

## **A Long Road of Local Governance in Indonesia: From Indonesian Independence to Promulgation of Job Creation Law**



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**ABSTRACT:** This study aims at examining and reviewing thoroughly the local governance in Indonesia from time to time. This research employed normative a juridical method by searching the secondary data more. According to the research, we may state that local governance implementation has taken a long road and continuous changes pursuant to the laws and regulations regulating it. The relatively interesting dynamics are that Constitutional Court Decision No. 137/PUU-XIII/2015 states that cancellation of local regulation is under the Supreme Court's authority. In addition, Law No. 11 of 2020 concerning Job Creation actually revokes some authorities granted to local level to be that of the central level, although the Law aims at correcting overlapping laws and regulations.

**KEYWORDS:** Local Governance, Indonesian Independence, Job Creation Law

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### **1. INTRODUCTION**

The local governance implementation has ups and downs in line with the development of Indonesian constitution system. Various related laws and regulations specifically regulating local governance take turn from the time this State was founded. Various dynamics in the changes of local governance policy start from centralistic to decentralistic direction. Indonesia divides central and local affairs with a decentralized, deconcentrated and *medebewind* pattern.

Article 18 the 1945 Constitution of the Republic of Indonesia serving as the source of autonomy implementation aims at encouraging realization of the aspired idea, namely autonomy. According to Bagir Manan (1993), the definition of autonomy is the freedom and independence (*vrijheid* and *zelfstandigheid*) of lower governmental units to regulate and administer governmental affairs. To realize Article 18 the 1945 Constitution of the Republic of Indonesia, there is attraction in the life of the nation. This attraction is unnecessarily removed, that this is a history of law in the life of the state or governance. Law is not the objective, but only a bridge that will bring us to the aspired idea (Sunaryati Hartono, 1991).

The governmental implementation system in Indonesia based on system approach covers central governance system, referred to as the government, and local governance system. The practice of governmental implementation in inter-government relationship is known as the centralization and decentralization concepts. The centralization concept shows the characteristics that all authorities of governmental implementation are under the central government, while the decentralization system shows the characteristics that some authorities of governmental affairs under the government's obligation are given to local government. The relationship between the government and local government also takes part in the existing changes.

Local development as an integral part of the national development cannot be separated from the regional autonomy principle. Changes to central-local relationship policy in Indonesia basically refer to the *ultra vires doctrine* (detailing governmental affairs given to local level one by one) and *residual power* or *open end arrangement* (the concept of original power and remaining power). The journey and history of regional autonomy in Indonesia are always marked with creation of a product of laws and regulations which replaces previous product. Such change on one hand marks the dynamics of orientation of local development in Indonesia from time to time. On the other hand, however, it may also be understood as part of the ruler's "political experiment" in enforcing its power.

Observing the development of regional autonomy in Indonesia is a very interesting study, since regional autonomy is not only a legal phenomenon, but also governmental, political, and social-cultural phenomena. Covering power, regional autonomy as a principle means respecting the existing regional life, customs, religions and characters in regional level. Therefore, the central

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governance must keep away any affairs intending to homogenize all regions into a model, by forcing its will for local characters to follow the national character.

Based on the background above, we may formulate the following problems: a) what is the ratio of regulation on local government from time to time?; b) how is the challenges to local government in the future with its political dynamics?

### **2. LITERATURE REVIEW**

There are previous researches on local governance. Local governance is the implementation of governmental affairs by local governance and DPRD pursuant to autonomy principle and assisting duty with the principle of broad autonomy in the system and principle of the Republic of Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia (H. Andi Pangerang Moenta, 2018). Some use the term local governance, that it contains more general understanding and may be used to review lower governmental units in the perspective of any state building (B. Hestu Cipto Handoyo, 1919). Of the researches mentioned above, there is no research on the development of local governance after the enactment of Law No. 11 of 2020 concerning Job Creation.

### **3. METHODOLOGY**

This research employed a normative juridical method by searching the secondary data more. The approach to problem used in this research was the statute approach. The statute approach was chosen since the objects studied were many laws and regulations. This research employed primary, secondary and tertiary source of data.

### **4. DISCUSSION**

#### **4.1. History of Local Governance**

In line with the constitutional development of the Republic of Indonesia regarding local government, the government must base on the spirit and provisions of the 1945 Constitution. Article 18 the 1945 Constitution expressly states: "Regions in Indonesia are divided into big and small regions, with its form of governmental structure decided with a law..." The explanatory note to the article states, among others: "Since the state Indonesia is an *"eenheids staat"*, Indonesia will not have any region in its environment which is also *"staat"*."

Regulation of local governance starts from the establishment of the Republic of Indonesia in 1945. The history of constitution of the Republic of Indonesia shows there were some Constitutions applicable, namely: 1) the 1945 Constitution; 2) RIS Constitution; 3) the 1950 Temporary Constitution; 4) the 1945 Constitution after Presidential Decree on 5 July 1959; 5) the 1945 Constitution during the New Order; and 6) the 1945 Constitution after the Amendment. The long journey of local governance with its continuous changes is pursuant to the dynamics of development in its times. Each period of local governance has different form and structure under laws and regulations.

In the previous and current laws and regulations on local governance, there are some principles of governmental implementation, such as the decentralization, deconcentration and assisting duty (*medebewind*) and wisdom (*vrije bestuur*) principles (Muhammad Fauzan, 2006).

The complexity of regulation related to the authority between the government and local government is a hot issue in each period of implementation of laws and regulation related to local governance. The development of regional autonomy in Indonesia has ups and downs with different characteristics, which is certainly based on laws and regulations with different characteristics, since creation of Law underlying Regional autonomy is based on the political-legal condition developing at the time.

According to Mahfud MD (1999), law is basically a normative and implementative product or crystallization of mutually-competing political wills, thus each legal product has character pursuant to the political configuration from which it is born. With regard to the relationship between politics and law, there are three assumptions, namely determinant law on politics, determinant politics on law, and interdependent politics and law (Mahfud MD, 1999). Based on the existing legal product, we may analyze which political configuration is used at the given time.

The most underlying is when the 1945 Constitution of the Republic of Indonesia was amended for the first time in 1999. Therefore, the analysis on regulation of local governance is divided into 2 periods, namely period before and after amendment to the 1945 Constitution of the Republic of Indonesia. The Amendment to the 1945 Constitution brings significant impacts to the life of the state in Indonesia, one of which is changing the basis of governance from the Central Government to Local Government, or with the term regional autonomy (Santoso Sembiring, 2006).

#### **4.1.a. Before Amendment to the 1945 Constitution of the Republic of Indonesia**

The rules were arranged for the first time by Preparatory Committee for Indonesian Independence (PPKI) on 19 August 1945. In this time, there was Law No. 1 of 1945 regulating daily governmental implementation by the Local-National Committee (H. Andi Pangerang Moenta, 2018). Further, PPKI stipulated: 1) for the time being, RI is divided into eight provincial regions, namely West Java, Central Java, East Java, Sumatera, Kalimantan, Sulawesi, Maluku and Lesser Sunda Provinces; 2) Each provincial region is

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divided into residencies; 3) *swapraja* and city governments are maintained. Therefore, the governmental units in the regions consist of: province, residence, *swapraja*, city, *kewedanaan*, subdistrict and village (Hanif Nurcholis, 2016).

Below is the description of laws and regulations regulating the implementation of Regional Autonomy before the Amendment to the 1945 Constitution of the Republic of Indonesia (M. Agus Santoso, 2020):

### 1) Period of Law No. 1 of 1945 concerning the Position of Local-National Committee

This Law designates 3 types of Autonomous Regions, namely Residency, Regency and City. This Law is the outcome (*resultante*) of various considerations regarding the governmental history during the kingdoms era and during the colonial governance. This Law emphasizes the aspiration of people's sovereignty through formation of representative body in each region. Regional Autonomy is given to region at the time of region formation through Law in the form of very limited main authorities and in 3 years there is no Government Regulation (PP) to regulate it. This Law cannot be enforced completely yet. Mahfud MD (1999) states that in this period, Law regarding local government is made in experimental process, but from this process, eventually laws of local governance seem to be quite responsive in line with democratic political configuration.

### 2) Period of Law No. 22 of 1948 concerning Local Governance

This Law only focuses on regulation of democratic structure of local governance. There are 2 types of autonomous regions, namely common autonomous region and special autonomy region and there are 3 levels of autonomous regions, namely Province, Regency/Big City and Village/Small City. However, this Law cannot be enforced completely. Regulation of local government has ups and downs, where local government issues are set forth in Article 18 the 1945 Constitution. However, at the time the 1945 Constitution is applied for the first time, there is still attraction of local governance issue, because of the strong influence of Dutch's colonialism at that time. Similarly at the time the 1949 RIS Constitution is applied, there is attraction of local government between the central government and state government. At the time UUDS 1950 application on 17 August 1950, referred to the transitional era, RI concentration is unitary state and RIS government divides 10 Provincial regions under RIS Regulation dated 14 August 1950.

### 3) Period of Law No. 1 of 1957 concerning the Points of Local Governance

This Law applies uniformly throughout Indonesia, with emphasis on regulation of broad autonomous aspect. There are 3 levels of autonomous regions, namely Region Level I including Kota Praja Jakarta Raya, Region Level II and Region Level III. At this time, the implementation Regional Autonomy gains more attention from the Central Government, in which the Central Government is obliged to implement the decentralization beside deconcentration politics. However, this Law is also not implemented completely yet, and even the centralization nuance is still apparent.

After returning to the 1945 Constitution, local governance implementation is stipulated with Presidential Decree No. 6 of 1959 as improvement of Law No. 1 of 1957. Although Presidential Decree No. 6 of 1959 has been adjusted to Law No. 1 of 1957, but it juridically formally desires local government to be regulated by separated Law. As the juridical implication, under Article 18 the 1945 Constitution, Law No. 18 of 1965 concerning Local Governance and Law No. 19 of 1965 concerning *Desa Praja* are stipulated.

### 4) Period of Law No. 18 of 1965 concerning the Points of Local Governance

This Law follows the broad autonomy system. Autonomous regions are divided into 3 levels, namely Province as Region Level I, Regency/Municipality as Region Level II and Subdistrict/*Kota Praja* as Region Level III. Although this Law follows the broad autonomy system, but no Government Regulation is issued to hand over some of governmental affairs (Decentralization) to the regions. This Law cannot also be implemented completely yet. This Law is then declared null and void under Law No. 6 of 1969 provided that this law annulation is stated when its replacement is stipulated. The Law is a product of the old order governance, but it is applied in the new order that it is stipulated on 1 September 1965. This condition causes ripples because of unrealized autonomous principle, given that the old order ruler's influence still exists.

There is then TAP MPRS No. XXI/MPRS/1966 concerning Giving Broad Autonomy to Regions. In line with our constitutional history and because of demand for regional autonomy, the existence of lower level governmental unit is not merely the demand for efficiency and effectiveness of governmental implementation, but territorial principle of Indonesian regions which is divided into big and small governmental structural units.

### 5) Period of Law No. 5 of 1974 concerning the Main Provisions of Local Government

In line with the development of state constitution of the Republic of Indonesia, to realize real and accountable regional autonomy as the mandate of Article 18 the 1945 Constitution, division of big and small regions requires a law since Law No. 18 of 1965 it irrelevant to the development of constitution that it is necessary to replace it to create new law.

In this Law, the Decentralization principle is implemented simultaneously with the Deconcentration and *medebewind* principles, through gradual handover of affairs as per the capability (limited autonomous region's authority) and all depend on the Central Government's uniform policy. Managing natural resources are the Central Government's full authority, and there is no authority given to Local Government, including recruitment of political officials, local legislation process through permit and Central Government's instruction.

The ones holding leadership of local governance are Regional Head and DPRD, in which Governor's position as Regional Head is the Head of governance and head of region responsible to President through Minister of Home Affairs, while DPRD's position is

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the element of Local Governance and also serves as the people's representative. Therefore, Governor's position as Regional Head is quite dominant. This law acknowledges Deconcentration apparatuses at Region Level I and Level II, in which Regency and City's authority is residual, and there is no village autonomy. In Law No. 5 of 1979 concerning Village Governance formed under mandate of Law No. 5 of 1974, regulation of local governance is so complicated and complex because of so many issues that needs to be set forth in the frame of the Unitary State of Republic of Indonesia.

Because of political development and in association with our constitutional development, Law No. 18 of 1965 is deemed not in conformance to the governmental development, thus it is replaced with Law No. 5 of 1974 concerning Local Governance. After a quarter century, Law No. 5 of 1974 applies and with the fall of the new order regime, the new governance considers it necessary to amend Law No. 5 of 1974 concerning Local Governance.

### **4.1.b. After Amendment to the 1945 Constitution of the Republic of Indonesia**

In 1998, Indonesia undergoes a democratization process marked with the fall of Soeharto's regime with his New Order. From the New Order era to prior to the reform era, the governmental system in Indonesia is based on a centralistic system (Sentosa Sembiring, 2006). Below are regulations of Local Governance after the Amendment to the 1945 UUD of the Republic of Indonesia:

#### 1) Period of Law No. 22 of 1999 concerning Local Governance

The real implementation of regional autonomy in Indonesia is based on the dissatisfaction local people in regions with rich natural resources, but the people live in poverty. The management of local natural wealth and natural resources at that time is still performed by the central level, thus the people of regions rich with natural resources consider them harmed considerably. Finally, in the time of reform, they demand the implementation of regional autonomy. Further, Law No. 22 of 1999 concerning Local Governance is enacted.

The Law regulates the central government's authority to cancel local regulation and regional head decision, which is known as repressive supervision. The supervision in Law No. 22 of 1999 is emphasized more on repressive supervision in order to give freedom to head of autonomous regions in making decision and giving DPRD the role in realizing its function as the supervisory body over the implementation of regional autonomy.

Based on this Law, the decentralization principle is implemented in Regencies and Cities, while Decentralization is implemented simultaneously in Provinces in its position as limited Autonomous Region as well as administrative region. Decentralization is stipulated together with stipulation of attached (autonomous region's intact and full authority), independent and varied status of autonomous region pursuant to local people's aspiration, natural resources in their respective region.

Local Governance is Regional Head along with apparatuses of Autonomous Region as local executive body, and DPRD as local legislative body, including performing Regional Head election is under DPRD's authority. Thus, DPRD's position at that time is quite strong. Regional Head in its duty implementation is responsible to DPRD and must submit its accountability report to DPRD for each budget year. If Regional Head's accountability report is rejected for the second time, DPRD may at any time propose for its discharge to President of the Republic of Indonesia.

#### 2) Period of Law No. 32 of 2004 concerning Local Government.

This law is born based on the development of condition, constitution and demand for regional autonomy. Under Law No. 32 of 2004, autonomy is implemented on the broad autonomy format. This means that this principle is enforced by the government just like the era before Law No. 5 of 1974. Its consideration is based on the assumption that it is appropriate to grant autonomy policy to governmental affairs that may be implemented by the region itself, thus each region will be capable of and independent in giving services in order to improve the local people's prosperity.

In this Law, the Decentralization Principle is implemented at Province and Regency/City, while Deconcentration is implemented only at Province. In this period, almost similarly to that in Law No. 5 of 1974, DPRD is placed as part of Local Governance together with Regional Head in Local Governance implementation (DPRD is part of Local Governance). Regional Head is no longer responsible to DPRD but to President through Minister of Home Affairs. This Law also regulates direct Regional Head Election by the people, thus democracy is at the people's hand, and the special thing is the village autonomy.

The central level's control over regional level is made with a supervisory mechanism, showing a relatively strict formulation with preventive, repressive and general supervisory mechanisms. The central government's supervisory authority over local legal product is revised in Law No. 32 of 2004 by reenacting preventive supervision, authorizing Minister of Home Affairs to evaluate Draft Local Regulation and Regional Head Regulation on APBD, Amendment to APBD and Accountability of APBD Implementation. Besides, there is also the authority to clarify all local regulations except ones regarding APBD, Amendment to APBD and Accountability of APBD Implementation. Provincial local regulation is to be submitted to Minister of Home Affairs and regency/city local regulation is to be submitted to Governor for clarification. Any local regulation which may contradict to public interest and a higher regulation may be cancelled pursuant to prevailing mechanism.

Regional head/vice head election process according to Law No. 32 of 2004 is no longer DPRD's authority, but it is conducted with a direct election organized by Regional General Election Commission (KPUD) institution. This is quite different from Law No. 22

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of 1999 that DPRD is the medium of democracy implementation under Pancasila and its position is equal (partner of) to local government, but in practice there are different interpretations.

The broad regional autonomy principle is defined as the authority to regulate and manage all governmental affairs other than the central government's affairs. Region has the authority to create local policy to provide services, improve people's participation, initiative and empowerment aiming at improving their prosperity, including education (Murtir Jeddawi, 2008).

In Law No. 32 of 2004, the outer structure consists of province and regency/city and the inner structure consists of Regional Head and DPRD. Besides, similarly to Law No. 5 of 1974 jo. Law No. 22 of 1999, under regency/city, quasi-governmental units (Village Government) are formed. This Law fundamentally changes the conception of Law No. 22 of 1999. *First*, filling of regional head and DPRD members is made through direct election by the people. *Second*, Governor, besides serving as head of autonomous region, is *ex officio* made the deputy of the central government. *Third*, the governmental handover procedure is no longer conducted with a *general competence* or *open end arrangement* model, but with *ultra vires doctrine* model in combination with inter-government *concurrent* model.

### 3) Period of Law No. 23 of 2014 concerning Local Governance

Based on the division of governmental affairs between the central and provincial local and regency/city local governments in Law No. 23 of 2014 concerning Local Governance, there are some city/city government's affairs shifting to provincial government's affairs.

With the enactment of Law No. 23 of 2014 an autonomous region also serves as an administrative area (dual model). Its structure consists of Regional Head and DPRD. Besides, just like previous Law, under regency/city, quasi-governmental units (Village Government) and Customary Village governance are formed under Law No. 6 of 2014. Regional Head and DPRD members are directly elected. The governmental affair handover is the same with that of Law No. 32 of 2004, that is using *ultra vires* in combination with the inter-government *concurrent* model.

Article 4 Law No. 23 of 2014 states: (1) Provincial region, besides having status as region, is also an administrative area, which is the working area of governor as the deputy of the central government and the working area for governor in administering general governmental affairs in provincial regional area. (2) Regency/city region, besides having status as region, is also an administrative area, which is the working area of regent/mayor in administering general governmental affairs in regency/city regional area.

Regulation of regency and city, besides as autonomous region as well as administrative area, confirms the people's view and criticism so far that this Law is a setback to the era of Law No. 5 of 1974 (new order) which is centralistic. According to the past experience, area head's position will be more prominent than that of regional head. Regional autonomy implementation through decentralization will kept eroded by deconcentration.

In the unitary state, the responsibility to implement governmental duties is basically under the central government. However, since the Indonesian governmental system follows the decentralized unitary state principle, there are certain duties that must be managed by itself, leading to reciprocal relationship, which leads to authority and supervisory relationship.

As provided in Law No. 23 of 2014, preventive supervision in the form of evaluation of draft local regulation is submitted to Minister for evaluation of Draft Provincial Local Regulation regulating RPJPD, RPJMD, APBD, Amendment to APBD, accountability of APBD implementation, regional tax, regional retribution and regional spatial zoning before stipulation by governor. This Law also authorizes Governor as the deputy of the Central Government to evaluate draft regency/city local regulation regulating RPJPD, RPJMD, APBD, Amendment to APBD, accountability of APBD implementation, regional tax, regional retribution and regional spatial zoning before stipulation by regent/mayor.

Law No. 23 of 2014 affirms that it is prohibited for Local Regulation and Regional Head Regulation to be contradictory to the provisions of higher laws and regulations, public interest, and/or morality. Provincial Local Regulation and Governor Regulation which are contradictory to the provisions of higher laws and regulations, public interest, and/or morality are cancelled by Minister. Regency/City Local Regulation and Regent/Mayor Regulation which are contradictory to the provisions of higher laws and regulations, public interest, and/or morality are cancelled by Governor as deputy of the Central Government. Cancellation of Provincial Local Regulation and Governor Regulation is stipulated with a Ministerial Decision and cancellation of Regency/City Local Regulation and Regent/Mayor Regulation is stipulated with Governor Decision as deputy of the Central Government. The reviewing and testing mechanism by Minister of Home Affairs and Governor may be categorized into an executive review, which is local regulation testing mechanism by Minister of Home Affairs as executive official of central level and Governor as deputy of the Central Government.

Formation of governance on deconcentration principle (administrative area/local state-government) crossing governance on decentralization principle (autonomous region/local self-government) in all governmental units will lead to overlap of autonomy authority with centralization authority and competition between the two. The practice of public governance in the New Order era shows that governance on deconcentration principle is more dominant that it terminates governance on decentralization principle. Regional autonomy in this time ceases to exist, since deconcentration is soft centralization. Governance on deconcentration principle

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has direct path to the Center hierarchically. That it has direct path to the center of power, it has the bigger authority, fund and other resources than governance on decentralization principle.

On the contrary, the path of governance on decentralization principle is not toward the Center, but to the people under supervision of the Center in accordance with the Law. Local executive and house are not directly under the hierarchy of central officials. The working relationship of local executive and house with the central government is one between legal entity under the Law, instead of relationship between superior and subordinate officials. This form of governance is certainly inferior to the form of governance on deconcentration principle since the source of authority, fund and other sources highly depend on Central policy in case of decentralization of governmental affairs and financial decentralization.

The politics and law of local governance are always dynamic, and the function and role of law are substantially influenced by political power. The assumption in this study is that law is a political product, thus the character of legal product will be influenced by the legal configuration which forms it.

Article 18, 18A, 18B the 1945 Constitution of the Republic of Indonesia after the amendment regulates local governance as follows: *First*, local governance consists of two types: 1) regular autonomous local governance and 2) asymmetric autonomous local governance. Regular autonomous governance consists of autonomous provincial region and regency/city autonomous, while asymmetric local governance consists of special autonomous local governance and special autonomous local governance. *Second*, local governance on autonomy and assisting duty (*medebewind*) principles. The autonomy principle refers to the political concept which means local people's freedom to regulate and manage their governmental affairs autonomously, without direct intervention of the Central Government. *Third*, provincial and regency/city autonomous region has DPRD chosen through Election and regional head that is elected democratically. *Fourth*, relationship between Local-Central levels and between province and regency/city is regulated with Law in consideration of regional specialty and diversity. *Fifth*, financial, public service, exploitation of natural and other resources relationship between Central and Local levels is set forth and implemented fairly and harmoniously. *Fifth*, the State acknowledges and respects customary law society units provided that they still exist, with development pursuant to civilized society and its implementation pursuant to the principles of the Unitary State of Republic of Indonesia.

### 1. Local Government's Future Challenge

#### a. Central-Local Relationship

Regional autonomy will always be related to central-local relationship. There are four factors related to and determining central-local relationship in autonomy, namely authority relationship, financial relationship, supervisory relationship, and relationship arising from governmental organizational structure in the region (Bagir Manan, 2001: vi). According to M. Ryaas Rasyid, the essence of regional autonomy implementation is local government's discretion to administer governance itself on the basis of the society's initiative, creativity and active participation in developing and advancing their respective region (Lalu Said Ruhpina, 2005: 4). An ideal format of central-local relationship has not been found until now, and it even leads to never ending tension (Ni'matul Huda, 2005: 77).

Topics related to authority, relationship and financial regulations are the central topics which always contribute to the changes to laws and regulations related to local governance. Attraction of interest between central and local levels and even village level cannot be separated from the journey of the existing local governance. History gives fact that after the reform, Law No. 22 of 1999 and Law No. 32 of 2004 have given big space to local government to administer its own home affairs through the decentralization principle. However, it lacks of practice.

The breaking down of Law No. 32 of 2004 into some sections will affect the current implementation of regional autonomy. As commonly known, this Law is broken down into some sections of regulation, including; local governance, village, and regional head election. This shows that Law No. 32 of 2004 used about 10 years contains so many regulations related to local governance which eventually leaves various problems.

The spirit of birth of Law No. 1 of 2015 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2014 concerning Governor, Regent, and Mayor Election to be Law, Law No. 6 of 2014 concerning Village and Law No. 2 of 2015 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2014 concerning the Amendment to Law No. 23 of 2014 concerning Local Governance to be Law.

The provisions above indirectly influence legal products at local level, including local regulation, regional head regulation and others that have been applicable previously. Therefore, it is necessary to screen local legal products, especially local regulations which are no longer in line with the provisions of laws and regulations on local governance and village currently applicable, so that they may be immediately adapted in avoidance of overlapping authority between provincial government and regency/city government.

#### b. Local Regulation

The existence of lower level governmental unit (*lagere rechtsgemeenschappen*) in the constitutional system of the Republic of Indonesia is not merely a demand for efficiency and effectiveness of governmental implementation. Lower level governmental

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unit is one of the constitutional foundations of the Republic of Indonesia (Bagir Manan, 2001: 46). Meanwhile, democratic constitutional structure requires division of governmental power at central and local level.

Arranging local regulation should actually meet three aspects, namely juridical, philosophical and sociological aspects. Local regulation arrangement often ignores sociological aspect, namely the law prevailing in the society, and since it disregards society's potential and characteristics, local regulation implementation is disturbed considerably. Besides, most of the problematic local regulations are generally contradictory to higher rules, and there is also overlap between central and local policies and overlap between tax and retribution. Most of local officials who do not understand the Law assert local regulations which are oriented to short-term benefit disregarding long-term consequence.

With many local regulations cancelled by the Central Government on the reason of contradiction to public interest or higher rules and/or morality, the measure the Government should take before implementing repressive supervision is to evaluate regions, especially in arranging sustainable local regulation, and immediately return less appropriate Draft Local Regulation for revision. Therefore, any possible mistake in arranging Local Regulation may be minimized as much as possible. Since local regulation is a legislative product, there is a problem with the authority to test and cancel it. Which institution is authorized to cancel local regulation? When it is found that many local regulations stipulated by regions are contradictory to higher laws and regulations or central level regulations, can the local regulations be cancelled by central government (Minister of Home Affairs/Governor).

According to Law No. 22 of 1999, Law No. 32 of 2004 and Law No. 23 of 2014, Local Regulation that has been legalized at local level may be cancelled. Cancellation means its invalidity applies from the date of cancellation. Inappropriate term is made the basis to put in order Local Regulations which are deemed problematic. The terminology used for the term null and void by law should mean that its invalidity applies from the time the regulation is stipulated (which means it also cancels any legal consequences arising before the cancellation). In that relationship, supervision consists of two paths, namely supervision through executive path (Central Government) and supervision through judicative path (Supreme Court).

In 2015, application or judicial review on some articles Law No. 23 of 2014 is filed. Constitutional Court Decision No. 137/PUU-XIII/2015 decides that, among others, regency/city local regulation cancellation mechanism by governor and provincial local regulation by Minister of Home Affairs is declared non-constitutional/contradictory to the 1945 Constitution. With the Constitutional Court Decision, cancellation of local regulation is no longer the central government's authority, but the Supreme Court's authority.

### **c. Consequence of formation of Job Creation Law**

The promulgation of Law No. 11 of 2020 concerning Job Creation contributes to some points of local governance. This is a future challenge in local governance after the enactment of the Job Creation Law.

The consequence of Article 176 Law No. 11 of 2020 concerning Job Creation for local governance is recentralization. Some of local government's authorities are taken over by the central government. Article 176 explains changes to and additional articles in Law No. 23 of 2014 concerning Local Governance. The articles amended include Article 16, Article 250, Article 251, Article 252, Article 260, Article 300, Article 349 and article 350. Meanwhile, the additional articles are Article 292A and 402A.

Article 176 applies to both local regulation and regional head regulation, stating that they must not contradict to the provisions of higher laws and regulations. The government makes recentralization by stating that the level of all local regulations and regional head regulations is below that of central government regulation, while a Constitutional Court Decision concerning the concept of autonomy states it differently. Thus, autonomy has distinguished between delegated local regulation and attributed local regulation. Delegated Local Regulation is local regulation which is born from granting while attributed local regulation is local regulation which is born from inherent authority as autonomous region. This means that in case of control by the central level over local level, it is possible only for delegated local regulation, instead of for attributed local regulation.

The recentralization may influence central level's strengthening role in local level and the central level's input regarding many things on what were previously assigned to local level in the name of autonomy. Thus, what is so far region's direct authority is taken over by the central government through Job Creation Law, regardless of the Law's objective to improve what is overlapping in laws and regulations.

## **5. CONCLUSION**

Based on the description above, we may conclude that the history of constitution of local governance has ups and downs pursuant to the governmental dynamics, political influence from time to time. The changes in governmental system from centralistic to decentralistic or regional autonomy essentially aim at improving services to and prosperity of the people, develop democratic life, justice and equity, and maintain harmonious relationship between central and local levels. The existence of Job Creation Law also contributes to local governance authority defined as recentralization of local government's authority to the central government.

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