 2) Jakarta Provincial Government is led by one Governor assisted by a Vice Governor directly elected by universal suffrage of Regional Head and Deputy Head that gains of more than 50% (fifty percent).
- 3) The Governor in his capacity as representative of the Government and Regional Head of Jakarta is given the specificity of tasks, rights, obligations, and responsibilities in the position of Jakarta as the capital of the Republic of Indonesia.
- 4) The Governor shall have the protocol rights including assisting the President in the event of state in accordance with the provisions of the legislation.
- 5) The mayor/regent is appointed by the Governor upon consideration of Jakarta Provincial Council of Civil Servants who meets the requirements. Mayor/regent is dismissed by the Governor in accordance with the provisions of the legislation. Besides mayor/regent is responsible to the Governor.
- 6) In the capacity as the capital of the Republic of Indonesia, Jakarta Government may propose to the Government related to the increasing number of agencies, technical agencies and provincial departments, and/or technical institute of new areas according to the needs and abilities of local financial budget.
- 7) Funding of Jakarta Provincial Government in conducting the affairs of government that are special in its position as the capital of the Republic of Indonesia is put in the state budget.
- 8) Jakarta Provincial Government may propose the establishment of a special area in its territory to the Government; a special area is set up to hold certain government functions that are special and for the national interest/national scale.

b. Special Province of Yogyakarta

Special Region of Yogyakarta is the province that has the privilege in the administration of government affairs within the framework of Unitary State of Republic of Indonesia. The specialty is the privilege of the legal position held by Yogyakarta by history and origins of rights under the Constitution of the Republic of Indonesia Year 1945 to set up and take care of special authority. Rationales behind granting privilege status of Yogyakarta Province are:

- 1) Special status attached to Yogyakarta is an integral part in the history of the Indonesian nation-state.
- 2) Homogeneous Community of Yogyakarta at the beginning of independence merged into Indonesia's diverse society; ethnicity, religion, and customs.

- 3) After the proclamation of August 17, 1945, Sultan Hamengkubuwono IX and Duke Paku Alam VIII decided to become part of Indonesia.
- 4) The role of Yogyakarta continues in the era of revolution realized through the efforts of the Sultanate and the Duchy and the people of Yogyakarta in maintaining, filling, and keeping the integrity of the Unitary State of Republic of Indonesia.
- 5) Sultanate and the Duchy are remained positioned as a symbol of people's lives and stay protector as distinctive feature of YOGYAKARTA.
- 6) Privileges setting of Yogyakarta aims to achieve good governance and democracy, peace and welfare of the community, to ensure all-diversity in single country, and to institutionalize the role and responsibilities of the Sultanate and the Duchy in maintaining and developing the culture of Yogyakarta as the nation's cultural heritage.

Authority in matters of Privileges must be based on the values of local wisdom and favor to the people. The authorities of the Specialty associated with authority procedures for filling positions, duties, and authority of the Governor and Deputy Governor are:

- 1) Authority Procedures of Position Charging
Article 25 (1) states that the position of Sultan Hamengku Buwono who is enthroned as the Governor and the Duke of Paku Alam who sits as a Deputy Governor for 5 (five) years since the inauguration. Article 18 (1) letter c) of Act No. 13 of 2012 states that the Candidates for Governor and Deputy Governor Candidates are citizens of the Republic of Indonesia who must meet the following requirements: enthroned as Sultan Hamengku Buwono for a candidate of Governor and enthroned as Duke of Paku Alam for a candidate of Vice Governor.
- 2) Local Government Institutional of YOGYAKARTA
Local Government institutional authority of YOGYAKARTA is organized to achieve effectiveness and efficiency of governance and public services based on the principles of responsibility, accountability, transparency, and participation by taking into account the shape and arrangement of the original rule
- 3) Culture
Cultural authority is organized to maintain and develop the results of idea, feeling, intention, and the work in the form of values, knowledge, norms, customs, objects, art, and the noble traditions rooted in the YOGYAKARTA community
- 4) Land
In the authority of the land, the Sultanate and the Duchy with this Act are declared as a legal entity. Sultanate and the land of the Duchy are intended for the maximum development of the cultural, social interests, and welfare of the community. Sultanate land and the Duchy land are registered at the land agency conducted in accordance with the provisions of the legislation.
- 5) Spatial

Authority of the Sultanate and the Duchy in the limited spatial is in the management of land use of Sultanate and the Duchy. In the exercise of authority, the Sultanate and the Duchy establish the general framework of spatial land policy of the Sultanate and the Duchy according to the specialty of YOGYAKARTA. The general framework of spatial land policy of the Sultanate and the Duchy is determined by taking into account of national spatial and spatial of Yogyakarta Region.

c. Province of Nangroe Aceh Darussalam

Aceh is the provincial area which is the unity of law society that is privileged and given special authority to regulate and manage its own affairs and interests of local communities in accordance with the legislation in the system and the principles of the Republic of Indonesia based on the 1945 Constitution. Government of Aceh is the provincial government in the system of Unitary State of Republic of Indonesia based on the Constitution of the Republic of Indonesia Year 1945 which held government affairs conducted by the Regional Government of Aceh and Aceh Provincial Parliament in accordance with the functions and authority of each. Rationales behind granting privilege status for Aceh Province as stated in the explanation of the Law on Governing Aceh are:

- 1) The journey of constitutional of Republic of Indonesia puts Aceh as a unit of local government that is privileged and special, associated with distinctive character of the history of the struggle of Acehnese people who have endurance and perseverance.
- 2) Resilience and perseverance are sourced from the view of life which is based on Shari'a which bore a strong Islamic culture, so that it is one of the capital region in the struggle to seize and maintain the independence of the Republic of Indonesia
- 3) Dynamic aspirations of Acehnese society not only in the lives of indigenous, cultural, social, and political adopting Aceh specialty, but also in the providing of legal certainty in all matters as basic religious life of the people of Aceh who have shaped attitudes, high fighting spirit, and a strong Islamic culture.

d. Papua Special Autonomy

Rationale behind the provision of special autonomy for Papua Province, namely:

- 1) Integration of the nation in the Republic of Indonesia container must be maintained with respect of equality and diversity of social and cultural life of Papuan people.
- 2) In reality the various policies in the governance and development of the centralized yet fully satisfy the justice, has not yet achieved the welfare of the people, not yet fully supported legal enforcement, and has not yet shown respect for Human Rights in Papua.
- 3) Management and utilization of the natural wealth of Papua Province has not been used optimally to improve the lives of indigenous peoples, so that it has resulted the gap between the Papua Province

and other areas as well as the neglect of the basic rights of indigenous Papuans.

- 4) In order to reduce the gap between the Provinces of Papua and others, and improve living standards for people in Papua province as well as provide the opportunity for indigenous people.
- 5) The momentum of reform in Indonesia to provide opportunities for the emergence of new thinking and awareness to solve Indonesia's various major problems in managing better national and state life.

Special Autonomy for Papua Province is basically giving greater authority to the province and the people of Papua to organize and take care of themselves in the framework of the Unitary State of Republic of Indonesia. This authority also means authority to empower the potential socio-cultural and economic of Papuan society, including providing adequate role for the indigenous Papuan people through the representatives of the customs, religion, and women.

1. Ideal Design and Implications of Special Region in Indonesia

Act of 1945 sets up a special area. This is based on the provisions of Article 18A paragraph (1) and article 18B paragraph (1) and paragraph (2). Article 18A paragraph (1) of the 1945 Constitution provides that: "The relationship of authority between the central government and the provincial, district, and city or between provinces and districts and cities is governed by the Act having regard to specificity and diversity of the area. Article 18B Paragraph (1) Constitution of 1945: The State recognizes and respects the local government units that are special or specific regulated by law.

For an ideal design granting status or privileges for regional specificity in Indonesia, the researchers found that the ideal design for the area is the provincial level as well as county and city level, in the sense of a special area will be set up under their real reasons related to the state of the area, while privilege status emphasizes more on aspects of history (the origins of an area). In the constitutional practice of Indonesia, Indonesia has ever given special status and privilege to provincial and district, provincial level, which is still valid; the Province of Jakarta, Yogyakarta Special Region, the Province of Nanggroe Aceh Darussalam and Papua (points of specificity and/or privileges have been explained in the discussion above).

The establishment of a special area in Indonesia, in the sense of granting the status of specificity / privileges for the province in Indonesia also has two implications, namely: (1) the desire of another area to demand of special areas and the desire of other areas to establish a new area which has special authority or privileges; (2) the implications for strengthening the unity of the country. Reclaim areas and new areas that propose the establishment of a specialized area namely:

a. Special Region of Surakarta

Special Region of Surakarta is a special region that is recognized by Indonesia, but this time the privilege of the Special Region of Surakarta has been removed (as

explained above). With the abolition of its privilege efforts are made to restore the status of privilege made by Kraton Surakarta to file a judicial review of Law No.10 of 1950 on the Establishment of Central Java province.

b. Establishment of Special Autonomy in Bali

Phenomenon to apply special autonomy including in Bali is a special note. The demands of special autonomy in Bali that have already been sticking out have been responded also by the House of Representatives by incorporating the Bill of Bali Special Autonomy in the list of Prolegnas year 2009-2014. Some of the things for the draft proposal for special autonomy are the authorities related to administrative matters include: tourism affairs; spatial affairs; and cultural affairs. The reason demanding special autonomy in Bali is the concept of one island one management in that tiny island.

4. CONCLUSION

1. Conclusion

Based on the above results, we can conclude a few things as the subjects of assessment, namely: (1) design of a special area not only given to the provincial-level regions, but local-level district / city. Province-level regions which still have the status of specificity / privileges include: Jakarta, Nanggroe Aceh Darussalam (NAD), Papua Province, and the Special Province of Yogyakarta. While the district that still has the status of specificity is the county / city that became part of Aceh administration. (2) Design of granting the status of specificity / privilege in Indonesia is based on a variety of reasons, namely: Jakarta provincial government as a unit which is special in its position as the capital of the Republic of Indonesia, their resilience and perseverance are sourced from the view of life which is based on Islamic shariah which bore a strong Islamic culture, origins rights, and others. (3) Theoretically the establishment of special autonomy is one way or the option undertaken by a state to hold its togetherness. In some cases in Indonesia selection of special autonomy is made as a middle way that an area does not escape from the Homeland, as occurred in the Province of Nanggroe Aceh Darussalam (NAD) and Papua, while also restoring the rights of an area that has origins that are special, such as the Special Region of Yogyakarta.

2. Suggestions

Brainstorming in this study includes:

1. The government should make a special area design set forth clearly in the law. It is as a legal basis in providing specificity status / privilege of an area. This is done to minimize the political compromise.
2. The Government shall grant an area that qualifies as a special area / specialty areas as mentioned in the reasons above.

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