

Transmigration Policy in Papua as a Discretion Action of the Papua Province Government



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ABSTRACT: This research is to find out the validity of the Transmigration Policy of the Papua Provincial Government will discuss, as well as the policies of local governments especially in Papua Province which issued policies based on Discretion by enacting provincial regulation No. 15 of 2008 on Population based on Law No. 21 of 2001 on special autonomy for Papua, where the regulation regulates programs made by the central government is wrong. The other is the arrangement of the transmigration program. The type of research that will be done is legal research (legal research) that is to find and find the principles and rules that govern status, which to be presented is a match between the rule of law and legal norms. From the results of the study showed that the actions of the Papua Provincial Government by expressing a rule based on the principle of discretion, but the habit is considered

KEYWORDS: Transmigration, Discretionary Principle, Central Government and Papua Provincial Government

I. INTRODUCTION

Papua is a province that has a government system that adheres to special autonomy¹ and become one of the destinations for population distribution from areas that are densely populated, such as the island of Java. This is because in Papua there is still a lot of land that has not been utilized by the potential of the area, both agricultural land, plantations, and even fisheries. The population distribution in question is transmigration. Transmigration is a program created by the Indonesian government to move people from a densely populated area (city) to another area (village) within the territory of Indonesia.

Transmigration is a development program mandated by Law no. 15 of 1997 as amended into Law no. 29 of 2009, which aims to improve the welfare of transmigrants and the surrounding community, increase and equalize regional development, and strengthen national unity and integrity.² The programs developed include the development of business opportunities, especially in the agricultural sector, distribution of assets in the form of land and housing, construction of education and health facilities, and development of accessibility to production factors, such as the construction of road facilities, economic institutions, and capital.

The Factors That Caused Transmigration to be Implemented, can be described as follows:

- a. Population factors, Indonesia is experiencing problems including the uneven distribution of the population. Indonesia's population 61.1% live on the islands of Java and Madura; while the islands of Java and Madura are only 6.9% of the total area of Indonesia. It is clear that the island of Java is very densely populated, while the other islands have a small population. Therefore, there is a need for equity through the transmigration program.
- b. Economic factors, most of Indonesia's population works in the agricultural sector, while farmers in Java only have an average of 0.3 hectares of land. Ideally, farmers should own at least 2 hectares of land.
- c. Natural disaster factors, areas prone to natural disasters, areas affected by development projects, for example, will be built reservoirs.

In Article 1 of Law Number 29 of 2009 concerning Transmigration, there are three types of transmigration, namely general transmigration and assisted self-help transmigration, and self-directed transmigration: General transmigration is transmigration carried out by the government and/or local government for residents who have limited access to opportunities. work and business whose costs are fully borne by the government. Rocky self-help transmigration is transmigration designed by the government/and/or local government by involving business entities as partners. Independent transmigration is transmigration

¹ Frans Pikey, Papua Mencari jalan perdamaian, Penerbit buku Kompas, Jakarta, 2018, pp. 3

² Team Penelitian Universitas Kristen Satya Wacana, *Transmigrasi" Dari Daerah Asal Sampai Benturan Budaya Di Tempat Pemukiman"*, CV Raja Wali, Jakarta, 1984, Pp.7

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which is the migration initiative concerned with the direction, services and assistance of the government or local government for residents who already have the ability.

With regard to the implementation of Transmigration in Papua Province, Papua is the largest province in Indonesia with a very small population, with so large natural resources (SDA), Papua is the Government's target in implementing Transmigration with the aim of this program being to reduce poverty and population density. from several islands outside Papua within the unitary republic of Indonesia, also provides opportunities for those who want to work and meet the needs of manpower to manage natural resources in islands such as Papua. The implementation of the transmigration program in Papua began in 1964.

After the enactment of Law - Law 21 of 2001 concerning Papua's special autonomy. So the implementation of transmigration carried out by the Central Government of Transmigration Implementation in Papua is regulated in Provincial Regulation No. 15 of 2008 concerning Population in Article 44 paragraph (1), that the Transmigration Policy in Papua will be implemented after the Papuan natives reach the number of 20 million people, and Article 44 paragraph (2), that the Transmigration Policy as referred to in paragraph (1) will implemented after receiving consideration and approval from the MRP and DPRP. This rule is based on Article 61 paragraph (3) and paragraph (4) of Law no. 21 of 2001 concerning Special Autonomy for Papua.

Positioning transmigration as one of the solutions to the problem of equitable development is the right policy, considering that this program is proven to be able to create business opportunities and develop the quality of human resources. In addition, transmigration has been proven to be able to build or encourage the development of new growth centers that will have a positive impact on the economic conditions of the surrounding communities. If we look closely, it becomes an oddity then if the work program launched by the central government is finally 'thwarted' by a regional regulation. Of course, there is an element of defiance against the policies taken by the central government. In the hierarchy of governance between the central government and local governments which are then framed in the construction of regional autonomy, ideally, local governments are extensions of central government policies. The ideal relationship between the central government and local government is collaborative to achieve the national goals of the Indonesian nation.³

The local government has an obligation to ensure the success and success of the program which is the policy of the central government in question. While waiting for 20 million souls, the government makes a program that is exactly the same as transmigration but is carried out for the local community (Translok). . Based on this background, the authors are interested in conducting research with the title: "Transmigration Policy in Papua as a Discretionary Action of the Papuan Provincial Government".

II. RESEARCH METHOD

The research method used in this study is normative juridical by basing its analysis on the applicable laws and regulations.⁴ The research data used are secondary legal data consisting of primary legal materials, namely statutory regulations, among others; Law No. 29 of 2009 concerning Transmigration, Law no. 21 of 2001 concerning Special Autonomy, and Regional Regulation of Papua Province No. 15 of 2008 concerning Population. This study also uses secondary legal materials, namely literature related to research problems. The legal data was obtained through a literature study which was then analyzed descriptively analytically⁵ to answer research problems.

III. DISCUSSION

1. Public Policy as a Governmental Discretionary Action

According to Thomas Dye, policy is whatever the government chooses to do or not to do (public policy is whatever governments choose to do or not to do), Thomas Dye's definition of public policy implies that,⁶ "The public policies are made by government agencies, not private organizations. Public policy concerns the choices that government agencies should or should not make. In line with that understanding is the opinion of James Anderson E. who defines public policy as a policy set by government agencies or bodies.⁷

³ Telly Sumbu, 'Hubungan Pemerintah Pusat Dengan Pemerintah Daerah Dalam Kerangka Pengelolaan Keuangan Negara Dan Daerah', *Jurnal Hukum IUS QUIA IUSTUM*, 17.4 (2010), 567–588.pp.5

⁴.Kornelius Benuf and Muhamad Azhar, 'Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer', *Gema Keadilan*, 7.1 (2020), 20–33. Hlm. 24.

⁵ .Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: PT Raja Grafindo Persada, 2004). Hlm. 35.

⁶ AG Subarsono, *Analisis Kebijakan Publik (Konsep, Teori,dan Aplikasi, penerbit Pustaka Pelajar, Yogyakarta, 2005, pp. 2*

⁷ *Ibid.*

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In David Easton's view, when the government makes public policies, the government also allocates values to the community, because every policy contains a set of values in it.⁸ Similarly, said by Harold Laswell and Abraham Kaplan that public policy should contain goals, values, and social practices that exist in society. This means that public policies contain values that do not conflict with the values and social practices that exist in society, so that public policies will face resistance when implemented.⁹ Based on the opinions above, public policy is understood as policy choices made by government officials or agencies in certain fields, such as education, politics, economy, agriculture, industry, defense, and so on.

Based on the above understanding, public policy is an act of government in the form of an act of discretion. Because in short, government discretionary action can be interpreted as freedom to act or make decisions from the implementers of public policies (authorized and authorized state administration officials) according to their own opinions, as the understanding of public policy above. Discretion is the freedom given to implementers of public policies in the context of implementing public policies, in accordance with the increasing demands for public services that the state must provide to an increasingly complex society.¹⁰

Etymologically, the concept of discretion (discretion) has a root equivalent to the word *discernere* (Latin). In English it has equivalents in other words *discernment* and *judgment*¹¹. While abstractly, Krishna Djaya Darumurti explained, that:

“..... discretionary power is defined as free power; power based on subjective considerations or problems of the power holder to do or not to do something. The holder of discretionary power has the freedom to act in the face of a case. The concept of discretionary power is in sharp contrast to the concept of power based on the "general rule of law". Therefore, the discretionary power that is an exception to the "general rule of law"¹². In this sense, the nature of discretionary power is free power, that is, it is carried out no longer according to or following the considerations of the regulations per previously applicable laws.

In this case, Philipus M. Hadjon emphasized that the government's discretionary power is one of the government's (executive) means in making policies to achieve certain goals which can be realized in the form of: regulatory power (delegated legislation); government decisions (KTUN); factual actions; police action and law enforcement; government sanctions, and so on.¹³ Based on the description above, it can be stated that public policy is every decision made by the government that aims to achieve the goals of the Republic of Indonesia, whether carried out by the central government or local government and can be done on the basis of government discretion.

2. History and Purpose of Transmigration in Indonesia

Dutch Colonial Era Transmigration The Dutch colonial government initiated this policy in the early 19th century to reduce the density of the island of Java and supply labor for plantations on the island of Sumatra. This program slowly faded in the last years of the Dutch colonial period (1940s), then was re-run after Indonesia's independence to counteract food shortages and the economic downturn during the Soekarno administration twenty years after World War II. In its peak year, 1929, more than 260,000 *Cultuurstelsel* contract workers were brought to the east coast of Sumatra, 235,000 of whom were from the island of Java. The immigrants worked as coolies; if a worker asks for his contract to be terminated by the company (desertion), he will be sentenced to forced labor. The death rate and torture among coolies at that time was very high. Post-Independence Transmigration After Indonesia's independence was recognized by the Dutch in 1949 under the Soekarno government, the transmigration program was continued and extended to Papua.

Transmigration Destinations in Indonesia. According to the Indonesian government and the development community, the aim of the program is to move millions of Indonesians from the densely populated islands of Java, Bali and Madura to the sparsely populated outer islands in order to create an even population density. Transmigration will eradicate poverty by providing new land and opportunities for poor migrants. Transmigration will also benefit Indonesia by increasing the use of natural resources on the less densely populated islands. This program also aims to unite the entire nation by creating a single Indonesian national identity that replaces regional identities. The Indonesian government has officially stated that there is no separation of "indigenous tribes" and immigrants in Indonesia, because Indonesia is a country of "indigenous tribes run and led by the natives for the natives"¹⁴

The policies carried out by the Government related to the transmigration program are the embodiment of the ideals or goals of the Unitary State of the Republic of Indonesia made by the founders of the State as stated in the preamble to the 1945 Constitution which is the state constitution which reads to protect the entire Indonesian nation and all of Indonesia's bloodshed, to advance the general welfare, and to educate the nation's life.

⁸ *Ibid.*

⁹ *ibid*

¹⁰ Erlyn Indarti, *Diskresi Dan Paradigma (Sebuah Telaah Filsafat Hukum)* (Semarang: Universitas Diponegoro, 2010). Pp.43.

¹¹ Krishna Djaya Darumurti, "Diskresi Kajian Teori Hukum", Genta Publishing, 2016, pp. 23

¹² *Ibid*, pp. 2.

¹³ Lihat dalam Krishna Djaya Darumurti, *Diskresi Kajian Teori Hukum*, Genta Publishing, 2016, pp. 3.

¹⁴ Rohani Budi Prihatin, 'Revitalization of Transmigration Program', *Aspirasi*, 4.1 (2013), 57–64. Pp. 62.

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3. Legal Legality of Regional Regulations

Papua is a province that has a government system that adheres to special autonomy and is one of the destinations for population distribution from dense areas such as Java Island because in Papua there is still a lot of land that has not been utilized by the potential of the area, both agricultural land, plantations, and even land. fishery. The population distribution in question is transmigration. Transmigration is a program created by the Indonesian government to move people from a densely populated area (city) to another area (village) within the territory of Indonesia.

Transmigration is a development program mandated by Law no. 15 of 1997 as amended into Law No. 29 of 2009, which aims to improve the welfare of transmigrants and the surrounding community, increase and equalize regional development, and strengthen national unity and integrity. In connection with the implementation of transmigration made by the central government in Papua as the goal of equitable development in Indonesia, the regional government of Papua Province is seen as not bringing good things, but instead bringing bad things to the people of Papua. So to solve this problem, the government issued a policy based on discretion by enacting Regional Regulation No. 15 of 2008 concerning Population. Where the contents of Article 44 paragraph 1 states that the Transmigration Policy in the Province will be implemented after the Indigenous Papuan population reaches twenty million people. And in Article 44 paragraph 2, that the implementation of Transmigration in Papua will be carried out after receiving consideration and approval from the MRP and DPRD.

With the issuance of Regional Regulation (Perda) No. 15 of 2008 concerning population as in Article 44 paragraph 1 and paragraph 2 which regulates the implementation of transmigration to Papua, the regional government of Papua Province takes discretionary action. In this sense, the nature of discretionary power is free power, that is, it is carried out no longer according to or following the considerations of the regulations per previously applicable laws. Because the act of discretion is due to the existence of the purpose of state life that must be achieved, in this case the purpose of the state is to create people's welfare (the concept of the welfare state).¹⁵

Such action by the Papua Province regional government is not based on its authority, considering that the Papua Provincial government is the Governor along with other apparatus as the executive body of the Papua Province, the Governor is the head of the government who is fully responsible for administering the government in the Papua Province and as the representative of the Government in the Papua Province. In addition, the Papuan People's Representative Council (DPRD), is the Papuan Provincial Legislative Body as the Papuan Provincial Legislative Body, then the Papuan People's Assembly (MRP) is the cultural representation of indigenous Papuans, which has certain powers in the context of protecting the rights of indigenous people. Papua based on respect for customs and culture, empowering women, and strengthening religious harmony as regulated in the Act.¹⁶

Therefore, the decision-making action by the Provincial Government of Papua with the aim of controlling the population by rejecting the transmigration program by issuing regulations that are contrary to the regulations above it by using the principle of discretion in accordance with legal objectives.

IV. CONCLUSIONS AND SUGGESTIONS

The Transmigration Program used by the Central Government is a policy carried out in order to reduce population density in densely populated areas. The purpose of Transmigration based on Law - Law no. 29 of 2009 concerning amendments to Law No. 15 of 1997, namely improving the welfare of transmigrants and the surrounding community, increasing and equitable regional development, and strengthening national unity and integrity. However, this Central Government Policy was not agreed upon by the Regional Government of Papua Province by issuing a Provincial Regulation (Perdasi) Number 15 of 2008 concerning Population. Regarding population control, the social gap between the natives and the newcomers is unacceptable. The Papuan Provincial Government has thus implemented a discretionary principle policy. The central government in issuing transmigration policies needs to consider the conditions and potentials of certain regions. So that it does not repeat itself as has happened to the Papua Provincial Government. Regions in Indonesia through their respective regional governments should not hesitate to take discretionary actions, even if they violate the law, if they believe that their discretionary policies are based on or for the benefit of the people.

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