

Reconstruction Of Provincial Authority In The Field Of Marine Affairs And Fisheries To Regency/City Governments In Realizing The Welfare Of Small-Scale Fishermen In Indonesia

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Abstract

Horizontal conflicts occurred after the UUPD came into effect because there were regulations regarding changes in marine zoning for small fishing communities. Meanwhile, the authority of the district/city government over coastal areas and small islands has been regulated in the UUPWP3K that the authority of the regional government to manage coastal and small island resources. This study aims to analyze the provisions of laws and regulations on regional government and coastal area management as regulated in the regulations on coastal areas and small islands, and how to reconstruct the authority of the provincial government to the district/city government as before. The research method used is normative legal research. Normative legal research is research that is carried out or directed at legislation, namely the relationship between one regulation and another and its relation to implementation in practice. The results of the study show that since the UUPD came into effect, the authority to manage the marine and fisheries sector as well as coastal areas and small islands by the district/city government has been reduced. The zoning area of 0-4 miles which was originally managed by the district/city government is now managed by the provincial government, thus making the provincial authority zoning 0-12 miles.

I. Introduction

Indonesia as a country with extraordinary fish resource potential, fishing activities in Indonesia are dominated by small fishermen. More than 90% of Indonesian fishermen are small fishermen who catch fish in coastal areas. This is a great opportunity as well as a challenge to strengthen small-scale fisheries businesses to be more advanced, independent, and sustainable. Small-scale fisheries also have an important role in the economy both in macro and micro aspects.

Decentralization of fisheries in Indonesia experienced a period of rapid development after the reform era with the enactment of Law Number 22 of 1999 concerning Regional Government (Law No. 22/199). Based on this law with the concept of regional autonomy, it provides greater authority to regional governments to manage marine and fisheries resources.

Management of marine and fisheries resources by regional governments is increasingly strengthened with the enactment of Law Number 32 of 2004 concerning Regional Government (Law No. 32/2004) replacing Law 22/1999. Based on Law No. 32/2004, district/city regional governments have a legal basis or umbrella for the management of marine resources as stated in the provisions of Article 18 paragraph (1) - (4).

The authority of the district/city government in managing marine and fisheries natural resources is reaffirmed in the provisions of Article 7 paragraph (3) and (4) of Government Regulation Number 38 of 2007 concerning the Division of Government Affairs between the Government, Provincial Governments, and Regency/City Governments, that the district/city government regulates and manages government affairs based on the criteria for dividing elective affairs.

Elective affairs are government affairs that actually exist and have the potential to improve community welfare in accordance with the conditions, characteristics, and superior potential of the region concerned. Elective affairs include marine and fisheries affairs.

Based on the provisions of Article 27 of the UUPD, the district/city government does not have the authority to manage marine and fisheries natural resources to improve the welfare of coastal communities which is the authority of the district/city government's optional affairs. The authority to manage marine and fisheries natural resources is the authority of the provincial region with an archipelagic character to implement the authority of the central government in the marine sector based on the principle of assistance tasks. Meanwhile, the authority of the district/city government refers to Roman I letter Y Attachment to the UUPD, the marine and fisheries sector, only in the sub-affairs of capture fisheries, related to the empowerment of small fishermen, and the management and organization of fish auction places (TPI).

Empowerment of small fishermen, referring to Article 1 number 1 of Government Regulation Number 50 of 2015 concerning the Empowerment of Small Fishermen and Small Fish Farmers, explains efforts to improve the ability of small fishermen to carry out their activities better. The word "upaya" in the big dictionary of the Indonesian language is defined

as an activity that directs energy, thoughts to achieve a goal. Upaya also means effort, reason, endeavor to achieve a goal, solve problems, find a way out.¹

In fact, the main objective of decentralization in the concept of regional autonomy is to open up space for partisanship and justice that is not obtained from a centralized system by reducing or even eliminating obstacles to equal welfare for people in the regions. UUPD is actually the antithesis of decentralization itself. UUPD does not eliminate decentralization but builds a new centralized space by placing greater authority in the province. The transfer of authority in the management of marine and fisheries natural resources from the district/city government to the provincial government has more or less given rise to new problems, including; First, the district/city government cannot budget in the district/city regional revenue and expenditure budget (APBD) to improve the welfare of small fishermen.

Second, the authority to manage fisheries under 12 miles including licensing of fishing vessels 5 GT-30 GT (gross tonnage) is taken over by the province, while the district/city government is only involved in empowering small fishermen and TPI as described above. This will have a major impact on fishing vessel licensing services. Where fishermen in remote areas must apply for permits to the provincial office which takes time and a long distance to travel, and large costs must be incurred to obtain fishing permits. Whereas the main objective in implementing decentralization is to provide easy access to the community to the services they need.

Third, how to implement adequate monitoring, controlling and surveillance (MCS) governance while the provincial government still has to deal with technical and administrative problems such as the number and capacity of human resources, the number of provincial technical implementation units (UPT) in districts/cities that are not yet adequate, limited areas and infrastructure. Meanwhile, on the other hand, the fisheries management area is becoming wider.

Based on statistical data from 2016, the number of fishing fleets measuring less than 10 GT or those included in the category of small-scale fishermen was 508,551 units or 94% of the total fleet. This condition shows that the capture fisheries business is still dominated by small-scale fishermen with simple technology. The structure of fishermen in Indonesia is still dominated by small-scale fishermen who are generally closely related to poverty. Widodo as quoted by Kusdiantoro, et al., explained that small fishermen are only able to utilize resources in coastal areas with catches that tend to continue to decline due to competition with large vessels and the decline in the quality of coastal resources. The catch is also easily damaged, weakening their bargaining position in sales transactions. The exploitative relationship pattern between capital owners and laborers and fishermen, as well as the seasonal and uncertain nature of fishing businesses, causes poor people in coastal areas to find it difficult to escape the trap of poverty and the debt of traders or ship owners.²

In fact, the aim of decentralization with regional autonomy authority for district/city

¹ Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia*, Edisi Ketiga (Jakarta: Balai Pustaka, 2005), hlm. 1250.

² Kusdiantoro, Achmad Fahrudin, Sugeng Hari Wisudo, dan Bambang Juanda, "Perikanan Tangkap Di Indonesia: Potret dan Tantangan Keberlanjutannya", *Jurnal Sosial Ekonomi Kelautan dan Perikanan*, Vol. 14 No. 2 (Desember, 2019), hlm. 149

regional governments is the implementation of the rights, authority and obligations of autonomous regions to regulate and manage their own government affairs and the interests of local communities in the unitary state system of the Republic of Indonesia, according to their own initiative based on the aspirations of the community in realizing community welfare.³

2. Research Method

Soemitro said that normative legal research is also called library legal research, because it is mostly carried out on secondary data found in libraries.⁴ An approach is a researcher's perspective in selecting a spectrum of discussion space which is expected to provide a clear description of the substance of a scientific work.⁵ The data sources needed in this study were obtained from libraries and documents, through secondary data. According to Sugiyono, secondary data is a source of data that does not directly provide data to data collectors, for example through other people or through documents. In research, the sources of secondary data can be laws, books, journals, articles related to the research topic.⁶

³ Andi Pangerang Moenta dan Syafa'at Anugra Pradana, *Pokok-Pokok Hukum Pemerintahan Daerah* (Depok: Rajawali Pers, 2018), hlm. 27

⁴ Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri* (Jakarta: Ghalia Indonesia, 1990), hlm. 11

⁵ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Cetakan Kedua (Jakarta: Kencana, 2017), hlm. 11-12

⁶ Sugiyono, *Metode Penelitian Kuantitatif* (Bandung: Alfabeta, 2018), hlm. 456

3. Results and Discussion

a. Policy Direction And Authority Of Regency/City Government In The Marine And Fisheries Sector With The Effectiveness Of Law Number 23 Of 2014

The division of government affairs between the central government and regional governments is a consequence of the regional autonomy system used in Indonesia. As a unitary state that has a very large territory with diverse ethnicities and cultures in Indonesia, granting autonomy to regions seems to be one of the right choices to facilitate the acceleration of development in the regions, including in the marine and fisheries sector.⁷ The optimal role of the government and regional governments in prospering the marine and fisheries sector is very much needed to realize Indonesia's vision as the world's maritime axis. The utilization of marine and increasing fisheries production in the regions will basically depend on the policies and programs implemented by the regional government. Regional policies and programs (both at the planning and implementation levels) in the marine and fisheries sector are basically an elaboration of the authority they have.

The granting of the broadest possible autonomy to regions is implemented based on the principle of a unitary state. In a unitary state, sovereignty lies only with the state government or national government and there is no sovereignty in the regions. Therefore, no matter how broad the autonomy given to the regions, the final responsibility for the implementation of regional government will remain in the hands of the central government. For this reason, regional government in a unitary state is a single entity with the national government. In line with this, policies made and implemented by the regions are an integral part of national policy. The difference lies in how to utilize regional wisdom, potential, innovation, competitiveness, and creativity to achieve these national goals at the local level which in turn will support the achievement of national goals as a whole.

The progress of a nation is largely determined by the innovation carried out by the nation. Therefore, it is necessary to have protection for innovative activities carried out by state civil servants in the regions in advancing their regions. There needs to be an effort to spur regional creativity to increase regional competitiveness. Therefore, there needs to be objective criteria that can be used as a guide for regional officials to carry out innovative activities. In this way, innovation will be spurred and developed without any fear of becoming the object of legal violations.

Basically, the implementation of the latest UUPD is intended to encourage the

⁷ Budiyo, Muhtadi, dan Ade Arif Firmansyah, "Dekontruksi Urusan Pemerintahan Konkuren Dalam Undang-Undang Pemerintahan Daerah", *Kanun Jurnal Ilmu Hukum*, No. 67 Th. XVII (Desember, 2015), hlm. 422

creation of greater efficiency and effectiveness of regional government administration in improving the welfare of the community, both through improving public services and through increasing regional competitiveness. This change aims to spur synergy in various aspects of regional government administration with the central government, especially in the marine and fisheries sector for the advancement and empowerment of small fishing communities. UUPD is the main foundation for the existence of regional governments in developing their respective regions and creating services, community participation, initiatives and community empowerment which ultimately aim to improve people's welfare. In line with this principle, the principle of real and responsible autonomy is also implemented in accordance with the potential and uniqueness of the region. Thus, the content and type of autonomy for each region are not always the same as other regions.

However, in the UUPD, the unclear regulations in the implementation of regional government in the marine and fisheries sector have resulted in legal uncertainty in following up on the implementation of regional autonomy in the marine sector. Regional difficulties also occur because so far regional governments (especially districts/cities) have not had experience in managing marine areas. This is because so far marine management has been entirely the authority of the central government. As a result of the absence of implementing regulations for Law No. 22/1999 and Law No. 32/2004, in many cases marine management carried out by regions still refers to a centralized form of management. In fact, the conditions of society and the environment in various regions require different management models.⁸

Since the regional autonomy policy was implemented, regions have begun to pay attention to their potential and what can be economically developed to improve community welfare. Several regions in Indonesia that geographically have coastal areas and small islands realize how important it is to manage these areas for various activities, both economic and conservation, in a balanced and appropriate manner. Coastal areas and small islands are indeed areas that have their own uniqueness but are vulnerable to conflicts of interest, economic and social issues as well as various environmental problems due to utilization that is not based on ecological principles which are the basis for sustainable resource management.

Centralization should not eliminate the existence of regional autonomy as a constitutional mandate. The current UUPD tends to lead to a centralization policy. This tendency can be identified both in terms of the concept of division of affairs, authority to form regional regulations, and in the division of authority, especially for the management of natural resources, forestry, and mining. The UUPD considerations state that the

⁸ Masyhuri Imron, "Otonomi Daerah Dan Permasalahannya Dalam Pengelolaan Kelautan", *Jurnal Masyarakat & Budaya*, Vol. 13 No. 1 (2011), hlm. 99

efficiency and effectiveness of regional government administration need to be improved by paying more attention to aspects of the relationship between the central government and regions and between regions, regional potential and diversity, and opportunities and challenges of global competition in the unity of the state government administration system.

Based on the entire series of divisions of the implementation of provincial and district/city regional governments in the marine and fisheries sector, it can be understood that in the context of the implementation carried out by regional governments in the marine sector against the norms of the UUPW3PK and UUPD have different values. The UUPW3PK adheres to the principle of decentralized regional autonomy. So that both the central government, provincial regions and district/city regions have the authority to carry out government administration in the marine and fisheries sector as long as it is in accordance with existing norms.

UUPD is a mandate of Article 18 paragraph (7) of the 1945 Constitution of the Republic of Indonesia to regulate the structure and procedures for organizing regional government, replacing Law No. 32/2004 because it is considered no longer appropriate to developments in conditions, state administration, and demands for organizing regional government. The implementation of government affairs in the regions is carried out by the regional government based on the principles of decentralization, deconcentration, and assignment tasks.

Article 9 paragraph (3) of the UUPD explains that "concurrent government affairs are government affairs that are divided between the central government and provincial and district/city governments". Concurrent government affairs that are delegated to the regions are the basis for implementing regional autonomy, which are the authority of the regions consisting of mandatory government affairs and optional government affairs. Mandatory government affairs consist of government affairs related to basic services and government affairs that are not related to basic services. Concurrent government affairs that are the authority of the regions are mandatory government affairs related to basic services that include education, health, public works and spatial planning, public housing and residential areas, security, public order, and social community protection.

The division of concurrent government affairs between provincial and district/city areas, although the government affairs are the same, the difference will be seen from the scale or scope of the government affairs. Although provincial and district/city areas have their own government affairs that are not hierarchical in nature, there will still be a relationship between the central government, provincial areas and district/city areas in their implementation by referring to the NSPK (norms, standards, procedures, and criteria) made by the central government. The division of government affairs between the central government and regional governments is a consequence of the regional autonomy

system used in Indonesia. As a unitary state that has a very large territory with diverse ethnicities and cultures in Indonesia, granting autonomy to regions seems to be the right choice to facilitate the acceleration of development in the regions, including in the marine and fisheries sector.

The division of concurrent affairs as described above seems to erode the authority of district/city governments to manage their own marine resources. So based on the provisions of the UUPD, there is no proper division of authority in the marine wealth sector. The only division of authority that is clear enough as a follow-up to regional autonomy in the marine sector is related to the issue of fisheries business permits, as stipulated in Government Regulation Number 141 of 2000 concerning the Second Amendment to Government Regulation Number 15 of 1990 concerning Fisheries Business (PP No. 141/2000). PP No. 141/2000 states that the use of non-motorized fishing vessels, outboard motorized fishing vessels and inboard motorized fishing vessels with a weight of no more than 10 GT or a motor power of no more than 30 horsepower, which operate in the district/city area, the permit is granted by the regent/mayor. As for inboard motorized vessels with a maximum weight of 40 GT or a motor power of no more than 90 PK (Paardenkracht/mechanical horsepower), the permit is granted by the governor. With these provisions, a motor ship with a weight of 30 GT operating in a provincial area, for example, its permit is not issued by the district/city, even though it is based in the district/city area. Thus, the district/city does not receive any income from the motor ship being based in its area, even though they have to be exposed to its waste.

Based on the description above, referring to the provisions of the UUPD, concurrent government affairs in the marine and fisheries sector between the central government, provincial regional governments and district/city regional governments have been divided into their authorities. Although the principle of regional autonomy applies, the direction of policies formed by each region must not conflict or overlap with the authority that has been determined at each level of government. If it conflicts, the policy can be canceled. Concurrent government affairs should be managed together or coordinated with each other between the central, provincial, and district/city governments according to their respective authorities. In fact, the one that has full authority in the marine and fisheries sector remains in the hands of the central government, which among other things has authority in the marine, coastal and small islands sub-affairs, namely managing marine space above 12 miles and national strategic, issuing permits for the use of national marine space, issuing permits for the use of types and genetics (germplasm) of fish between countries, determining the types of fish that are protected and their trade is regulated internationally and determining conservation areas. Meanwhile, in the sub-affairs of capture fisheries, it can manage fish capture in sea areas above 12 miles, issue capture fisheries business permits, determine the location for the construction and management of national and international fishing ports and other overall authority for

the marine and fisheries sector.

Policies that can be implemented by district/city governments in developing the marine and fisheries sector to improve the welfare of small fishermen include improving education, training and outreach that involves not only marine and fisheries service employees but also fishermen and fish farming communities in remote areas. Then it is necessary to establish a village unit cooperative (KUD) for fishermen which is needed for the purchase of motor boats, promotion and repair of fishing equipment. The local government is also expected to be able to more quickly handle all forms of problems faced by fishermen and fish farmers, as well as add to the completeness of support for fishermen in carrying out their daily work and the distribution of aid funds evenly to fishermen in the area can also be implemented.

The direction of district/city government policy in the marine and fisheries sector is limited in the UUPD, and is not in accordance with the principle of regional autonomy. If viewed from the perspective of the welfare state theory, then the restrictions imposed by lawmakers on district/city governments are not in favor of the welfare of the district/city, especially for small fishing communities. District/city governments (regents/mayors) are not given the freedom to improve the standard of living of the region and its people from the marine and fisheries sector. So that the acceleration of the regional economy which aims to prosper and improve the welfare of the district/city will be greatly hampered and will even be difficult to occur.

b. The Impact Of The Implementation Of Law Number 23 Of 2014 On Regency/City Government Programs In Improving The Welfare Of Small-Scale Fishermen

In every constitution of a country (including the 1945 Constitution of the Republic of Indonesia) in principle has the aim of limiting the authority of the government in guaranteeing the rights of the governed and formulating the implementation of sovereign power. This aim can be categorized into three, namely; providing limitations and supervision of political power, releasing control of power from the ruler himself, providing limitations on provisions for the rulers in exercising their power.⁹

Article 1 of the 1945 Constitution of the Republic of Indonesia states that the Republic of Indonesia is a unitary state in the form of a republic. The consequence of being a unitary state is the formation of a unitary state government, namely the formation of the Indonesian government as a national government for the first time and then the national government which then forms regions in accordance with the provisions of laws and regulations. Then Article 18 paragraph (2) and paragraph 5 of the 1945 Constitution of the Republic of Indonesia states that "Regional governments have the authority to

⁹ M. Darin Arif Mu'allifin, "Hubungan Konstitusi dengan Tugas dan Fungsi Negara", *AHKAM Jurnal Hukum Islam*, Vol. 4 No. 1 (Juni, 2016), hlm. 164

regulate and manage their own government affairs according to the principles of autonomy and the tasks of formation and are given the broadest possible autonomy."

In relation to the system of government, in a broad sense it can be interpreted as all efforts made by government institutions to achieve state goals, namely welfare (welfare state), where the government is organized to make all efforts/attempts to create welfare for its people.¹⁰ Therefore, granting the widest possible regional autonomy to regions is directed to accelerate the realization of community welfare through improving services, empowerment, and community participation. In addition, through broad autonomy in the strategic environment of globalization, it is hoped that regions will be able to increase competitiveness by paying attention to the principles of democracy, equality, justice, privileges and specialties as well as the potential and diversity of regions in the NKRI system.

The granting of the broadest possible autonomy to regions is implemented based on the principle of a unitary state. In a unitary state, sovereignty lies only with the state government or national government and there is no sovereignty in the regions. Therefore, no matter how broad the autonomy given to the regions, the final responsibility for the implementation of regional government will remain in the hands of the central government. For this reason, regional government in a unitary state is one unit with the national government.¹¹

The implementation of UUPD indirectly affects legal products in the regions, both regional regulations, regional head regulations and other regulations that have previously been in effect. Therefore, it is necessary to conduct a sweep of regional legal products, especially regional regulations that are no longer in line with the provisions of laws and regulations on regional government that are currently in effect so that they can be adjusted immediately so that there is no overlapping authority between the provincial government and the district/city government.

Regions as a legal community unit that has autonomy have the authority to regulate and manage their regions according to the aspirations and interests of their communities as long as they do not conflict with the national legal order and public interest. In order to provide wider space for regions to regulate and manage the lives of their citizens, the central government in forming policies must pay attention to local wisdom and vice versa, regions when forming regional policies, both in the form of Regional Regulations and other policies, should also pay attention to national interests. Thus, a balance will be created between synergistic national interests and still paying attention to conditions, characteristics, and local wisdom in the implementation of government as a whole.

¹⁰ Hendrawati Hamid, *Manajemen Pemerintahan Daerah* (Makassar: Garis Khatulistiwa, 2020), hlm. 38.

¹¹ Oksep Adhayanto dan Yudhanto Satyagraha Adiputra, "Dampak Undang-Undang Nomor 23 Tahun 2014 Terhadap Peraturan Daerah di Kabupaten Bintan Tahun 2015 (Studi Peralihan Kewenangan Dibidang Kelautan dan Pertambangan)", *Jurnal Selat*, Vol. 2 No. 2 (Mei, 2015), hlm. 298

Several problems that have an impact on the welfare of small-scale fishing communities after the enactment of UUPD in marine and fisheries governance in Indonesia include the lack of clarity and disharmony in regulations. This problem is exacerbated by overlapping authority between related institutions and agencies. So that conditions like this create significant obstacles in determining policies and implementing programs in the marine and fisheries sector. In addition, obstacles related to licensing are also crucial issues that have a direct impact on small-scale fishing communities on the coast. The complicated licensing process and administrative obstacles not only slow down the development of this sector, but also hinder the economic potential of coastal communities that are highly dependent on marine catches. Therefore, serious efforts are needed to detail and harmonize regulations, resolve overlapping authorities, and simplify the licensing process in order to increase efficiency and fairness in marine and fisheries management in Indonesia.

c. Reconstruction Of Article 27 Of Law Number 23 Of 2014 On Provincial Authority In The Field Of Marine Affairs And Fisheries To Regency/City Governments In Improving The Welfare Of Small-Scale Fishermen

In essence, in regional autonomy, not only is the authority of decentralization given, where the transfer of government affairs by the central government to autonomous regions is based on the principle of autonomy. However, there is also the granting of deconcentration authority as stipulated in Article 1 number 9 of the UUPD, where the delegation of part of the government affairs that are the authority of the central government to the governor as the representative of the central government, to vertical agencies in certain regions, and/or to the governor and regent/mayor as the person in charge of general government affairs.

Furthermore, Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia emphasizes that the Republic of Indonesia is divided into provincial regions and the provincial regions are divided into districts and cities, each of which has a regional government, which is regulated by law. This can be interpreted that the Republic of Indonesia according to the 1945 Constitution of the Republic of Indonesia is decentralized, not centralized so that regional government is held in relation to decentralization.

In the framework of decentralization according to Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia, regional governments exercise the broadest possible autonomy, except for government affairs which are determined by law as central government affairs. In other words, it can be said that the form of the Indonesian state is the Republic of Indonesia which is run based on decentralization, with the broadest possible autonomy.

According to Riyadi and Bratakusuma, granting autonomy to regions is an

empowerment effort in order to manage development in the regions. So that creativity, innovation and independence can be expected to be owned by each region, thus reducing the level of dependence on the government. Another important thing with regional autonomy, the quality of services provided by the government to its people will increase.¹²

However, the birth of UUPD which revoked Law No. 32/2004 which was a political product of the government. Political products according to Kumar are interpreted as a package of political services for each constituent it serves.³⁹⁸ It turns out that in the field of marine and fisheries it does not have a positive impact on the district/city regional government, because this authority has been delegated to the provincial government.

The presence of UUPD apparently ignores the ideals of regional autonomy, because in this new UUPD, the character of decentralization is reflected with the wrapping of regional autonomy, which has been replaced by centralization wrapped in deconcentration. The central government is trying to deliberately stabilize the contextuality and existence of a more prudent regional government between the center, province, and city or district, or return to the shadow centralization scheme.¹³

As for the district/city government, based on the provisions of Article 14 paragraph (5) of the UUPD as a producing and non-producing district/city area, they only receive a share of the results from the implementation of government affairs, and for producing district/city areas, the calculation of marine profit sharing is marine products that are within a territorial boundary of 4 (four) miles measured from the coastline towards the open sea and/or towards the archipelagic waters. In its implementation, the implementation of government affairs in the fields of forestry, marine affairs, and energy and mineral resources, income is only divided into 2, namely between the central government and the provincial government. Meanwhile, in terms of calculating marine profit sharing, there is a portion for the district/city government.

The transfer of authority of the district/city government related to the marine and fisheries sector to the provincial government as stipulated in Article 27 of the UUPD greatly limits the district/city government in improving the welfare of small fishermen, such as; First, the rights of small fishermen to earn a decent living are neglected, including easy access to facilities, infrastructure and facilities for fishing. Second, small fishermen in the regions feel neglected and poverty in coastal areas is increasing. Third, there is no budget allocated to help small fishermen, expand ponds, and facilitate permits for small fishermen to manage and organize fish auction places. Fourth, the difficulty of obtaining permits in the field of fish farming within the regional scope for small fishermen, because

¹² Riyadi dan Dedy Supriyadi Bratakusumah, *Perencanaan Pembangunan Daerah (Strategi Menggali Potensi Dalam Mewujudkan Otonomi Daerah)* (Jakarta: PT. Gramedia Pustaka Utama, 2005), hlm. 122

¹³ Yusdianto, "Hubungan Kewenangan Pusat dan Daerah Menurut Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah", *PADJADJARAN Jurnal Ilmu Hukum*, Vol.2 No. 3 (2015), hlm. 487

it takes time and a long distance to the province to take care of it. Fifth, the difficulty of obtaining the provision of fishing facilities such as: fishing vessels, fishing gear, fuel, clean water and so on. Sixth, the district/city government has difficulty managing marine resources, including developing community human resources in managing marine and fishery products.

The form of reconstruction returns the authority of the district/city government to its previous authority in line with Yusuf Qardhawi's opinion that reconstruction includes three important points, namely; First, maintaining the core of the original building while maintaining its character and characteristics. Second, repairing things that have collapsed and strengthening the joints that have weakened. Third, including several updates without changing the original character and characteristics. From here it can be understood that renewal is not presenting something that is completely new, but rather reconstructing and then applying it to the current reality.⁴⁰² This means that the authority of the district/city government related to the marine and fisheries sector is simply returned to its original state by adding and strengthening it according to current needs.

This situation then changed after the issuance of Law No. 32/2004 which overturned all previous assumptions. The makers of Law No. 32/2004 reclaimed the assumption used by the makers of Law No. 5/1974 which believed that the source of power was the central government. In Law No. 32/2004, the term recognition of authority was no longer used but "transfer of affairs". This is where the old assumption began to rise again. With the term affairs, Law No. 32/2004 assumes that all government authority basically belongs to the central government, in this case the president as head of state. What is transferred to the regions is only the technical part of the authority, which is called affairs.

This assumption is based on the philosophy of power in the old Javanese culture which believes that basically power must be gathered in one hand, it cannot be shared. But the old concept of power is based on the royal system where the king is the sole owner of all power. This philosophy does not really apply in the context of the formation of the Republic of Indonesia, and is even more irrelevant when applied in the democratic system that we adhere to. The decision of the central government to return to the old assumptions that are ahistorical and have been proven to have given birth to a centralistic government system (Law No. 5/1974) is questionable because it was born in the era of decentralization. Law No. 32/2004 and the UUPD are a very real stretch of the recentralization roadmap.

The lawmakers seem to have forgotten that the centralized system that lasted for 25 years of the enactment of Law No. 5/1974 has sterilized the initiative and creativity of regional governments and communities in the regions, weakened regional responsibility in developing their regions and communities, and lowered the self-esteem of regional

communities due to the limited or no dignified participation space for them in determining their future. Everything depends on the attention and "gifts" of the central government. Regional officials are infected with an inferiority complex, begging for help from the center and serving central officials who visit the regions. This situation is corrected by Law No. 22/1999. The placement of fairly broad authority to the regions, especially regencies/cities, and the allocation of relatively large financial resources compared to before the enactment of Law No. 22/1999, and gradually changed the face of the regions and awakened the initiative, creativity, and self-esteem of the regions. In the context of governance, it is understood that no initiative and creativity can be expected without sufficient authority and money. Oddly enough, the rise of regional initiative, creativity and self-esteem was not accepted as a prospective development for the sake of building healthy competition between regions towards national progress, but was instead suspected by a number of key officials in the government in Jakarta as if autonomy were a threat to the integrity of the Republic of Indonesia.

Furthermore, regarding the changes to the regional government law, if we refer to Abdul Manan's opinion, that in the context of the renewal and development of national law, the dimension that must be implemented is the renewal dimension, where the changes aim to further improve and perfect national development. In addition to the formation of new laws and regulations, efforts are also made to improve existing laws and regulations, so that they are in accordance with the needs that continue to develop. According to Jeremy Bentham, legal changes essentially play a role in leading society to happiness (welfare) in their lives. So that laws that are beneficial to society if they bring prosperity, and laws that are most in accordance with the benefits or interests of society are those that tend to increase the amount of individual welfare that forms that society.¹⁴

4. Conclusion

The direction of the district/city government policy in the marine and fisheries sector can only implement policies on; empowering small fishermen in the district/city area, managing and organizing TPI, issuing IUP in the field of fish farming whose business is in 1 (one) district/city area, empowering small fish farming businesses, and managing fish farming.

The impact of the enactment of the UUPD on the district/city government program in improving the welfare of small fishermen, where the district/city government is not given the authority to manage the marine and fisheries sector in general, is not included in the development of marine and fisheries human resources, does not receive general allocation funds and special allocation funds. The complicated licensing process, the implementation of programs in the marine and fisheries sector in the district/city that are unclear, as well as the ambiguity and disharmony in regulations related to marine and fisheries.

The reconstruction that can be carried out by the government regarding the

¹⁴ Jeremy Bentham, *Teori Perundang-Undangan Prinsip-Prinsip Legislasi, Hukum Pidana dan Hukum Perdata* (Bandung: PT. Nuansa Cendikia, 2018), hlm. 26

provisions of Article 27 of the UUPD concerning provincial authority in the marine and fisheries sector to the district/city government in improving the welfare of small fishermen is by returning the authority in the marine and fisheries sector to the district/city government

References

- Departemen Pendidikan Nasional. 2005. *Kamus Besar Bahasa Indonesia*, Edisi Ketiga, Jakarta: Balai Pustaka.
- Kusdiantoro, Achmad Fahrudin, Sugeng Hari Wisudo, dan Bambang Juanda. 2019. "Perikanan Tangkap Di Indonesia: Potret dan Tantangan Keberlanjutannya", *Jurnal Sosial Ekonomi Kelautan dan Perikanan*, Vol. 14 No. 2.
- Andi Pangerang Moenta dan Syafa'at Anugra Pradana. 2018. *Pokok-Pokok Hukum Pemerintahan Daerah* Depok: Rajawali Pers.
- Ronny Hanitijo Soemitro. 1990. *Metodologi Penelitian Hukum dan Jurimetri* Jakarta: Ghalia Indonesia.
- I Made Pasek Diantha. 2017. *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Cetakan Kedua Jakarta: Kencana.
- Sugiyono. 2018. *Metode Penelitian Kuantitatif* Bandung: Alfabeta.
- Budiyono, Muhtadi, dan Ade Arif Firmansyah. 2015. "Dekonstruksi Urusan Pemerintahan Konkuren Dalam Undang-Undang Pemerintahan Daerah", *Kanun Jurnal Ilmu Hukum*, No. 67 Th. XVII.
- Masyhuri Imron. 2011. "Otonomi Daerah Dan Permasalahannya Dalam Pengelolaan Kelautan", *Jurnal Masyarakat & Budaya*, Vol. 13 No. 1.
- M. Darin Arif Mu'allifin. 2016. "Hubungan Konstitusi dengan Tugas dan Fungsi Negara", *AHKAM Jurnal Hukum Islam*, Vol. 4 No. 1.
- Hendrawati Hamid. 2020. *Manajemen Pemerintahan Daerah* Makassar: Garis Khatulistiwa,.
- Oksep Adhayanto dan Yudhanto Satyagraha Adiputra. 2015. "Dampak Undang-Undang Nomor 23 Tahun 2014 Terhadap Peraturan Daerah di Kabupaten Bintan Tahun 2015 (Studi Peralihan Kewenangan Dibidang Kelautan dan Pertambangan)", *Jurnal Selat*, Vo. 2 No. 2.
- Riyadi dan Dedy Supriyadi Bratakusumah. 2005. *Perencanaan Pembangunan Daerah (Strategi Menggali Potensi Dalam Mewujudkan Otonomi Daerah)* Jakarta: PT. Gramedia Pustaka Utama.
- Yusdianto. 2015. "Hubungan Kewenangan Pusat dan Daerah Menurut Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah", *PADJADJARAN Jurnal Ilmu Hukum*, Vol.2 No. 3.
- Jeremy Bentham. 2018. *Teori Perundang-Undangan Prinsip-Prinsip Legislasi, Hukum Pidana dan Hukum Perdata* Bandung: PT. Nuansa Cendikia.