The European Proceedings of
Social & Behavioural Sciences
EpSBS

Future Academy

ISSN: 2357-1330

https://dx.doi.org/10.15405/epsbs.2018.12.03.62

UUMILC 2017
9TH UUM INTERNATIONAL LEGAL CONFERENCE

UNITARY STATE PRINCIPLE BETWEEN CENTRAL AND LOCAL GOVERNMENT IN YOGYAKARTA

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Abstract

The ideal concept of a unitary state is that whole operation of local government should be centered on a structured organization model including the duties and authorities inside. In opposite, the unitary state of Indonesian Republic according to the 1945 Constitution urges chances which lead to a difference of regulation among the local governments. The aims of this research are (1) to recognize the relationship pattern of the central and regional government authority based on the Enactment Number 13 of 2012; (2) to recognize the implementation of decentralization concept in the local government of Yogyakarta, before and after the existence of Enactment Number 13 of 2012. This research uses normative juridical approach for which it attempts to present the data as accurate as possible to describe the facts. The data used were primary and secondary data which consist of primary, secondary, and tertiary law materials. The relationship pattern of authority between the central government and local government of Yogyakarta according to Article 18B subsection (1) of the 1945 Constitution is asymmetric for which several structures and rights of Yogyakarta are not established and determined by the central government. The difference of implementation of decentralization concept before and after the Enactment Number 13 of 2012 exists is on the clarity of substances for regulating the privileges in Yogyakarta. There were several rights which were not mentioned as the rights of Yogyakarta which later, in 2012, were set in detail and firmly legalized to gain the certainty of law in the government.

Keywords: Authority Relation Pattern, Privileges of Yogyakarta, Unitary State..

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1. Introduction

The 1945 Constitution as the basic written law and the highest written source of law in Indonesia, does not regulate all aspects of the state life in detail, but only the essential elements. Therefore, relating to the matters that need to carry out the basic rules are assigned to the lower legislation as the rules implementor, either on the state life and society or the administration of the government at both the central and regional levels.

The 1945 Constitution itself as a source of written law has undergone 4 (four) amendments, thereby bringing a significant impact on the system of regional government in Indonesia. The makers of the 1945 Constitution have been aware from the beginning that for achieving efficiency, effectiveness, and maximumin results of the country management, the state of Indonesia must be divided into large and small areas.

Since a state is an organization of power (Na'a, 2012) which must obey the philosophy and organizational mechanism as the system, it is a logical consequence if the management of the state organization is divided into levels according to the range of the organization power. As the Republic of Indonesia is considered as a large country, both from the size of its territory and the population, as well as the complexity of its organization, then it is common for the organizational structure bears the distribution of power, the delegation of powers along with the existence of centralized and decentralized control systems (Marbun, 2005).

It leads to an idea that although the number of Articles in the 1945 Constitution are not so many, the importance of them in regulating the regional government related to the structure of Indonesian Republic brings it to be formulated in detail after the second amendment in year 2000 as follows:

i. The Unitary State of the Republic of Indonesia is divided into provinces and those provinces are divided into districts and cities, where each province, district and city has local government which is regulated by law.
ii. Regional, district and municipal governments shall administer and manage their own governmental affairs according to the principle of autonomy and co-administration.
iii. Regional, district and municipal governments have Regional Representative Council whose members are elected through a general election.
iv. Governors, Regents, and Mayors are the provincial, district and municipal government who are elected democratically.
v. The local government carries out the widest possible autonomy, except for the government affairs which under the law are determined as the government affairs.
vi. Local governments have rights to arrange and determine both local and other regulations in implementing the autonomy and supporting other tasks.
vii. The arrangement and procedure of local governments' administration are regulated in the laws.

1.1. Article 18 A

i. The authority relation between the central government and provincial, district and municipal governments or between provinces and districts and municipalities are regulated in laws by taking into account the specificity and diversity of the regions.

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ii. Financial relationships, public services, utilization of natural resources and other resources between the central government and local government are administered and implemented fairly and harmoniously under the laws.

1.2. Article 18 B

i. The State acknowledges and respects local government units which are either special or exclusive regulated by law.
ii. The State acknowledges and respects the unity of customary law society along with their traditional rights as long as they are still alive and corresponding to the development of society and the principle of the Unitary State of the Republic of Indonesia, as governed by laws.

From the formulation of the amendment of Article 18 of the 1945 Constitution, it can be asserted that Article 18 of the 1945 Constitution constitutes the constitutional basis for the formation of regional government which will be further regulated by laws, and those the referred regions will be autonomous and have a Regional Representative Council along with regional governments.

Enactment of Law Number 13 of 2012 was welcomed very well by the people of Yogyakarta, because of the long struggle done by the society to bring this such of law which then evokes much spirit of the people of Yogyakarta. It is because in the laws of local government implemented in Indonesia does not regulate explicitly about the position of the Sultan and Pakualam who were throning at that time as the governor and governor deputy. It caused much turmoil among the society related to the filling of the governor and governor deputy position of Yogyakarta Special Region. Another rumoil was arisen in 2000, when the Regional Representative Council would occupy the governor deputy position through voting paired with the candidate from KGPAA Paku Alam VIII, not from Paku Alam who was throning at that time, namely Paku Alam IX.

The turmoil re-emerged in 2003, when the throne of Sri Sultan Hamengku Buwono X and Paku Alam IX had run out. The absence of a legal law for privileges in fulfilling the position made the fulfillment of the governor and governor deputy position might be taken through election. But then, the Regional Representative Council (DPRD) of Yogyakarta only proceeded one pair of candidates, Sultan and Paku Alam as the governor and governor deputy. The next turmoil reappeared at the time of governor and deputy governor's throne had expired in 2008. The Enactment Number 32 of 2004 does not specifically regulate the fulfilling of the governor and governor deputy from the Sultan and Paku Alam. A fierce debate that had occurred in the political elite of the central level government could be overcome with the spirit of togetherness of the society who want to maintain the distinctive characters of Yogyakarta which still has and acknowledges the power of Sri Sultan Hamengku Buwono as the king and governor and Sri Paduka Pakualam as the deputy governor (Santoso, 2013).

From the historical point of view, the Ngayogyakarta Sultanate and the Pakualaman Duchy had declared to join the Republic of Indonesia as a privileged area, yet the legal laws of that special status were not existent at that time. Even the privileged position was threatened on the New Order Era, for which the government of Sultan and Paku Alam was not accommodated by the government. (Kedaulatan Rakyat, 2012).

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2. Problem Statement

The debate on the privilege of Yogyakarta had been increasing as many people want to change and simultaneously equate the electoral system of local head and local head deputy in Yogyakarta to other regions which was through direct election, not determination. The controversy was sharpened when the government made the implementation of regional autonomy as the parameter for changing the electoral system of local head and local head deputy of Yogyakarta. But obviously, many things must be observed in interpreting the implementation of local autonomy at the present time in Indonesia.

The implementation of autonomy should not be generalized in all regions of Indonesia, considering that each region has different capabilities and potentials. The implementation of regional autonomy still needs deeper studies, including in this case, the study of the privileges of Yogyakarta affects the system of local head and local head deputy election, especially in the privileged region. Indeed, the awareness of many parties regarded to this case is needed, because the essence of the regional autonomy implementation itself is actually about the regional independence which is adjusted to the capabilities and conditions of each region.

The Discussion on the relationship between central and local government starting before the amendment of Article 18 of the 1945 Constitution to the completion of Amendment IV of the 1945 Constitution still attracts much attention of various realms, whether from the bureaucrats, practitioners and especially academics or theorists. The conflict of concepts and thoughts about the relationship between central and regional government in Indonesia is actually more about where the movement of power or greater authority goes, remaining in the center or in the regional.

3. Research Questions

One of the ideas that need to be emphasized on relation of the central and regional government in the doctrine of the unitary state (*eenheidstaat*, unitary state) is an opinion asserting that the highest power holders of state affairs are the central government. One of the sovereignty nature is single, original, eternal and indivisible. The sovereignty or power is divided or distributed if it (sovereignty) wishes for it.

In formulating a unitary state, Indonesia does not admit the concept of a state within a country. Therefore, at the regional level, local governments form Local Regulations as a manifestation of the existence of the people's will and wish in performing the regional governments. Regarding to the formation of local regulations, the role of the Regional Representative Council as one of the local regulations former is very important for which this institution is expected to truly represent the aspirations of people. Based on the background that has been described before, these following problems can be identified:

i. How is the pattern of authority relation between central and regional government in Yogyakarta according to the Enactment Number 13 of 2012 on the privileges of special region of Yogyakarta reviewed from the principle of unitary state in Indonesian state administration system?
ii. How is the implementation of decentralization concept in performing the regional government in Yogyakarta before and after the existence of the Enactment Number 13 of 2012 on privileges of special region of Yogyakarta?

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4. Purpose of the Study

This article has several objectives as follows:

1) To examine the pattern of authority relation between the central and regional government in Yogyakarta according to Law Number 13 Year 2012 about the privileges of Special Region of Yogyakarta reviewed from the principle of unitary state in Indonesian state administration system.
2) To examine the implementation of decentralization concept in performing the local government in Yogyakarta before and after the existence of the Enactment Number 13 of 2012 on privileges of Special Region of Yogyakarta.

5. Research Methods

This research is a descriptive analytical study for which it tries to present the data as accurate as possible by organizing and classifying the data to describe the facts systematically and integratedly regarding to the state of the observed object. The data used in this research were primary and secondary data which consisted of primary, secondary, and tertiary law materials. The research was carried out by using normative juridical approach and empirical juridical approach.

6. Findings

6.1. The Unitary State, Decentralization, Authority Relation of central and regional government

In writing this article, the author uses the theory of unity as a grand theory. It is because the study of the pattern of authority relation between the central government and the Special Region of Yogyakarta according to the Enactment Number 13 of 2012 will be reviewed from the applicable principles in countries that choose a unitary state form for which they will later be theoretically elaborated on the idea of a unitary state. For the middle theory used in the writing of this article is the theory of decentralization and autonomy, with the consideration that the existence of authority possessed by the region is determined by the theory of decentralization and autonomy. Moreover, the theories of decentralization and autonomy determine the magnitude, type and scope of authority possessed of autonomous regions.

Meanwhile for the applied theory used in this article is the theory of authority relation pattern of central and local government which is supported by the regional administration theory. The use of authority relation pattern theory supported by the theory of regional administrration system is intended to look closer and more practical at the pattern of central and regional government related to the privileges of special region of Yogyakarta with the central government in the frame of Unitary State of Republic of Indonesia (NKRI). These theories will be described without following the systematic pattern of theoretical levels, but they will support and define each others as a theoretical framework in observing the research problem (Huda, 2013).

The term “state” is actually a term which is derived from translating (transliterate) into Indonesian of some foreign terms such as “staat” (Dutch), “state”, “estado” (spanish), “stato”(Italian language). These terms are etymologically derived from the term in Latin “status” or “statum” which means putting in its own state, putting in order to stand, making it stands (Ashiddiqie, 1994).

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The State of Indonesia itself, as stipulated in the 1945 Constitution, is a country based on the law. Within the state of law, the limitation of state and political power must be done clearly for which no one cannot violate it. Therefore, in the state of law, the law plays a very important role and is above the power of state and politics (Strong, 2013). By confirming the existence of the concept of a state of law in the 1945 Constitution proves that the principle of a state of law is seen as something essential of its existence. Until present time, the state of law concept is an ideal idea for a state. The idea of a state of law has been evolving since Plato wrote the *nomoi* or even long time before that.

The idea of a state of law is based on a belief that state power must be exercised on the basis of good and just law (Na'a, 2012). Thus, since its inception, the concept of a state of law is intended to limit the power of state authorities for which it can minimalize the power abuse. Therefore, there is no one in a state of law who is immune of laws. In this case the concept of a state of law cannot tolerate either the totalitarian, dictatorial or fascist system of government, or the anarchist government system. Because the totalitarian/dictatorial state system often treats people arbitrarily without regarding to their dignity and rights, the protection of fundamental rights of the people becomes one of the essence of a law state (Na'a, 2012).

In Indonesia itself, it is expressly stated that the state of Indonesia is a state based on law (rechtstaat), not a state of power (machtstaat), as asserted in the 1945 Constitution. The concept rechtstaat which is derived from Germany (which later is followed by Dutch) has some differences compared to the rule concept of law which is derived from England. Yet, both of them lead to the protection of fundamental rights of people. Since the rechtstaat born from the Continental European legal system, it is more directed to the improvement and limitation of the functions of executives and administrative officials so that they do not violate the fundamental rights of the people. Meanwhile, as the concept of rule of law was born in the atmosphere of the Anglo Saxon legal system, it is more focused on the improvement and enhancement of the role of legal institutions and courts to enforce human rights and basic rights (Fuady, 2011).

In discussing the pattern of authority relation between the center and the regional government in the form of a unitary state (eenheidstaat, unitary state), it cannot be separated from the parameter which is associated to the method or system of the regional administration. According to Bagir Manan (Yusdiansyah, 2010), “The regional administration system is a system which is associated to the allocation of authority, duties and responsibilities to organize and manage the governmental affairs between the central and regional levels. One embodiment of those allocations is that regions will have a number of governmental affairs either on the basis of submission or acknowledgement or even permitted as the affairs of the regional administration system”.

Furthermore, according to Bagir (Yusdiansyah, 2010) there are theoretically known several regional administration systems, namely the formal systems, material systems of and real or actual systems of regional administration.

1. Formal system of regional administration (formeele hoishoudingsbegrip)

In this system, the division of authority, duties and responsibilities between the central and local governments to regulate and manage certain governmental affairs is not specified in detail. The principle of the formal regional administration system is that there is no different characteristic of affairs held by

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the central and local administrations. Anything that can be held by the central government can basically be organized by the region as well. The division of authority, duties and responsibilities for governing and administering a governmental affair is based solely on the belief that a government affair is better and more successful if it is administered and governed by a particular government unit, and vice versa. Furthermore, Bagir Manan (Marbun, 2005) states that: "Theoretically, the formal household system provides the widest possible of flexibility to the locals to regulate and administer government affairs and to make such affairs as local household affairs".

2. Material system of regional administration (material huishoudingsbegrip)

In this system, there is a detailed division of authority, duties and responsibilities between the centre and the region. Governmental affairs belonging to the regional household affairs are determined certainly. The material household system is based on an idea that there is indeed a fundamental difference between central and regional government affairs. Regionals are considered to have a separate scope of governmental affairs that is materially different from the affairs which are organized and administered by the central government. Furthermore, this system departs from the idea that government affairs can be sorted out into various environmental units of government.

3. Real or Actual household systems (riele huishoudingsbegrip)

This system is a middle ground or a combination of a formal household system and a material household system. It is called as "real", because the content of regional households is based on real circumstances and factors. A question rises from this such a system, "which system is the most dominant from the combination of formal household systems and materials household system *nayat* (real)?"

As it is known that formal household systems have stronger foundations for realizing the principles and goals of the househod rather than household systems, it should be naturally dominant for formal household system, which is later followed by the elements consisted in the material household system.

6.2.Pattern of Authority Relationship Between Central and Regional Government according to the Enactment Number 13 of 2012 on the Special Region of Yogyakarta (reviewed from the principle of unitary state in the 1945 constitution)

In its development, the principle of a unitary state rises many challenges in its implementation. The greatest challenge in implementing the principle of a unitary state is the disintegration of the nation. This happens because the centralization of power that lasted too long in Indonesia leads to the misguided meaning of a unitary state. The meaning of a unitary state is more synonymous with a centralized power without regarding the diversity possessed by the Indonesian nation for which it seems like the principle of a unitary state is used as a tool to similize all regional entities in Indonesia.

One of the interesting issues in a unitary state is the status of a special region as an area regulated in the constitution as part of a unitary state governed by laws. The existence of a Yogyakarta palace that historically has proceeded the integration into the Unitary State of the Republic of Indonesia, is often become a legitimacy why Yogyakarta should have a special status. Based on the author's point of view, the special status that Yogyakarta bears today is appropriate, since the original structure that existed in the Yogyakarta community with Kasultanan and Pakualaman Duchy is an arrangement that none of other regions in Indonesia has the same.

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In connection with the special status of Yogyakarta, as Bagir Manan has quoted in the previous chapter, the central and regional relations within the decentralization framework should not disassemble the arrangement and original structure of the Indonesian society government, but should maintain and develop them. The author strongly agrees with that opinion because dismantling the arrangement and original structure of Indonesian society government means denying the historical process of society that has a characteristic with the original arrangement. The development of the privilege of Yogyakarta itself as described earlier, can be a reference in the implementation of local government (Huda, 2013). The main problem of a unitary state form is the existence of special conditions owned by some regions, which requires the government to apply a pattern of relationships that is different from the autonomous regions in general.

As the Enactment Number 13 of 2012 exists, it is an assertion of the substance of regulation on the Yogyakarta's privilege. For the Special Region of Yogyakarta itself, the existence of the Enactment Number 13 of 2012 becomes the basic law of the decentralized authority of the central government to the government of the Special District of Yogyakarta. The authority in those privileges affairs based on the Enactment Number 13 of 2012 refers to the prcedurs of fulfilling the function, position, duties, and authority of the Governor and Governor Deputy, the local government institutions of DIY, land, culture and spatial layout.

7. Conclusion

The pattern of authority relation between the central and regional governments in Yogyakarta according to the Enactment Number 13 of 2012 on the specialties of Yogyakarta reviewed from the principle of a unitary state, is a special relationship pattern within the framework of a unitary state which means that the Government of Yogyakarta Special District has the authority as stated in the Laws on the Regional Government applied in Indonesia, along with the privileges mentioned in the Enactment Number 13 of 2012. Considering the original arrangement and structure that existed in the Yogyakarta community connected to Kasultanan and the Pakualaman Duchy are the arrangements that are not owned by other regions in Indonesia, the authority relationship between the central government and the Special District of Yogyakarta within the framework of the unitary state should not dismantle them. Maintaining along with developing them is a must.

Therefore, the Enactment Number 13 of 2012 becomes the normative foundation to affirm the position of Yogyakarta as an area with special powers which are not possessed by other regions, as regulated previously in the law stipulating the formation of Special District, on the Enactment Number 3 of 1950 in conjunction with Laws Number 19 of 1950 in conjunction with Laws umber 9 of 1955. So, the pattern of authority relation of central and regional government in Yogyakarta according to the Enactment Number 13 of 2012 on the Special District of Yogyakarta asserts that the position of law is declarative which means that the existence of the Law Number 13 of 2012 is an affirmation along with being the legal basis for the privilege of Yogyakarta.

The difference in the implementation of the concept of decentralization before and after the enactment of Laws No. 13 of 2012 exists is on the clarity of the privileges arrangement in Yogyakarta. Before the Enactment Number 13 of 2012 exists, the substance of Yogyakarta's specialty is not expressly

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regulated in law. But then, the Enactment Number 13 of 2012 in Article 7 expressly describes the decentralized authority to the Special Region of Yogyakarta, which includes the Procedures for fulfilling the position, duties and the authority of governor and governor deputy, the local government institutions of Yogyakarta, land, culture and spatial layout. It is expected that a turmoil done by the Yogyakarta people related to the authority of Yogyakarta will no longer appear.

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