Problematics of Decentralization in the Field of Health Law in the Autonomous Era

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Abstract

Based on positive law, which applies in Indonesia, decentralization has "chosen" to give up some of its authority to autonomous regions. The delegated authority is very broad, because in Law Number. 23 of 2014 uses a residual system when determining what is the authority of local governments. With the residual system, the central authorities have been clearly defined in advance, while the rest are autonomous regions. Therefore, authority in the health sector has become an autonomous regional government authority, because that authority is not determined as the authority of the central government. On the one hand this benefits the local government, because by using its authority, the regional government can regulate the health sector according to its aspirations and capabilities. This research was approached in terms of legal science, both at the dogmatic level, legal theory, and legal philosophy. In this study also used a normative legal approach or library law, namely legal research conducted by examining library materials or secondary data. Normative legal research or literature includes research on semantic law, research on the degree of vertical and horizontal synchronization, comparison of law and history of law. Research on legal principles is carried out by interpreting the legal norms formulated in laws and regulations relating to local government in Indonesia. Based on this research study, it can be concluded that in terms of law and policy as well as the scope of authority of regional governments that support regional autonomy in the health sector, it is still unclear and inconsistent in the description of the functions and authority of regional governments in the health sector.

I. Introduction

Decentralization is the reversal of administrative consequences in one center, as well as the "granting" of power to the regions. The legal consequences of decentralization, i.e. its implementation can be done by giving up authority and or affairs to the lower level local government.

Based on positive law, which applies in Indonesia, decentralization has "chosen" to give up some of its authority to autonomous regions. Delegated authority is very broad, because Law No. 23 of 2014 uses a residual system when determining what is under local government authority. With the residual system, the authority of the central government has clearly been predetermined, while the rest is the authority of autonomous regions. Therefore, the authority in the health sector has become an autonomous regional government authority, because that authority is not determined as the authority of the central government. On the one hand it benefits the local government because by using its authority, the local government can regulate the health sector in accordance with its aspirations and abilities.

Implementation of services in the health sector knows no boundaries, so it needs to be done comprehensively and across borders. One example that shows unlimited authority in the health sector is the problem of pollution, whether water, noise, or waste. When the voice of an industry located in one area releases waste that affects health conditions in another area, the affected local government does not have the authority to take action against the industry because the industry is domiciled outside its jurisdiction.

The efforts of the Central Government through the Ministry of Health to maintain the character of centralization in the implementation of decentralization in the health sector are carried out through a number of policy rules as implementing regulations for decentralization in the health sector which indirectly reduce the authority of the Regional Government. First about the legal rules and unclear and inconsistent policy patterns regarding health service tariffs, second, namely inconsistencies and delays in legal

regulations and quality control policies and costs for health services, third about delays in legal regulations and social health service policies, fourth about delays and inconsistencies in legal regulations and licensing policies, fifth on inconsistencies in legal regulations and policy accreditation, sixth on ambiguities and delays in legal regulations and hospital medical audit policies, seventh regarding ambiguity and inconsistencies in legal rules and administrative sanction policies, eighth regarding delays in outlining the functions and authority of the regional government of the health sector in making local regulations and decisions of regional heads, and nine on weaknesses in the structure and capacity of government legal institutions in the health sector.

Azrul Azwar, in his capacity as Director General of Public Health of the Ministry of Health of the Republic of Indonesia in 2005, explained that, in fact there had been a discourse about changes in organizational structure in the health department related to health decentralization, but until now there had been no concrete action. The only change in the structure of the department of health related to health decentralization, was the establishment of the Decentralization Unit to support the success of health decentralization at the Provincial and District or City level.

The organizational structure of the department of health turned out to have a supratructural weakness, namely that the legal section or sub-section had not yet been formed, which would certainly hamper the legal efforts of the Regional Government in designing, forming, overseeing and evaluating regional regulations and decisions of regional heads in the health sector. Structural weaknesses are also related to the limited number and quality of human resources in the field of health law, health science and technology, including the technical aspects of hospitals, so that it has difficulties in establishing technical requirements in Regional Regulations, moreover the Decree of the Regional Head outlining the functions and authority of supervision Provincial / Regency / City Government in the field of licensing, standardization, accreditation and certification in the field of health.

2. Research Method

This research was approached in terms of legal science, both at the dogmatic level, legal theory, and legal philosophy. Legal research, in this paper also uses a normative legal approach or library law, which is legal research conducted by examining literature or secondary data. Normative legal research or library law includes research on semantic law, research on the degree of vertical and horizontal synchronization, comparison of law and legal history. Research on legal principles is carried out by interpreting the legal rules formulated in laws relating to local governments in Indonesia.

Research on legal systematics aims to examine the basic understanding or basis of the legal system contained in the laws relating to the Relationship between the Central Government and Regional Governments, the aim of which is to examine the policy indications of the relationship policies between the center and the regions. government, especially those relating to laws and regulations in the health sector that are not in line with the principles of decentralization and democratic principles.

Research on the degree of vertical and horizontal synchronization was carried out to examine the extent to which positive laws are written in Indonesia that have legal harmony. This research is inseparable from the determination of material objects and formal objects in this paper. Research on the degree of horizontal synchronization aims to examine the alignment in laws and regulations that are parallel or equal that govern the substance of the same research material.

Research on the history of law examines the background of the purpose of the formation of laws and regulations on local government which are material objects of this research, namely the health sector law and the law on regional government, and also to determine the extent of the development of decentralized content in each government policy regions that came into force in Indonesia.

The purpose of this study is to better describe the relationship between the central government and regional governments that are more in line with the ideals of the 1945 Constitution of the Republic of Indonesia and redefine the laws and regulations relating to the relationship between the central government and regional governments, especially in

health sector. Another objective of this research is to describe the impact that occurs with problems arising from the unequal distribution of authority between the center and the regions, and to formulate concepts and principles that are fair and in accordance with the principle of broad autonomy.

3. Results and Discussion

The highly centralized government structure is still reflected in the health sector which is still dominated by the National Development Planning Agency, the Ministry of Health, the Ministry of Finance, and the Ministry of Home Affairs. In addition, the national health service system, with all its limited resources, there is no link between the program and the unit within the Ministry of Health itself, so it does not function as a system, but instead competes with each other to influence the regions.

The function and authority of the government in regional autonomy in the field of health are bound to the legal principles in Law Number 23 of 2014 which provide regional autonomy as mandated by Article 18 paragraph (2) and paragraph (5) of the Constitution of the Republic of Indonesia 1945. Give regional autonomy as much as possible, with the aim of accelerating the realization of public welfare through improved services, empowerment and community participation is expected to increase competitiveness by paying attention to the principles of democracy, equality, justice, privileges, and specificity and potential and diversity in the system The Unitary State of the Republic of Indonesia. The principle of regional autonomy in Law Number 23 of 2014, according to the General Explanation, is the "principle of broadest autonomy", in the sense that regions are given the authority to manage and regulate all government affairs outside the affairs of the Central Government. regulated in local government law.

Now, decentralization, especially in the health sector, has been expressly stated in Article 12 paragraph (1) letter b of Law Number 23 of 2014 which stipulates "handling of the health sector" as one of the various mandatory functions which are the authority of local governments. Then, in accordance with Article 12 paragraph (1) letter b of Law Number

23 of 2014, namely the implementation of the handling of the health sector by the Regional Government is based on the principle of decentralization by prioritizing autonomy in the province and district or city regional government.

The handling of the health sector as a compulsory governmental affair which is the authority of the provincial / district / city government, in accordance with Article 13 paragraph (1) of Law Number 23 of 2014 and its Explanation, must pay attention to "harmonious relations between government structures", in terms of harmony between provinces and other provinces, districts or cities with other districts or cities, or provinces and districts or cities below it, so that the principle of autonomy, the principle of decentralization, and the principle of harmony, are legal principles that form the philosophical basis of the functions and authorities of the government in regional autonomy in the health sector.

Specifically in the field of health, the Minister of Health as the implementing element of the central government in the field of health, based on Article 2 paragraph (4) letter b jo. Article 5 paragraph (3) Government Regulation Number 38 Year 2007, has the authority based on the regulatory and directional function, in the sense of establishing policies in the health sector in the form of norms, standards, procedures, and criteria in accordance with statutory regulations, among other:

1. registration, accreditation, certification of health facilities;
2. licensing certain health facilities;
3. national scale registration, accreditation and certification of health workers;
4. granting permission for foreign health workers;
5. registration, accreditation, and certification of health commodities; and
6. national scale development, monitoring, evaluation and supervision.

In accordance with Article 4 of the Minister of Health Regulation Number 1575/MENKES/PER/XI/ 2005 concerning the Organization and Work Procedures of the Ministry of Health. The Ministry of Health does not have authority in the field of health which is operational, in the sense that the Ministry of Health does not function as an executor (operating), but functions as a regulator and director, so that the Ministry of Health only has the authority to determine:

1. professional / expert certification requirements and position requirements in the health sector;
2. standard licensing by the region in the health sector;
3. qualification requirements for service businesses in the health sector;
4. standard guidelines for education and utilization of health workers;
5. guidelines for financing health services;
6. guidelines for the screening, development and application of health technology;
7. guidelines for health and nutrition technology certification; and
8. accreditation standards for health facilities and infrastructure.

If the formulation of Article 7 and Article 14 of Government Regulation Number 41 Year 2007 concerning the Organization of Regional Apparatus is reviewed in relation to the functions and authority of the Regional Government in the field of health, then the Provincial Health Office and the District / City Health Office as the Provincial and Regency / City regional apparatus organization health sector, has authority in the field of health based on the function of implementing only which is guided by norms, standards, procedures and criteria set by the Minister of Health as the implementing element of the Central Government in the health sector, in accordance with Government Regulation No. 38 of 2007. Provincial Health Office and Office District / City Health also has authority in the field of health based on the function of regulating but is "limited", in the sense of only formulating policies that are technical in nature as an elaboration of policies in the health sector determined by the Minister of Health.

The State Administration Agency explains that good governance is the implementation of solid and responsible governance effectively and efficiently, by maintaining the "synergy" of constructive interaction between the domains of the state, the private sector and the community. good governance is generally defined as good governance, in the sense of following certain rules in accordance with the basic principles of good governance.

G. H. Addink interprets the principles of good governance as the principles of good administration and formulates in detail into eight principles that include positive and negative characters, namely: the principle of prohibition of arbitrary acts, the principle of fairness or fairness, the principle of legal certainty, the principle of trustworthiness, the principle of trust , the principle of proportionality or the principle of balance, the principle

of equality, the principle of prudence, and the principle of consideration.

Giving the same meaning between the principles of good governance and the principles of good administration, according to Sadjijono, is a new thought and innovation in administrative law. Although Kuntjoro Purbopranoto once wrote "general principles for good governance" [5], they were not given an explanation of the equality of meaning of the principle in question. Furthermore, Sadjijono supports the opinion of G. H. Addink with the argument that the term good governance means the use or implementation of administrative authority by government organs and has legal consequences in the field of state administration, so an indication of a good government if the administration is good.

So, good governance is basically the administration of a clean, orderly, orderly, flawless and authoritative government, therefore a follow-up to making good and clean governance by effectively actualizing "general principles of good governance", which is used as unwritten law through the implementation of law and the application of law and legal formation.

By referring to the concept of good governance, it can be understood that the structure of legal institutions (government) internally and externally must have a systemic connection and be supported by the capacity or carrying capacity of institutions (Human Resources, funds, facilities and infrastructure) are strong, and there is structural consistency and its function with the legal principles that underlie its formation, so as to be able to concretize legal principles in the form of legal norms in the rule of law and policy, so that the government can take good governance actions regarding licensing, accreditation, medical auditing, and administrative sanctions in the field of adequate health to protect the right of every citizen to optimal health status

4. Conclusion

Later it is expected that in the structuring of the authority of the implementation of decentralization in the health sector, it must be directed in the formation of legal rules and

policies that pay attention to weaknesses and normative constraints in the implementation of regional autonomy in the health sector. Then it is necessary to develop normative law and structuring institutional structures with reference to the principles of decentralization and the principle of democracy in Indonesia. The principle of democracy in the regional policy process is the participation of the community and local government in the formation of regional regulations in the health sector. So that the community has the broadest opportunity to provide input to local governments in the process of forming their own regulations according to the needs of their area. Therefore, local governments need to make strategies to more actively involve the role of the community in the formation of regional regulations in the health sector so that they can produce regional regulations as well as participatory regional head decisions to solve problems that arise in the decentralization in the health sector in the future autonomy era.

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