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The Urgency of The Principle of Deliberation Towards Regional Institutions in The Perspective of The State of Pancasila Law

Cynthia Hadita[1], Susi Dwi Harijanti[2]

[1] Doctoral Program in Law, Universitas Sumatera Utara, Email: cynthiahadita@gmail.com
[2] Faculty of Law, Universitas Padjajaran

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ABSTRACT

The problem has not been applied optimally and optimally to the principle of deliberation, besides the need for structuring regional institutions so that they can run effectively and efficiently so it needs to be studied from the perspective of the state theory of Pancasila law. The research method used is normative juridical. The results showed that the urgency of regional institutions that refer to the principle of deliberation by remembering that Indonesia is a State of Pancasila Law, one of which needs to practice consultative values, it becomes necessary to construct regional institutions. The RIA method needs to be carried out to consider the costs and benefits in maximizing the implementation of ideal regional autonomy by elaborating on the arrangement of inefficient regional institutions so that they can be implemented optimally.

1. Introduction

The structure of local government needs to have regional institutions that refer to the principle of deliberation to overcome various problems in the regions, and answer various regional needs to create equitable welfare of the community in the regions (*local society welfare*) so that a forum is needed that has the potential to overcome complex problems in an area that will be discussed comprehensively through an ideal and proportional container. However, the current regional autonomy as accommodated in the Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government, normatively regulates the principle of autonomy as widely as possible and the principle of autonomy, but at the level of practice, is not yet in line with the will of Article 18 of the 1945 NRI Constitution. This is

because of the limitations of regions other than those granted special autonomy to innovate according to the needs of the regions, one of which is to construct independent non-structural institutions to consider regional heads so as not to be mistaken in making policies.

For example, the practice of special advisory of regional heads in this case the Governor is in the Government of Aceh, Muhammad MTA was appointed based on the Decree of the Governor of Aceh No. 821.21/1009/2017. Muhammad MTA is responsible for providing input and advice to the Governor of Aceh, if what is requested or not, on the lives of the people of Aceh. The aim is to strengthen the political and security sectors to improve the performance of the Government of Aceh.[1] However, Irwandi Yusuf the Governor of Aceh at that time who issued the Special Advisory Decree, still went to jail, because there were still shortcomings and ineffectiveness in the institution, because only one special advisor was chosen, which was only sole in the political field, not yet in the fields of law, economics, and others.

The Aceh government is decreed by the Governor, more legitimacy as in the practice in the Special Region of Yogyakarta which makes the legality of the governor's advisor through the Regulation of the Governor of the Special Region of Yogyakarta No. 20 of 2016 concerning Parampara Praja, where Parampara Praja is in charge of providing consideration, advice, and opinions to the Governor in the context of implementing privileges.

There are 8 (eight) Parampara Praja, namely Sri Sultan Hamengkubuwono X, the palace and Puro pakalaman circles, health figure Dr. Soetaryo, Hermin Kusmayati, former UII Rector and economist Edy Suandy Hamid, religious figure Amin Abdullah, and land expe GKR Mangkubumi is the eldest daughter of Sultan HB X of Puro Pakualaman , namely GPH Wijoyo Harimurti, and who comes from various backgrounds, among them jurists, economists.[2]

For example, the Regional Head in North Sumatra who went to jail was the former Mayor of Medan who had a *hat trick*, namely Rahudman Harahap, Abdillah, Dzulmi Eldin. The former Governor of North Sumatra was reminded by the KPK not to let a *hat trick* go to jail because there were already Syamsul Arifin and Gatot Pujo Nugroho. Other Regents and Mayors such as Pangonal Harahap (former Regent of Labuhan Batu), Fahywysa Laia (former Regent of South Nias), Terbit Rencana

[1] Serambi News. (2017). Retrived 24 September 2022. *https://aceh.tribunnews.com/2017/10/14/muhammad-mta-diangkat-sebagai-penasihat-khusus-gubernur-aceh-ini-bidangnya.*

[2] Tribun News. (2016). 8 Orang Parampara Praja DIY yang Dilantik Miliki Latar Belakang Berbeda. Retrived 20 September 2022. *https://jogja.tribunnews.com/2016/08/30/8-orang-parampara-praja-diy-yang-dilantik-miliki-latar-belakang-berbeda*.

Peranginangin (former Regent of Langkat), Binahati Benedictus Baeha (former Regent of Nias), Robert Edison Siahaan (former Mayor of Pematangsiantar), and Deputy Mayor Ramli Lubis (former Deputy Mayor of Medan). This is a factor in the urgency of regional institutions with the principle of deliberation in local government in the concept of broad, real, and responsible autonomy.[3]

2. Method

The research method used is normative juridical research, which is by determining whether there is a rule of law based on legal norms, whether the norms in the form of orders or prohibitions are by legal principles, and whether a person's actions are legal norms or basic arguments. The design of this study is evaluative, to explain the results of the study. The findings of the study will be evaluated by the researcher, who will decide whether the hypothesis resulting from the suggested legal theory is accepted or rejected.[4]

To construct regional institutions with the principle of deliberation, exploratory research is needed to find legal novelty in this research. Exploratory research is a study carried out to learn about the modern concept of exploratory research usually carried out on new knowledge; there is little, if any, information about the problem being studied. Secondary data sources are used to conduct legal research for this [5]study. Secondary data, that is, secondary data collected from primary, secondary, and tertiary legal materials.[6]

3. Results & Analysis

3.1 Application of Regulatory Impact Assessment to Regional Institutions

The rule according to Bagir Manan, is classified as a decentralized or local norm (decentralization or local norm). The term used to distinguish it from the central norm is the embodiment of State Administration based on Pancasila and the 1945 Constitution.[7]

In the 1970s, the American government implemented a *Regulatory Impact Assessment* (RIA) to systematically assess the negative and positive effects of proposed or ongoing policies. The difficulty of accommodating the interests

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[3] Tribun News. "Jejak Panjang Korupsi di Sumut, ini 11 Kepala Daerah yang terlilit Kasus". Retrived 28 August 2022. https://batam.tribunnews.com.

[4] Muhaimin. (2020). *Metode Penelitian Hukum*. Majapahit: Mataram University Pressp. Hlm. 76.

[5] Bambang Sunggono. (2018). *Metode Penelitian Hukum*. Depok: PT Rajagrafindo Persada. Hlm. 46.

[6] Soerjono Soekanto. (2013). *Normative Legal Research.* Jakarta: PT RajaGrafindo Persada. Hlm. 29.

[7] Bagir Manan in B. Hestu Cipto Handoyo. *Constitutional Law, Citizenship and Human Rights*. Yogyakarta: Atma Jaya University Yogyakarta. Hlm. 136.

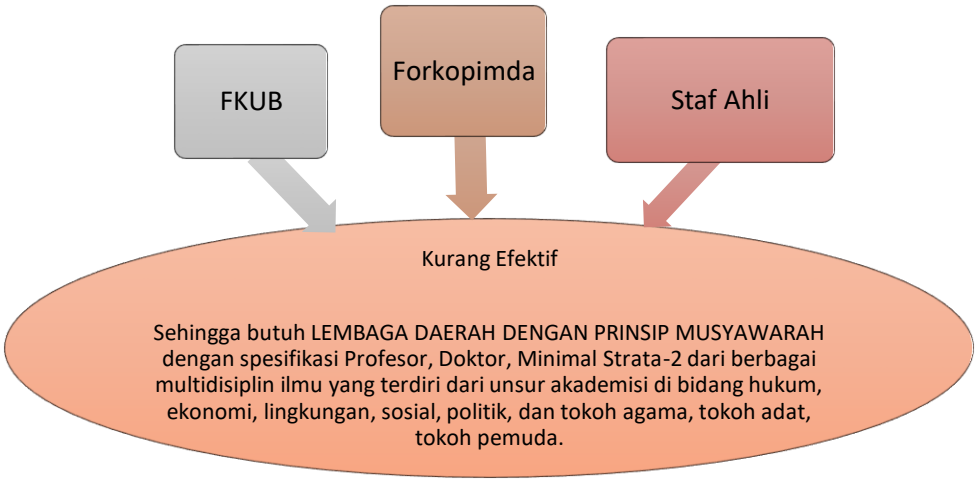
of the community is a frequent issue in the implementation of regional autonomy.[8]

RIA according to the OECD: "... *RIA's most important contribution to the quality of decisions is not the precision of the calculations used, but the action of analyzing – questioning, understanding real-world impacts and exploring assumptions*" (The RIA's most important contribution to the quality of decisions is not the precision of the calculations used, but the act of analyzing-questioning, understanding real-world impacts and exploring assumptions).

RIA is used as a method to minimize a complex problem by considering the *cost and benefit* aspects carried out through the analysis of new or existing policies. The RIA method can be used to organize some ineffective regional institutions so that they can be elaborated to reduce *costs and benefits* through a legal approach.

Article 1 number 18 of the Local Government Law essentially regulates Forkopimda which is a collegial collective starting from the Provincial Forkopimda, Regencies/Cities consisting of the leadership of the DPRD, police leaders, prosecutorial leaders, and leaders of territorial units of the Indonesian National Army in the Regions. In addition, there is an FKUB (Religious People's Communication Forum) which is accommodated in Article 25 paragraph (1) letter c of the Local Government Law. In addition to Forkopimda, FKUB, regional heads are assisted by the regional secretariat/staff as stipulated in Article 209 paragraphs (1) and (2) letter a of the Local Government Law.

However, in addition to the role of Forkopimda and FKUB, the support staff of the regional head (commonly known as expert staff) has also not shown optimal things. Of course, this needs to be arranged as offered in the following scheme:



[8] *Asian Development Bank* and the Ministry of Industry and Trade, *Indonesia Regulatory Review-Annual,* (Jakarta: Asian Development Bank. Hlm. 67.

Regional Heads generally think that their position is above the expert staff so in the policy-making process, regional heads often do not hear input from their subordinates, so that a well-known container is needed and listened to for consideration by the Regional Head so as not to take a wrong step in the process of running the wheels of government in the regions. The relationship between the elaboration in the scheme above will also have a relationship with the principle of RIA (*regulatory impact assessment*) so that the principle can organize *hyper-local regency* (hyper-regional institutions) so that there are not many coordination institutions that lead to ineffective conditions so that it is necessary to minimize ineffective containers and then transformed into regional institutions with the principle of deliberation.

In essence, regional institutions with the principle of deliberation by minimizing the position of FKUB and Forkopimda so that they are in line with the concept of RIA. In addition, the formation of a new institution in the event of the presence of urgency or need for that institution. For example, there are 7 new state institutions formed by President Jokowi such as the Pancasila Ideology Development Agency (BPIP), the State Cyber and Password Agency (BSSN), the Marine Security Agency (BAKAMLA), the National Committee for Islamic Finance (KNKS), the Peatland Restoration Agency (BRG), the Presidential Staff Office (KSP), the Tourism and Creative Economy Agency (BEKRAF).[9]

In addition, there is always a discourse to make the local government system the *blueprint* of the central government system. For example, the discourse of the ombudsman in the regions, the KPK in the regions, and others. Thus, the existence of a vice president but the absence of regional institutions with the principle of deliberation is an offer that becomes an ability in the context of a legal state such as Indonesia.

3.2 The Urgency of Regional Institutions With the Principle of Deliberation in the Perspective of the State of Pancasila Law

The paradigm and structure of the legal theory of the State of Pancasila are contained in the formulation of Pancasila itself, which is the result of an agreement between the founding fathers of Indonesia who took the principles of Pancasila from the spirit and culture of the Indonesian nation for hundreds of years, long before Indonesia's independence on August 17, 1945. Meanwhile, the development of Pancasila was officially carried

[9] Kompas.com. (2020). 7 Lembaga Baru yang Dibentuk Jokowi, Salah Satunya BPIP. Retrived 24 September2022.https://apple.co/3hXWJ0Lhttps://money.kompas.com/read/2020/12/02/184557926/7-lembaga-baru-yang-dibentuk-jokowi-salah-satunya-bpip.

out through two BPUPKI sessions, especially the I-session period: from May 29 to June 1, 1945. Session II lasted from June 10 to June 16, 1945.[10]

Lima the fundamental value of Pancasila, which is formulated materially based on the perspective (paradigm) of the Indonesian nation in a state that is intergalactic, unique to Indonesia, and formally juridical by taking into account the provisions of the 1945 Constitution by comparing it with the concept of a liberal State of Law. Peradilan is independent and impartial, and the principle of legality both formally and materially, and on the other hand is colored by Indonesian aspirations. The law of Pancasila is the concept of a Legal State in which one party must meet the criteria *of the rule of law* concept in general, which is supported by the three pillars of recognition and protection of human rights.[11]

Pancasila, as the philosophy of the state, shows that in all aspects of life, society, nationality, and statehood, the ideals of divinity, humanity, unity, democracy, and justice must be upheld. The philosophy of the state is defined as a community of human life or a social structure that is a legitimate society.[12]

Pancasila as a legal mind (*rechtsidee*), is relevant to the opinion of Gustav Radbruch who stated that:[13]

The idea of law is a cultural idea that cannot be formal, meaning it is directed at the legal mind (*rechtsidee*), that is, justice. To fill this mind of justice with concrete content must be seen in terms of its finality, and to complete the mind of law and finality, certainty is needed.

The philosophy of the State of Pancasila Law is present as a counterweight to the interests of individuals, the interests of society, and the state. Yudi Latif stated that Pancasila has a strong ontological, epistemological, and axiological foundation based on morality and national-state orientation. .[14]

The concept of a legal state has been formulated by Plato and Aristotle to describe a state ruled by a just government. The philosophical value expressed is related to the human ideal (wishful thinking) that has a correspondence with empirical facts aimed at finding the ideal truth.[15]

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[10] Kabul Budiyono. (2012). *Pendidikan Pancasila Untuk Perguruan Tinggi*. Bandung: Alfabeta. Hlm. 24-26.

[11] A. Mukthie Fadjar. (2005). *Tipe Negara Hukum*. Malang : Bayu Media. Hlm. 86-88.

[12] Alwi Kaderi. (2015). *Pendidikan Pancasila Untuk Perguruan Tinggi*. Banjarmasin : Antasari Press. Hlm. 91.

[13] Astim Riyanto. (2002). *Filsafat Hukum*. Bandung: Yapemdo. Hlm. 377.

[14] Yudi Latif. (2011). *Negara Paripurna: Historisitas, Rasionalitas, dan Aktualitas Pancasila*. Jakarta: Gramedia Pustaka Utama. Hlm. 42-46.

[15] Moh. Kusnardi dan Bintan Saragih, *Ilmu Negara*, (Jakarta: Gaya Media, 2000), p. 131.

According to Philipus M. Hadjon, the state of law established by Indonesia is the law of Pancasila, which includes the characteristics of the first, Proportional functional relations between state powers. Second, The harmony of relations between the government and the people is based on the principle of harmony. Third, Balance of rights and obligations. And the fourth is the principle of dispute resolution by deliberation and the judiciary is the last means.[16]

Soediman Kartohadiprodjo expressed his thoughts in the Indonesian Symposium on the State of Law, that the state of law Pancasila is characterized by the first elements, prioritizing duties and responsibilities for state institutions and not prioritizing power. Second, the consensus is based on customary law. Third, is the family spirit. And lastly, Protecting the people from arbitrary government actions.[17]

As a regional institution at the third level, the entity of a regional institution is regulated in Chapter VI of the 1945 NRI Constitution. This provision provides for the formation of several organs known as regional organs or institutions, which are state institutions formed in the area. In terms of history, the government began a few months after efforts to build state institutions and placed authority with their respective duties went smoothly in Law Number 1 of 1945 concerning the Position of the Regional Indonesian National Committee (KNID) so that it could be implemented throughout Indonesia.[18]

Almost every country in the world has a written constitution that provides for the establishment, delegation of authority, and functioning of various government agencies, as well as the protection of human rights. Countries without a written constitution include the United Kingdom and Canada. Important concepts for all government agencies and all human rights in these two countries are found in customs and are also scattered in various texts, both relatively new and very old, such as the Magna Charta of 1215, which guarantees human rights. The People of England. The written constitution provides for the division of powers by type of power, and government agencies are formed based on this kind of authority.[19]

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[16]Philipus M. Hadjon. (2007). Perlindungan Hukum Bagi Rakyat di Indonesia – Sebuah Studi tentang Prinsip-prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi. *Peradaban*. Hlm. 85.

[17]Dewa Gede Atmadja, et all. (2015). *Teori Konstitusi & Negara Hukum*. Malang : Setara Press. Hlm. 156.

[18]Siti Khoiriah Yusnani Hasyimzoem, M. Iwan Satriawan, Ade Arif Firmansyah. (2019). *Hukum Pemerintahan Daerah*. Depok: PT. RajaGrafindo Persada.

[19]The 1945 NRI Constitutional Court of the Republic of Indonesia. "*Teori Konstitusi*". Retribved 01 April 2020. https://mkri.id/index.php?page=web.Berita&id=11776 .

Referring to the opinion of Hans Kelsen, a law belongs to the dynamic (nomodinamic) system of norms because laws are always formed and abolished by the institutions or authorities that have the authority to form them, so in this case, we see them not from the perspective of the content of the norm, but the perspective of the norm, in terms of its validity or formation.[20]

Mencreates a new order of life-based on the interests of society. Furthermore, the ideology underlying a state determines the constitutional position, which can be defined as "the framework of a political society organized through and by law, that is, in which the law has established a permanent institution with recognized functions and prescribed rights. Menurut James Bryce. The constitution, in this sense, contains the rules that control the formation of permanent institutions, the duties of government agencies, and the determination of certain rights. The constitution standing in the state varies all the time. The constitution served as a barrier between the people and the ruler during the transition from a feudal monarchy or oligarchy with absolute governing authority to a democratic nation-state and finally served as a tool of the people in the struggle for power against the ruling class. Since then, after the popular struggle has been won, the position and role of the Constitution have shifted from simply protecting the security and interests of the people's lives against the tyranny of the ruling class to the ultimate weapon of the people to end the unilateral power of one group in the monarchical and oligarchic system.[21]

The upper-level organs are known as high-level State Institutions, the second-level organs as state institutions, and the third-level organs as regional institutions. The first-level organs are the President and Vice President, the Constitutional Court, the Supreme Court, the Financial Audit Board, the People's Consultative Assembly, the House of Representatives, and the Regional Representative Council. According to Jimly Asshiddiqie, state institutions listed in the 1945 Constitution of the Republic of Indonesia can be separated into three levels when analyzing their position within the framework of state institutions.[22]

Only government agencies can be called second-tier organs. Some institutions derive power from the 1945 Constitution of the Republic of Indonesia, and some from laws such as the General Election Commission; the central bank, the Minister of State, the Indonesian National Army, and the Kepolisian Negara, which is the second-tier organ of the country.

[20]Nimatul Huda dan R Nazriyah. (2011). *Teori dan Pengujian Peraturan Perundang-Undangan*. Bandung: Nusa Media. Hlm. 24.

[21] Eka NAM Sihombing. (2019). *Pengantar Hukum Konstitusi.* Malang: Setara Press. Hlm. 10-11.

[22] Eka NAM Sihombing. (2018).*Hukum Kelembagaan Negara.* Yogyakarta: Ruas Media. Hlm. 22.

Furthermore, local institutions are defined in chapter VI of the 1945 Constitution of the Republic of Indonesia which deals with Local Government.[23]

Article 18 of the 1945 Constitution contains several regional institutions, which are government bodies headquartered in the regions. Regency Local Government, Provincial Government, Municipal Local Government, Regent, Mayor, City Regional People's Representative Council, Provincial People's Representative Council, and Regency Regional People's Representative Council are entities at the regional level. When it comes to the presence of regional institutions, which are legally stated in the 1945 Constitution of the Republic of Indonesia, there are many important variables to consider.[24]

Even though the rule of law as embodied in the explanation of the 1945 Constitution was inspired by the concept of the rule of law known in the west, and if read it and understand what Soepomo had in mind when he wrote the explanation of the 1945 Constitution.[25]

Pancasila is an ideology in a democratic society because of the features it has. Furthermore, its relevance lies in its relative position to other ideologies, so that Indonesians who believe, live, and understand why Pancasila is an ideology to be used as a foundation and goal in building themselves in various social, national, and state life, including political life, can use it as a foundation and goal in self-development. In a country based on the law of Pancasila, so that the functional relationship is proportional between state power and the relationship between the central government and local governments, it is considered necessary for local institutions to be practiced at the provincial, district, and city government levels, with the principle of deliberation.[26]

Philosophically, exploring the meaning of the 4th precept of Pancasila "People's Affairs Led by Wisdom in Representative Consultative Affairs" then the existence of the "principle of deliberation" has the potential to be reflected in regional institutions with the principle of deliberation to overcome problems in the regions, because, so far, regional heads do not have a forum for consultation that can be asked for consideration or give consideration even without being asked by the Regional Head.

The application of the people's Precepts in representative is carried out in the context of continuity, renewal, and improvement of political progress

[23] *Ibid.* Hal. 23.

[24] *Ibid*.

[25] Satjipto Rahardjo. (2006). *Membedah Hukum Progresif*. Jakarta: Penerbit Buku Kompas. Hal. 48.

[26] Alfian. (1990). *Pancasila Sebagai Ideologi dalam Kehidupan Politik*. Jakarta: Perum Percetakan Negara.

that we have been able to achieve. Thus, we can maintain national stability and political prosperity on the one hand, while channeling the energy of increased aspirations in society on the other.[27]

Deliberation is consensus and is led by wisdom. In line with the fourth Pancasila principle, deliberation of consensus is based on knowledge led by wisdom in representative discussions. Every choice must be held accountable and must not violate Pancasila or the 1945 Constitution. Everyone has the same right and opportunity to share his thoughts.[28]

4 Conclusion

The urgency of regional institutions that refer to the principle of deliberation by remembering that Indonesia is a State of Pancasila Law, one of which needs to practice consultative values, it becomes necessary to construct regional institutions. In addition, the need to organize inefficient regional institutions by elaborating through the RIA Method needs to be carried out to consider *the costs and benefits* in maximizing the implementation of ideal regional autonomy.

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