The Authority of Environment Management by the Local Government in Indonesia

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The implementation of environment management is divided among the central government and local government. After the implementation of Law Number 23 of 2014 concerning Local Government, there are some of government affairs concurrent that shared between local and central government. Those, the affairs are divided into governmental matters relating to basic services and not related to basic services. Law Number 23 of 2014 classifies the “environment” as an affair not related to basic services.

This research is focused on the discussion on how environmental management by local government after the implementation of Law Number 23 of 2014 concerning Local Government, there are some of government affairs concurrent that shared between local and central government. Those, the affairs are divided into governmental matters relating to basic services and not related to basic services. Law Number 23 of 2014 classifies the “environment” as an affair not related to basic services.

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1. Introduction

Governance in Indonesia is not centralized but decentralized. That is, every administration of government affairs is done by hierarchical entities. The context in Indonesia, the choice of using decentralized governance systems is a logical consequence that must be accepted by looking at the geographic circumstances of the country as well as the large population. Decentralization is believed to be able to deliver the state to achieve its goals in the welfare of people’s lives.

In the implementation of decentralized governance is interpreted that there are government affairs that can not be done alone by the central government. The meaning is, the local government also has the affairs of government that becomes duty and responsibility. The limit in understanding the extent to which local government authority to run its government affairs is to mean that the form of the state of Indonesia is a unitary state. Consequently, the source of authority owned by a country is the domain of the central government which is then given to the regions. The authority given by the central government is the source of authority of the regional government.

In Law Number 23 Year 2014 on Regional Government (hereinafter referred to as Law No.23 of 2014) stipulates that in connection with government affairs, there are government affairs which are the authority of regional government. Government affairs which become the regional authority is called the concurrent government affairs that composed of the regonal authority of government affairs and government mandatory options.[1] Referred to Mandatory Government

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Affairs consist of Government Affairs relating to Basic Services and Government Affairs that is not related to the basic services. The main reason for Law Number 23 of 2014 distinguishes the compulsory matters because of the failure of previous rules in the implementation so that the disharmony of the rules on local government with rules relating to other sectoral sectors is inevitable.

The main difference between the classification of Government Affairs relating to Basic Services and Government Affairs that is not related to the basic services lies in the provision of minimum service standards (SPM). In the Academic Manuscript, Act No. 23 of 2014 provides an explanation that the implementation of Government Affairs relating to Basic Services should be prioritized to meet the basic needs of citizens so that the government needs to make minimum service standards (SPM) or other standards to ensure that citizens wherever they are able to access the same services.\[^2\] Law No. 23 of 2014 brings at least a new expectation on the implementation of local government that can alleviate the level of imbalances of interregional services, so that the priorities on compulsory governmental affairs related to basic services on a closed list include: (a) education; (b) health; (c) public works and spatial planning; (d) housing and residential areas; (e) peace, public order, and the protection of society; and (f) social.\[^3\]

Regarding to and Government Affairs that is not related to the basic services is also established in a closed list of 18 areas of affairs including one of which is on the environment. This, of course, raises the question because in the Indonesian Constitution especially in Article 28H, states that "every person has the right to live a safe and prosperous life, to live and to get a good and healthy environment and have the right to receive health services".

Based on the above background, the authors in writing this paper focus on the issue of how the regulation of the authority of environmental management based on Law No. 23 of 2014?

2. Methods

Research in the field of law, there are two types of research methods are known, namely normative legal research methods and empirical legal research methods.\[^4\] In this paper used normative legal research methods because use secondary data by conducting a comprehensive study and analyze the primary legal materials, secondary legal materials and tertiary legal materials. The approach used are statute approach and conceptual approach. Furthermore, all the data that has been collected is analyzed qualitatively and prepared analytically descriptively.

3. Results and Discussion

a. Local government and the distribution of government affairs in Indonesia

Theoretically, no single country with a large area can implement its policies and programs effectively and efficiently through a centralized system.\[^5\] Therefore, transfer authority of some central to regional authorities is a requirement for a country with a wide range of areas with a large population. In the context of Indonesia, the implementation of local government is done based on regional autonomy with the note that the authority possessed by the region is not a freedom but the independence to determine their respective regional policies. There are 7
basic elements which are generic elements in forming local government. These elements include: (i) government affairs; (ii) institutions; (iii) personnel; (iv) regional finance; (v) regional representatives; (vi) public services; (vii) supervision. Ultimately, decentralization is an option other than the desire to bring about a government that is responsive to the dynamics of the region as well as decentralized governance more conducive to the acceleration of democratic development in Indonesia.

Regional autonomy is not newly applied in Indonesia. The development of regional autonomy, of course, follows the dynamics of regulation on local government and the change of government regime. At least, post-reformation until now the rules on local government has changed 3 times ie Law No. 22 of 1999 which was later amended by Law No. 32 of 2004. Further Law No. 32 of 2004 along with the development of legal dynamics and the change of government regime changed through Law No. 23 of 2014 which is currently a positive law.

Based on Law Number 23 Year 2014, government affairs owned by local governments are classified into two categories: mandatory business related to basic services and selected affairs related to the development of potential sectors that grow and develop in the area. The objective of the approach is to encourage local governments to carry out government affairs that are truly in line with the regional character and the needs of the local people to support the creation of the welfare of local communities.

Related to concurrent governmental affairs, based on the a quo Law consists of government affairs relating to basic services and governmental affairs not related to basic services. Compulsory governmental affairs relating to basic services are the affairs include: (i) education; (ii) health; (iii) public works and spatial arrangement; (iv) public housing and residential areas; (v) peace, public order and protection of society; and (vi) social. Whereas the government affairs which are not related to basic services include 18 (eighteen) government affairs as regulated in Article 12 paragraph (2) of the Law a quo. The regulation of the classification of local government affairs is clearly different from the previous Regional Government Law which does not share local government affairs in relation to basic services or not.

There are legal implications when the division of governmental affairs is categorized into mandatory government affairs relating to basic and not related to basic services. The basic services in government affairs relating to basic services (in relation to the above-mentioned functions) shall be guided by minimum service standards established by the central government. In other words, it can be interpreted that in addition to government affairs that are not related to basic services, the regional government in performing basic services to the public on the matter is not based on minimum service standards established by the central government. In this context it can be seen that environmental affairs belong to mandatory government affairs that are not related to basic services so that in its implementation in society, local government does not base basic services in the field of environment based on minimum standards given by the central government.

The main reasons behind the distribution of the compulsory functions as
described in the Academic Paper of Law Number 23 of 2014 are described as follows:

"Affairs must be differentiated into two groups of affairs, affairs related to basic services of citizens who must be minimally fulfilled by the region. Because the implementation of this mandatory business is very important for the welfare of the community then the law also needs to regulate the sanctions for regions that fail to perform obligatory business in accordance with the SPM or NPK made by the government ."

b. Management of Environmental Affairs Under Law No. 23 of 2014

Based on Law No. 32 of 2009 on Environmental Protection and Management (UUPPLH) defines the environment as the unity of all rung with all objects, power, conditions, and living creatures, including humans and their behavior that affect nature itself, the survival of human life and welfare as well other living beings. The Nomenclature of the Environment is also stipulated in the 1945 Constitution of the Republic of Indonesia on Article 28H states that "every person has the right to live a prosperous and spiritual life, to live and to get a good and healthy environment and to receive health services". The article in the Constitution provides confirmation that the enjoyment of a good and healthy environment is constitutional and guaranteed for its sustainability by the state.

On the basis of the above rules, then the state which in this case represented by the government has an obligation to conduct environmental management. Management is a systematic and integrated effort undertaken to preserve the functions of the environment including planning, utilization, control, maintenance, supervision and law enforcement.

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The success of environmental management is highly dependent on environmental management institutions. The main pillars of the implementation of environmental management are the designated government agencies and given the authority to implement the established environmental policies. Thus, the role of government is crucial to the implementation of environmental management. The authority of environmental management carried out by the government based on Law Number 23 Year 2014 itself is organized hierarchically between the central government and the regional government ie provincial and district/city governments. Means, the government to carry out government affairs in the environmental field not only based only on the provisions in UUPPLH but also Law No. 23 of 2014 on Regional Government.

Law 23 of 2014 has divided the concurrent governmental affairs between the central and provincial and regency/municipal governments in terms of environmental management. These matters include: (i) environmental planning; (ii) strategic environmental assessment; (iii) pollution control and / or environmental damage; (iv) biodiversity; (v) hazardous and toxic (B3) and
hazardous and toxic materials (B3 waste); (vi) guidance and supervision of environmental permits and permits for environmental protection and management; (vii) recognition of the existence of indigenous and tribal peoples, local wisdom, and the rights of indigenous peoples associated with the protection and management of the environment; (viii) education, training and environmental counseling for the community; (ix) environmental awareness for the community; (x) environmental complaints; (xi) garbage.\[11\]

The classification of environmental affairs as a concurrent business that is not related to basic services if interpreted in contrario then implies that every sub-field related to the environment does not require Minimum Service Standards (SPM) in its implementation. However, the UUPLH states that local governments at both the provincial and district / city levels have the duty and authority to implement minimum service standards in terms of environmental protection and management as stipulated by the Ministry of Environment and Forestry (KLHK).

Based on the law between Law Number 23 Year 2014 and Law Number 32 Year 2009, especially in the field of environmental management which is also closely related to the authority of the provincial and regency / municipal governments, there is no significant difference. That is, conceptually the authority of local government in managing the environment is the same starting from the initial process of planning to the enforcement. The difference lies in the priority scale that becomes the main agenda of the government in the implementation of service to the community fairly and equally. However, it does not mean that the regulation in Law No. 23 of 2014 which includes environmental affairs in government affairs not related to basic services is unconstitutional.

It can be understood by looking at the provisions of Article 24 of Law Number 23 Year 2014 which states that the governmental affairs that are not related to basic services, ministries or non-ministries together with the Regional Government to mapping which then the mapping results are requested by the Minister's recommendation to be made rules in the form of Ministerial Regulation. Mapping of mandatory governmental affairs unrelated to basic services is undertaken to determine the intensity of the affairs by basing on population size, size of APBD, and area. Furthermore, the mapping is used as the basis for the guidance to the region nationally.

The environment following environmental management and protection as stipulated in the UUPLH in the context of its implementation in the regions, while remaining in compliance with the provisions of Law Number 23 Year 2014 which does not classify on obligatory matters not related to basic services, does not mean that environmental management can be ignored by local government. Simultaneous and sustainability mapping done by ministries and Government is believed to lead to better environmental management if each region is capable of carrying out any environmental management in accordance with the authority it has. In addition, the authority of environmental management by the local government still refers to the Norms, Standards, Criteria and Procedures (NPSK) provided by the Ministry or the
Central Government which can be used as a reference.

Reference

[1] Pasal 9 ayat (3) UU Nomor 23 Tahun 2014 tentang Pemerintahan Daerah
[2] Naskah Akademik UU Nomor 23 Tahun 2014 tentang Pemerintahan Daerah
[3] Pasal 12 ayat (1) UU Nomor 23 Tahun 2014 tentang Pemerintahan Daerah
[5] (Bowman and Hampton, 1983)
[7] Naskah Akademik UU Nomor 23 Tahun 2014 tentang Pemerintahan Daerah
[8] Pasal 1 angka 2 UU Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup
[10] Pasal 63 UU Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup