

SETTLEMENT OF REGION DISPUTES THROUGH THE CONSTITUTIONAL

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ABSTRACT

Regional boundaries have an important meaning as the limits of regional government authority in carrying out regional government functions. Implies the emergence of conflicts between regions regarding the assertion of territorial boundaries because it is related to upholding the existence and sovereignty of each local government. In this research, the purpose of writing is not only to describe the conflict resolution process through the administrative process, but also relates to the settlement process through a review of the 1945 Constitution of the Republic of Indonesia by the Constitutional Court. The method used in this research is normative juridical. Through this research the writer can find research that is contrary to legal principles. Whereas Regulation of the Minister of Home Affairs Number 76 of 2012 is the correct regulation that is able to resolve conflicts in border areas. The administrative process regulated in Law Number 23 Year 2014 has not been able to resolve the problem of border area conflict even though the decision is a final decision but also has legal remedies as a review in court.

Keywords: Settlement, Regional, Constitutional, Court.

1. Introduction

Democracy's reformation era was such an abstract and universal concept. Those kinds of democracy has been applied in many countries in various forms, which results in various titles, such as constitutional democracy, peoples democracy, guided democracy, liberal democracy, and so on. One of democracy's system which has been practiced in Indonesia is constitutional democracy. It's adjusted regulations are explicitly stated in article 1 paragraph 2

of the 1945 Constitution amendments (also known as the 1945 Constitution of the Republic of Indonesia) which states that sovereignty is in the hands of the people and carried out according based on the constitution (Franciscus, Xaverius W., *Yustisia Jurnal Hukum: Volume 8 Number 1*, 2019: 109).

The Unitary State of the Republic of Indonesia is divided into a number of provincial areas and the province is divided into districts and cities, each of

which has a regional government, which is regulated by law. One of the constitutional aspects of the administration of the state and government since Indonesia's independence is the issue relating to the implementation of autonomy as a unitary state subsystem. The idea of autonomy as an alternative to the choice of federal state form has been laid since the days of the independence movement. At the time of drafting the 1945 Constitution of the Republic of Indonesia, autonomy was included as one of the subjects discussed and then contained in the 1945 Constitution of the Republic of Indonesia (Bagir Manan, 2004: 21-22). Government has a role in promoting good governance (Citra, 2015: 514).

After the wave of reforms in Indonesia, one of the issues that surfaced was the improvement of central and regional relations. The birth of Law Number 22 of 1999 concerning Regional Government has presented a new paradigm in the administration of regional government in Indonesia. With a broad and complete basis of autonomy, the implementation of regional government becomes more meaningful, because there is freedom for the region to regulate and manage its own household affairs, according to the conditions and potential of each region (Mexasai Indra, 2013: 1).

The autonomous region itself contains the understanding of a legal society unit that has territorial boundaries, which is authorized to regulate and manage government affairs and the interests of the local community according to their own initiative, based on the aspirations of

the people in the system of the Unitary State of the Republic of Indonesia. Based on this formulation, in the autonomous region there are elements, namely: a) elements of the territorial boundary. It can be stated that an area must have an area with clear boundaries so that it can be distinguished between one region and another. b) elements of government. The existence of government in the regions is based on the legitimacy of the Law which gives authority to the regional government, to carry out governmental affairs that have the authority to regulate based on their own creativity. c) elements of society. Society as an element of regional government is a legal community unit, both *gemeinschaft* and *gesellschaft*, clearly having traditions, customs, and customs that have colored the local government system, starting from the form of thinking, acting and certain habits (Sunamo, 2015: 15).

Since the era of regional autonomy, regional boundaries have important significance as management authority boundaries for each region so that the uncertainty and disagreement in the area's boundaries has caused many disputes regarding these boundaries related to the development of politics, economy, culture of the world community and local communities in interpreting regional boundaries. In the Republic of Indonesia Law, it has actually been regulated regarding the mechanism for resolving regional border crossings, namely Permendagri Number 76 of 2012 which replaces the previous Permendagri namely Number 1 of 2006 concerning Guidelines for Boundary Affirmation

which focuses on the resolution of non-litigation disputes.

However, the Constitutional Court has a gap in the resolution of regional border disputes which is the entry point in the settlement of border disputes between regions, namely through the Testing of the 1945 Constitution of the Republic of Indonesia towards the formation of regions due to the formal legal form of the formation of an autonomous region based on in the provisions of laws and regulations, one of the contents is the boundary of an established autonomous region. However, the tendency to resolve regional border disputes through the examination of the Law on the 1945 Constitution is indeed interesting to discuss, by making an effort to examine the formation of a region against the 1945 Constitution, it has changed the flow of disputes that were initially between one region and the region others become interregional areas with State Institutions.

2. PROBLEM STATEMENT

Based on the results of the preliminary explanation above, the author specifically focused on how to complete regional border disputes through the constitutional court?

3. Research Method

A study of normative law was used, bearing in mind the exclusive character of this study itself which method is normative. This method is useful for analyzing the correlation rule of law, justice and contracts. However, doctrinal learning is used to analyze legal principles, legal literature, along

with scholars' views on law that has high qualifications (doctrine) and comparative law. Because this research is a normative study, statutes and conceptual approaches are applied. The statute approach is applied by examining laws and other related matters legal regulations concerning the legal issues in question. This is an approach using the law and the rules. In addition, a conceptual approach is applied using perspective and the concept of several experts to analyze the data collected, together with the doctrines that grow in the legal discipline as the basis of this research to build on legal arguments to solve the legal problems under study (Marzuki, 2009: 93).

4. Result and Discussion (Calibri 14 bold)

1. Authority of the Constitutional Court in Resolving Regional Border Disputes

The Constitutional Court is a new institution in the branch of judicial power that explains the judicial function. This is in accordance with the provisions of Article 24 paragraph (2) of the 1945 (Mexasai, 2013: 149) Constitution of the Republic of Indonesia: *Judicial power is exercised by a Supreme Court and a judicial body that is under it in the general court, religious court, military court, state administration court environment, and a Constitutional Court.* If related to conflicts over territorial borders, the authority of the Constitutional Court rests with the authority to review the Laws on the 1945 Constitution of the Republic of Indonesia. With regard to the authority to examine the Laws on the 1945 Constitution of the Republic of

Indonesia in Article 24C paragraph (1) The 1945 Constitution of the Republic of Indonesia, Article 1 number 3 letter a juncto Article 10 paragraph (1) letter a juncto section eight of Law Number 24 Year 2003 concerning the Constitutional Court with the authority to decide on the petition of the applicant regarding losses from individual Indonesian citizens, customary law community unit, public or private legal entity, and state institution.

Law Number 24 of 2003 to examine the constitutionality of the Act, the Constitutional Court through its decision can declare that the material formulation of an Act has no legal force because it is contrary to the Basic Law. Likewise with a law, the Constitutional Court can cancel its validity because it is not in accordance with and is not based on the 1945 Constitution of the Republic of Indonesia. The law is produced by the House of Representatives together with the President in the administration of the state based on the law governing the life of the state community. Thus the Law produced by the legislature (the House of Representatives with the President) is balanced by the existence of a test (formal and material) of the judicial branch of the Constitutional Court (Nurbadri, 2008: 161-162).

The settlement through the Constitutional Court, according to the author, is a step that provides legal certainty compared to a settlement based on Permendagri No. 76/2012 concerning affirmation of regional boundaries which tends to settle by means of non-litigation which only leads to lengthy, seemingly endless debates which in turn makes Different

interpretations of the law, even though there are new government regulations. Thus this step can be used as a barometer for local government and the people of Indonesia regarding legal awareness and rule of law, which is in accordance with the choice of the Indonesian people that Indonesia is a state of law.

The emergence of the issue of constitutionality, then that is where the judiciary appears to treat the law as something that must be studied again theoretically carefully on the basis of the constitutional basis, never on the basis of eligibility. If the judiciary concludes that the relevant Act contradicts the constitution, then the judiciary can overturn the Act (Leonard, 2005: 87).

In the theory of toesting, a distinction is made between material toesting and formele toesting. The difference is usually associated with the difference between wet in materialile zin (Law in the material sense) and wet in formele zin (Law in the formal sense). Both forms of testing by Law Number 24 of 2003 concerning the Constitutional Court are distinguished by the term "Formation of Law" and "Content of Law" (Leonard, 2005: 16).

Whereas as stated in Article 51 paragraph (1) of the Constitutional Court Law that "The Petitioner is a party that considers his constitutional rights and / or obligations impaired by the coming into effect of the Law, namely:

- 1) Indonesian citizenship
- 2) Customary law community unit as long as it is still alive and in accordance with the development of society and the principles of the

- Unitary State of the Republic of Indonesia governed by Law
- 3) Public or private legal entities
 - 4) State institutions

In the constitutional court ruling in case decisions No. 06 / PUU-III / 2005 and 010 / PUU-III/ 2005 formulate more stringent legal standing requirements based on the applicant's constitutional rights, namely:

- 1) the applicant's constitutional rights granted by the 1945 Constitution of the Republic of Indonesia
- 2) that the applicant's constitutional rights are deemed by the applicant to have been impaired by the Act being tested
- 3) that the intended loss is specific (special) and actual or at least potential according to reasonable and ascertained reasoning
- 4) a causal relationship (causal verband) between the loss and the enactment of the Act to be tested
- 5) the possibility that the petition granted, then the constitutional impairment postulated will or no longer occurs.

Not everyone can be an applicant to the Constitutional Court and be an applicant. The existence of only legal interests as known in civil procedural law and state administrative procedural law cannot be the basis. In civil law, it is known as adagium *pint daction*, ie if there is a legal interest, you can file a lawsuit. Which if there is a legal interest may file a lawsuit. What is meant by standing or *persona standi in iudicio* is the right or legal position to file a lawsuit or petition in court (standing to sue).

In the above explanation it is clear that the legal standing of the applicant

in the case of a regional border dispute that is resolved through a judicial review in the Constitutional Court is a public legal entity or regional head or who has constitutional authority over the public legal entity so that it can be represented, as stated in the law. Law Number 23 of 2014 concerning Regional Government in Article 65 paragraph (1) letter e that the regional head has the authority that is, represents his Region inside and outside the court, and can appoint a legal representative to represent him in accordance with statutory provisions. So based on the legislation above, the regional head has the authority to represent the region in dispute resolution in court.

With regard to the constitutionality of the judicial review of the Law on the 1945 Constitution of the Republic of Indonesia must see the applicant's legal standing, constitutional impairment of the applicant and the contents of the Law which contradicts the 1945 Constitution of the Republic of Indonesia. there are at least five constitutional requirements for fulfillment namely. First, the applicant's constitutional rights granted by the 1945 Constitution of the Republic of Indonesia. Second, that the applicant's constitutional rights are considered by the applicant to have been impaired by a law being tested. Third, that the applicant's constitutional impairment must be specific and actual in nature, or at least potential in nature which according to logical reasoning and can certainly be ensured. Fourth, there is a causal relationship (causal verband) between the loss and the enactment of the law petitioned for trial. Fifth, there is a possibility that with the granting of

the petition the postulated constitutional impairment will not or no longer occur (<http://www.hukumonline.com/berita/baca/hol12943/kerugian-konstitusional-warga-negara> harus-penuhi-lima-syarat, accessed on 18 September 2019).

Based on this, the petition for the examination of the Law on the formation of the region can be tested for its constitutionality against the 1945 Constitution of the Republic of Indonesia and the applicant must have a clear legal standing whose constitutional rights have been impaired by the presence of the Act and can be proven before the court.

2. Settlement of Regional Border Disputes through Administrative Efforts

Whereas in the 1945 Constitution of the Republic of Indonesia, it is stated that if the territory of the country is further divided into provinces and regencies / cities, the form and structure of government shall be based on the Law. The mandate of this constitution is the legal basis for the formation of regional government with all its functions and authorities, including in the matter of regulating and managing the household of the region.

Completion of administrative efforts is a settlement carried out within the government itself. In the event of a border dispute over an autonomous region within a province, the Governor shall resolve it. But in practice the Governor does not have the authority to determine the status of the disputed region because the authority is in the

hands of the central government through the Ministry of Home Affairs and the Governor's position is only as a solution to disputes between autonomous regions (Mexasai, 2013: 200).

The legal basis for resolving disputes in the administration of government affairs and also including regional border disputes is in Article 370 of Law Number 23 of 2014 concerning Regional Government namely:

- 1) In the event of a dispute in the administration of inter-regional / regency / municipal governmental affairs in one provincial Region, the governor as the representative of the Central Government resolves the dispute in question.
- 2) In the event of a dispute in the administration of inter-Provincial Government Affairs, between the Provincial Region and the Regency / City Region in its territory, and between the Provincial Region and the Regency / City Region outside its territory, the Minister shall settle the dispute in question.
- 3) In the event that the governor as a representative of the Central Government cannot resolve the dispute as meant in paragraph (1), the handling shall be carried out by the Minister.
- 4) The Ministerial Decree relating to the settlement of disputes as referred to in paragraph (2) and the handling of dispute resolution as referred to in paragraph (3) is final.
- 5) Further provisions regarding the procedure for resolving disputes between Regions in the administration of Government Affairs

shall be regulated by Ministerial Regulation.

More specifically the resolution of regional border disputes is regulated in the provisions of Regulation of the Minister of Home Affairs Number 76 of 2012 Concerning Guidelines for Confirmation of Regional Bounds Article 25 namely:

- 1) In the event of a dispute in the affirmation of a regional boundary, a regional boundary dispute is resolved.
- 2) Settlement of regional boundary disputes between regencies / cities in one province is carried out by the governor.
- 3) Settlement of regional boundary disputes between provinces, between provinces and regencies / cities in their territories, and between provinces and regencies / cities outside their territories, shall be carried out by the Minister of Home Affairs.

With the two regulations above, Article 370 of Law Number 23 of 2014 concerning Regional Government in conjunction with Article 25 of the Minister of Home Affairs Regulation Number 76 of 2012 Concerning Guidelines for Regional Boundaries, which is used as a reference for resolving border disputes between regions in Indonesia. In accordance with the mandate of Article 25 of the Minister of Home Affairs Regulation Number 76 of 2012, it is clear that the resolution of disputes in the affirmation of boundaries between regencies / cities is carried out in stages starting first from the level of the Government below, namely the Governor. Pursuant to Articles 26 to 32 of the Minister of

Home Affairs Regulation No. 76/2012, steps for resolving border disputes between regions with the stages of the Governor facilitating the resolution of border disputes by inviting Bupati / Mayor meetings where disputed areas are held, the Governor is given the opportunity to hold meetings three times. with the Regent / Mayor. After the meeting limit is held three times, then based on the provisions of Article 28 paragraph (2) Regulation of the Minister of the Interior Number 76 of 2012 the Governor decides on the dispute over the regional boundaries, and if the Governor does not take the decision, The Governor hands over the next process to the Minister of Home Affairs (Mexasai, 2013: 264).

In this case the Minister of Home Affairs issued a formal decision in the form of a Minister of Domestic Affairs Regulation (Permendagri) concerning the affirmation of regional boundaries that are final and binding and no legal remedies can be made against the Minister of Domestic Affairs Regulation. However, even though it has been confirmed that it is final it does not rule out the possibility of being resolved through litigation by the Supreme Court and the Constitutional Court by Judicial Review because the Minister of Home Affairs Regulation is not a decision of the Judiciary so that the final nature is only in the Administrative process and it is possible to take legal action the other is for those who feel disadvantaged by the decision.

The emergence of loopholes to settle regional boundary disputes to the Constitutional Court through the examination of the Law Against the 1945 Constitution of the Republic of

Indonesia, this is because the formal legal form of the formation of an autonomous region is based on the provisions of the Law which contains the wrong contents. autonomous area boundaries that are related to regional boundaries with adjoining regions and their normalization is too general. Even though the potential for disputes can occur at the village level. However, in some recent laws concerning the formation of autonomous regions, more detailed regulations on regional boundaries up to the village level have been made, such as the Law of the Republic of Indonesia Number 21 of 2012 concerning the formation of Pangandaran Regency in West Java Province, Law of the Republic of Indonesia Number 22 of 2012 regarding the formation of the west coast district in Lampung province, Law of the Republic of Indonesia Number 23 of 2012 concerning the Formation of South Manokwari Regency in the province of West Papua, Law of the Republic of Indonesia Number 24 of 2012 concerning the Formation of the Arfak Mountains Regency in the Province of West Papua (Mexasai, 2013: 273).

Based on the description above, according to the author, although the rency dispute resolution mechanism has been regulated through the provisions of Article 25 of the Minister of Home Affairs Regulation Number 76 of 2012, challenged the Juncto Regional Boundary Guideline Article 370 of Law Number 23 of 2014 concerning Regional Governments, which resolves border dispute mechanisms through The administrative approach has not been able to resolve the border dispute

problem, so according to the authors, resolving regional border disputes through litigation can be used as the main option to obtain legal certainty.

The research results and the comprehensive discussion are deeply and clearly presented. Results can be presented in figures, graphs, tables and others that make the reader understand easily. The discussion must be clearly and deeply conducted. The discussion can be made in several sub-chapters.

5. Conclusion

1. Conclusion

Border disputes between regions are issues that can be examined by the constitutionality of the Constitutional Court. In resolving regional border disputes, the state has actually prepared a set of legal rules such as Regulation of the Minister of Home Affairs Number 76 of 2012 concerning Guidelines for Confirmation of Regional Boundaries and Law Number 23 of 2014 concerning Regional Governments to resolve regional boundaries of disputes through Administrative Settlements by Governors and Ministers Domestic is final, but in practice Permendagri as a result of dispute resolution through administrative efforts does not solve the problem even though it is final, even those who feel disadvantaged over the issuance of the decision can review it to the Supreme Court of the Ministry of Home Affairs and can even test the Law on the Formation of the area to the Court The Constitution as the basis for the constitutional impairment of the applicant.

2. Suggestion

Considering the importance of the territorial boundaries of an area as a

symbol of authority over the area, it is necessary to establish legal rules governing the mechanism for resolving disputes over regional borders that have more legal certainty. Considering that the issue of regional boundaries is a constitutional issue, it is deemed necessary to have a legal reform involving the Constitutional Court as a court that is capable of providing legal certainty in the resolution of regional border disputes.

References

Books:

Bagir Manan, 2004, *Menyongsong Fajar Otonomi Daerah*, Pusat Studi Hukum Fakultas Hukum Ull: Yogyakarta.

Leonard W. Levy, 2005, *Judicial Review*, Nuansamedia: Bandung

Marzuki, Peter Mahmud, 2009, *Penelitian Hukum (Legal Research)*, Kencana Prenada Media Group: Jakarta.

Mexasai Indra, 2011, *Dinamika Hukum Tata Negara Indonesia*, Refika Aditama: Bandung.

Sunamo H, Siswanto, 2012, *Hukum Pemerintahan Daerah di Indonesia*, Sinar Grafika: Jakarta.

Journals:

Franciscus, Xaverius W, 2019, The Concept And Its Implementation Of Indonesian Legislative Elections Based On The Pancasila Democracy Perspective, *Yustisia Jurnal Hukum*: Volume 8 Number 1.

Citra, Sukmadilaga, 2015, Good Governance Implementation In Public Sector: Exploratory Analysis of Government

Financial Statements Disclosures Across ASEAN Countries, *Procedia Social and Behavioral Sciences*

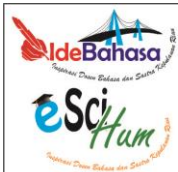
Sources of Scientific Work:

Mexasai Indra, 2013, *Konsep Penyelesaian Sengketa Perbatasan Antar Daerah Dikaitkan Dengan Pemekaran Daerah Di Indonesia*, Disertasi, Program Doktor Ilmu Hukum, Fakultas Hukum Universitas Padjajaran: Bandung.

Nurbadri, 2008, *Konflik Batas Wilayah Diera Otonomi Daerah dan Upaya Penyelesaiannya Studi Kasus Konflik Batas Wilayah Antara Kabupaten Tebo Dengan Kabupaten Bungo*, Thesis, Fakultas Hukum Universitas Diponegoro: Semarang.

Websites:

<http://www.hukumonline.com/berita/baca/hol12943/kerugian-konstitusional-warga-negara> harus-penuhi-lima-syarat, accessed on 18 September 2019.



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