

REGULATORY COMPETITION AND DECISION SPACE OF DECENTRALIZATION IMPLEMENTATION IN INDONESIA: STUDY OF LOCAL REGULATION IN 2007-2009

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ABSTRACT

This paper is aimed to investigate and analyze 250 cancelled local law review and its legal opinion as issued by the Home Affairs Ministry and Finance Ministry 2007-2009. The study found that there was regulatory competition not only between local law and law or government regulation, but also between local law and central government agencies. This competition was taken place on objects that have to be regulated and licensing authority. Decree of local law quash suit by the Ministry of Home Affairs is becoming legal standing debate. Decree of ministry as a central authoritative regulator extensively regulates the locally local government activity at the local area. The study also found that decision space of local government in decentralization is narrower than central government one. Theoretical contribution of the study revealed that different ranges of choice within and between tipology of deconcentration, decentralization or devolution.

Keyword: Regulatory competition, local law, legal review, decentralization, decision space.

I. INTRODUCTION

The policy of decentralization, which is well-known as Big Bang Approach, was implemented in Indonesia during the era of President Megawati based on Law No. 22/ 1999 by giving broad autonomy to local governments in all government administrative sectors except for security and defense, foreign policy, monetary and fiscal matters, justice, and religious affairs to the regions. In September 2004, the law was replaced by the passage of Laws 32 and 33/2004 on Regional Government regulated the stressing points on the regional autonomy. The main objectives of regional autonomy are to promote better delivery of government services and to raise the level of local government accountability for the sake of social welfare and national competitiveness. For many reasons, the laws have not been worked out.

A study conducted by UNDP in 2008 concluded that the practices of decentralization in Indonesia were as follows: (a) The regional autonomy performances of new regions were at low level, especially in the aspects of

economic growth. These regions centered the economic growth at the original area which implies to the economic gap with the others; (b) The economic growth in the new autonomy regions were more stable than the old ones; (c) New autonomy regions have not been able to decrease the poverty rate; and (d) New autonomy regions has low fiscal competency.

Some empirical studies on the performance of governance in some districts show that the private parties or the executives of private companies perceive decentralization have significantly bad impacts on license and employment regulation. A half of the respondents consider that decentralization bring policy ambiguity and corruption, and regional regulations produce monopolies and oligopolies in the local economy. In 2010, the Ministry of Home Affairs announced to cancel more than 1,000 regional regulations (Kompas, July 19, 2010). From an economic perspective, the cancellation of local regulation that reaches thousands will cause big losses, if we calculate the costs incurred to discuss the draft of regulations. Meanwhile, the academic debates from the perspective of constitutional law and public administration law on this issue have concluded that the Department of the Interior has no legal authority to do so. Based on Law Number 32 Year 2004 on Regional Autonomy, local regulation arrangement must meet the following requirements: a) It must be approved and signed by the Head of Regional and Regional Council, and b) It must be consistent with the higher law by Act No. 10 of 2004 on the legal hierarchy.

Data from the Ministry of Home Affairs in 2002-2009 showed that there were 930 regional regulations (23.45%) shall be cancelled and 156 Regional Regulations (3.93%) should be revised from the 3966 regional regulation investigated by the Department of the Ministry of Home Affairs. A list of local laws that were cancelled can be seen in the following figure:

