Legal Consideration on Formulating “Local Diversity” in Act 18A (1) of the Constitution of Republic Indonesia in 1945

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Abstract
Plurality is something adhered to Indonesian nation, even more before this nation established, there are ethnical society construction and its practice of government proven by country life of big and small kingdoms in this archipelago. This plurality is accommodated by the country’s founder by establishing that the form of Indonesian country is Unitary State using decentralization system. However, in its implementation, there are many rebellion in regional levels moreover it appears claim to break away from the Unitary State of Republic Indonesia (NKRI). Based on the fact above, the problem statement of this study reveals that what legal consideration on formulating the word of regional diversity in act 18A (1) the Constitution of Indonesian Republic in 1945 and what the meaning of the word in implementation of correlation between central government and regional. This study is normative research using qualitative juridical method. The research showed that the legal consideration on formulating the word of local diversity in act 18A (1) the Constitution of Indonesian Republic in 1945 referred to accommodate all diversity appearing in local, that derived from effort to prevent disintegrate. Moreover, the meaning of local diversity in conducting authority between central and local government was the form and content of local autonomy should not be uniform. This form and content referred to any special condition and diversity in certain local area.

Keywords: Legal Consideration, Local Diversity, the Constitution of Republic Indonesia in 1945

A. Introduction
Indonesia is granted by Allah plentiful, natural resources, this country is not only rich of natural resources, but it is also pluralistic country, from its geography, region, law, custom and culture, even Indonesia has its own governance practice, inhabitant society structure, it proven that long before the Nederland came to Indonesia,

1 The natural resources are in form of oil, and natural gas, coal, and C minerals such as sand and coral.

2 Indonesia is archipelago country in which 70% area covered with ocean, therefore this condition results in Indonesia become very fertile. Moreover, areas of Indonesia have characteristics of island and coast.

3 There are five religion living and contested in Indonesia, namely, Islam, Katholic, Protestant, Hindu, Budha and beliefs.

4 In Indonesia, there are national law and religious and custom law.


6 Government practice referred to the rise and fall of several small and big kingdoms that more or less have given effect on global civilization. The biggest kingdoms that has wide area almost as wide as or even wider than Indonesia cover Sriwijaya kingdom which its central appeared in South Sumatera, Majapahit in East Java and mataram in Central Java. Some small kingdoms were located in Aceh and Samudera Pasai, Kalimantan, Ternate, and Tidore, Bali, Yogyakarta, West Java, Banten and many others. All small and big kingdoms have their own law custom and legal society structure, and some of the custom law environment have certain literature such as Java with its ancient Java text, Sulawesi with its palmyra and many more. Each kingdom has its own language that it is different one and another.

7 The content of Act 18 the Constitution of Republic Indonesia 1945 stated “there are more than 250 zelfbesturendelandschappen or volksgemeenschappen, such as village in Java and Bali, village and clan in Minangkabau and others. This areas have original structures, therefore it considered unique areas. The republic Indonesia puts the same position of these special areas and all country rules on these areas based on rights of its originality.
there were many kingdoms big and small lived in this archipelago. Van Vollen Hoven said in the beginning of his book with title *Staatsrecht Overzee*:

“In 1596 when first ship of Nederland came to Indonesian islands, this area legally was not “wild” and “empty”. There were set of governmental and authority boards covered government by or of tribes, villages, village’s unity, republics, and kingdoms. Even more, Van Vollen Hoven stated that the “government” has local characteristic (inheemsch gebleven) although the influence of Hindu and Islam lived in society”.

The originality of Indonesian governmental characteristic is still appeared in daily life such as villages in Java, in Sumatera, in other islands. After freedom, all diversity covered in a country called Indonesia. To accommodate all of them, therefore, the purpose of Indonesian Nation fill in the opening of The Constitutions of Republic Indonesia 1945 (then it called UUD NRI year 1945). The purpose becomes main spirit in implementing nation life.

One of the efforts conducted by the government in order to create nation purpose reveals in dividing governmental areas, the result is some authority is delegated to the locals. However, not all authority could be delegated to locals; some authority still becomes central authority. Regulation on correlation of these authorities stated in Act 18A (1) of The Constitution of Republic Indonesia 1945 reveals that “the correlation of authority between central government and province government, regency and city or between province and regency or city are stated in statute based on local specialty and diversity”.

The correlation between central and local in unity nation becomes interesting subject to discuss, for in practice, it often appears conflict of interest, it happens in this country because the authority belongs to central government and the local government gets limited authority.

The result of this conflict of interest between central and local governments in implementing their correlation in decade 1950s appeared political upheaval where some areas conducted rebellion asking for freedom such as East Timor, Aceh, West Sumatera, and South Sulawesi. Moreover, rebellion appeared in West Java forcing to create Muslim nation, and in West Kalimantan riot happened with ethnic, religion, race and group (SARA) as the reason in the beginning of 1960s related to Chinese ethnic.

In line with the above fact, Pratikno stated that there were elements resulting in some rebellion in local areas:

“First, local rebellion in outside of Java resulted from great gap of economical structure between java and outside Java. Second, the local rebellion in the Old Order resulted from disappointment of centralization governmental system and the limited space for local autonomy as the minimum requirement for locals to keep their interests. Third, the consistent military and civic organizations and even as one unity with cultural polarization. Fourth, debate on nation fundamental also becomes the reason of local rebellion.”

Rebellion happened in local in the old order era succeed to minimize by the new order. Since 1955, there was almost no necessary local rebellion. Separatist movement happened in Aceh and Irian Jaya is more controlled than in the past order. However, the new order makes the problem of rebellion source more serious by implementing centralization governmental system and local finance that result in big gap of economic development between Java and outside Java. Pratikno stated:

“Even centralization becomes worse by creating uniformity on supra and infra political structures. New order regulates local governments in detail and national uniformity. The boards of local supra political structure are regulated in centrally and uniformed without giving attention on heterogeneity of local “political system” that existed long before the concept of Indonesian Nation appeared”.

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3 The purpose of Indonesian Nation stated in fourth alenia of introduction of The Constitution of Republic Indonesia 1945 that said; then for that reason in order to create government of Indonesian Nation that protect all indonesian and all indonesian homeland and to improve general welfare, to educate nation life and participate in the world discipline based on freedom, peace and social justice.
4 Act 18 (1) NKRI consists of provinces and the provinces are devided into regencies and cities, where each province, regency and city has local government based on statute.
5 East Timor finally conducted referendum and separated from Indonesia in . . . and became independent country called Timur Leste.
The problem of correlation between central and local appears as result of division and implementation of authority, task and responsibility of the government are not conducted by one central government. Besides central, there are lower governmental units that conduct the authority, task and responsibility to implement parts of governmental affairs delegated as local affairs related. Although central and local governments are one structure unity reflecting the unity of nation, however, the fact that each has authority environment, task and responsibility it is not wonder that conflicts of relation between them appeared.

In line with the background, the problem statement in this research covers: What is the law consideration on the word “local diversity” stated in Act 18A verse (1) of the Constitution of Republic Indonesia 1945 and what is the meaning of the word “local diversity” related to the correlation of authority between central and local?

B. Research Purpose:
The purpose of this research are to find out the law consideration on the word “local diversity” stated in Act 18A verse (1) of the Constitution of Republic Indonesia 1945 and its meaning in implementation the correlation of authority between central and local governments.

C. Research Method
This law research uses normative approach with purpose to examine positive law, in the meaning to collect, explain, systematic, analyze, interpret and value positive legal norms regulating on the law consideration on formulating local diversity in Act 18A verse (1) of the Constitution of Republic Indonesia 1945 and its meaning in implementation the correlation of authority between central and local governments. Moreover primary law in this study the Constitution of Republic Indonesia 1945 and Statute No.23 year 2014, on Local Government. The secondary law uses literature, past research finding and scientific journals. The research approach is statute approach. The analysis method uses qualitative juridical method to solve the problem.

D. Discussion
1. The meaning of Unitary Nation with Decentralized System
In Act 1 verse (1) of the Constitutions of Republic Indonesia 1945, Indonesia declared itself as unitary nation, however, in other hand, all local diversity and characteristics were given space to develop by local autonomy (Act 18 the Constitutions of Republic Indonesia 1945). The regulation stated that the local existence in unitary nation is not only as administratively area division, but also followed by giving right to local to arrange and conduct its own governmental affairs by the autonomy. Sri Soemantri stated: “The authority delegation from central government to local is not because it stated in constitutions, but it is the meaning of unitary nation”. In line with that, Bhenyamin Hoessein stated:

“...local autonomy is authority to arrange and conduct government locally according self idea based on society aspiration. Thus, decentralization truly appears to be society autonomy to solve all problems and give local service for society welfare related”.

Ramlan Surbakti stated that fundamentally in unitary nation, there is only one country with its central government that has all task and authority. In this nation, local governments have to obey and responsible to central government. In line with Ramlan Surbakti, Edie Toet Hendratno put his opinion as follows:

“Unitary country is country that has freedom and sovereignty on whole areas or local that held completely by one central government. Sovereignty completed from central government because in this country there is no other independent countries. Although in unitary countries their areas are divided in parts of areas, the parts have no real authority the same as states in federal country”.

Moreover, Edi Toet Hendratno stated that unitary countries are divided into two forms: 1) Unitary country with centralization system. 2) Unitary country with decentralization system. He explained:

“In unitary country with centralization system, all things in the country are directly arranged and controlled by central government and the locals only conduct anything instructed by the central. Whereas in unitary country with decentralization system, the locals are given authority to arrange and control its own affairs that result in autonomy area, that is one legal society unity that has certain

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2 Sri Soemantri, *Pengantar Perbandingan Antar Hukum Tata Negara*, (Jakarta; Rajawali, 1998), hlm. 53.
4 Ramlan Surbakti, *Memahami Ilmu Politik*, Cet.7 (Jakarta: Grasindo, 2010), hlm. 216
5 Edie Toet Hendratno, *Negara Kesatuan, Desentralisasi, dan Federalisme* (Jakarta: Graha Ilmu dan Universitas Pancasila Press, 2009), hlm. 46.
borderline area and has right, authority and responsible to arrange and control itself.\(^1\)

However, Indonesia that follows decentralization system results in certain tasks controlled by central and some affairs given away to locals, thus, it creates reciprocal correlation in the form of authority and supervision. This fact creates *spreading*, as explained by Bagir Manan:\(^2\) “Conflict is not need to be removed. The effort to diminish would never be succeed for it is naturally happened. Nation life and government cannot be separated from society life whether the society itself or society outside it. Good country or government should act in line with its society dynamic. In this condition, the trend would lead to unity or autonomy. If everything leads back to the society interest and purpose to healthy governance, conflicts cannot be considered as *spreading* where one create danger to another, but it is natural dynamical form that always appears in any level of national or governmental living development. The important is to create natural mechanism that the pulling is not only a *warning* but also a *feeding* for other.”\(^3\)

2. **The legal consideration on formulating the word “Local Diversity” in Act 18A (1) of the Constitution of Republic Indonesia 1945.**

Pluralism is inherent thing for Indonesian nation and it shows in National slogan “BhinekaTunggal Eka”. Van Vollen Hoven in his book *Straafrecht Overzee* stated that in 1596, when for the first time ship with three color arrived in Indonesian archipelago, its national state confessed that in land considered empty proven to be lands with amazing law system formed of a lot of and various ethnics and cultures.\(^4\) Harsja Bachtiar stated:\(^5\)

“.....Long before Indonesian nation created, in this archipelago there were forms of various local nations called local nation or society. Each local society was one independent nation, one solidarity unity with its own living area. Each created characteristics as nation characteristic, such as special culture, language, self identity, and the most important solidarity among the people, citizen, local society related”.

Paradigm of society variety cannot be denied considered the historical context of country factually informs that, before this country had declared its existence and developed its cultural system and customs, the diversity pattern showed the rich of Indonesia as a nation.

Therefore, to understand this unitary country, it needs to see the real condition of Indonesia covered from various local areas that previously existed and still developing till today as one living alliance in the country. Claim that local autonomy could be developing national unity becomes a paradox as well as a controverss and purpose to healthy governance, conflicts cannot be considered as *spreading* where one create danger to another, but it is natural dynamical form that always appears in any level of national or governmental living development. The important is to create natural mechanism that the pulling is not only a *warning* but also a *feeding* for other.”\(^3\)

According to Treisman argument, Bank Dunia\(^6\) noted:

“A primary objective of decentralization is to maintain national stability in the face of pressures to localization. When a country finds itself deeply divided especially along geographic and ethnic lines, decentralization provides an institutional mechanism for bringing opposition groups into a formal, rule bound bargaining process”.

OECD\(^7\) pointed that local autonomy creates better environment for continuing national identity. In a country (such as Indonesia) where there are diversity of social, geography, and economy, the argument seems to be relevant. “Local autonomy will give opportunity for local identity to be express, and also there is bigger guarantee that local interest will not be defeated by bigger or stronger group dominating in central government.”

When we define local autonomy as diversion authority from central to local government, the local autonomy in this idea become a way to represent more on local diversity. In the book *Decentralization and Development: Policy Implementation in Developing Countries*, Rondinelli and Cheema\(^8\) pointed that local autonomy close related to political stability and national unity. They noted that:

“Decentralization can increase political stability and national unity by giving groups in different sections of the country the ability to participate more directly in development decision making, thereby increasing their ‘stake’ in maintaining the political system.”

The phenomenon of separatist claims from several province forces the policy maker in Jakarta to fasten

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\(^{1}\) Soehino, *Ilmu Negara*, Ed.3, Cet.3 (Yogyakarta: Liberty, 2000), hlm. 225

\(^{2}\) Bagir Manan, *Perjalanan Historis Pasal 18 UUD 1945*, (karawang; uniska, 1993), hlm. 3


\(^{4}\) Lulu Said Rahpina, *Kedaulatan Rakyat Sebagai Hak Absolut Ideel Indonesia*. (Malang; UB Press, 2010), hlm.4-5.


\(^{8}\) Rondinelli, D.A and Cheema, GS (eds), *Decentralization and Development; Policy Implementation in Developing Countries*, (Beverly-Hills, Sage Publication, 1983), p. 16.
Deep argument of De Tocqueville on the disadvantage of uniformity in law formulation process seems to be relevant to country like Indonesia:

“in large centralized nations the lawgiver is bound to give the laws a uniform character which does not fit the diversity of places and mores; having never studied particular cases, he can only proceed by general rules; so men must bend to the needs of legislation; for the legislation has no skill to adapt itself to the needs and mores of men; and from this, much trouble and unhappiness results.”

Mark Turner pointed that considering its geographical characteristic as archipelago country, local autonomy seems to be appropriate with special characteristic of Indonesian geographical condition. He stated that diversity and width of Indonesia are potentially to apply decentralized system with assumption that this system will create governmental modus to be effective, efficient, and responsible.4

“The statute of local autonomy has created opportunity for local government to develop variety in organizational structure. Using previous system, local governmental structure seemed to be tight and rigid. The structure that almost identical were applied to various types and size of governments without giving attention to the width of area, in Java or outside Java, and for rich and poor areas without giving attention to the availability of natural resources and people in local areas.”


In the preamble of the Constitution of Republic Indonesia 1945 fourth alenia stated, “Indonesia country protected all Indonesian Nation and homeland of Indonesia”. This sentence gives understanding that Indonesian government should be able to protect the diversity in Indonesia; this understanding ideologically demands integrity among the differences. The integrity principle still demands existence of differences among the various cultures and governance system in each local area.

In the plural society, the effort to create social justice and welfare should focus on local structure patterns (locally), the differences of cultural and religious system, the differences of geographical characteristic and location, the differences of historical background and many others. The attention on the differences and specialty demand different service and way in implementing government.5

“In the relation dynamic between central and local, it is potentially to develop pluralistic autonomy policy, meaning that to each local area, it can apply different autonomy pattern. The diversity of correlation pattern has been proven by achieving special autonomy principle Province of Nangroe Aceh Darussalam and province Papua that both have different governmental institution format from other local government in general.”

According to Nasroen, local autonomy should not separate the unity country. The delegation of widely autonomy right should have limitation.8

“Do not limit in limitatieve opsomming, but the border will be decided by real condition of related autonomy area, in line with ability to achieve right and responsibility of affairs being delegated. Widely autonomy and limitation refer to practical and beleid affairs of central government, however it should state in statute. The fact of one province is different from others, so do the regency and other autonomy areas”.

In the regulation Act 18 of the Constitution of Republic Indonesia 1945, it stated that local government (in province, regency or city) regulate and control its own governmental affairs according to local autonomy principle and co-administration. This explanation becomes legal fundamental for all local governments to implement the wheels of government (including to establish local regulation and others) more flexible and freely as well as appropriate to the needs, condition and characteristic of each local area, except for governmental affairs stated in statute as central governmental affairs.

“However, though the local is given right to create local regulation and others in order to implement...”

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1 Turner M. and O. Podger (eds), Decentralisation in Indonesia, Redesigning the State, (Canberra; Asia Pacific Press at the ANU, 2003), p. 12.
2 Aspinall, E. and G. Feally (eds), Local Power and Politics in Indonesia; Decentralisation and Democratisation, (Singapore; institute of South East Asian Studies, 2003), p. 2.
5 Mas’ud Said, Arah Baru Otonomi Daerah di Indonesia, (Malang; UMM Press, 2008),hlm. 121.
7 Jimly Asshiddiqie, Konstitusi dan Konstitusionalisme Indonesia, (Jakarta; Sekjedn MK, 2006), hlm. 272.
8 M. Nasroen, Masalah Sekitar Otonomi, (Jakarta; J.B. Wolters, 1951), hlm. 40.
local autonomy, it does not mean that the local may create regulation confronting with principles of unitary nation."

Keragaman (diversity) is taken from the word ragam (diverse). Ragam means diverse, kind. Diversity is condition that is diverse, kinds of things, various. Local area is part of earth surface related to natural condition and special condition. It also means governmental environment; area: for example regency (province, country, and others); it can be referred to surrounding place used to special purpose; location: for example industrial area (offices, shops, and others); it means surrounding place or part of city environment (area): for example Jakarta and its surrounding. Local area is an environment of government (authority), surrounding places or including in environment of city. Thus, the diversity of local is condition of governmental environment that has many kinds or various.

Based on above explanation, the principle of local diversity meaning in act 18 A (1) is that form and content of local autonomy should not be uniform (uniformities). Form and content of local autonomy are decided by various special condition and diversity of any area. Meanwhile, the Indonesian People’s Consultative Assembly, Guidance in socializing the Constitution of Republic Indonesia 1945 states: “Act 18A verse (1) is based on local specialty and diversity. This principle means that the form and content of local autonomy should not be uniform. The form and content of local autonomy are decided by local specialty and diversity of each area.” Therefore, autonomy for farming areas can be different from industrial areas, or between beach areas and remote areas, and many others. Also, the local potential difference should be fundamental to decide the form and content of autonomy.

E. Summary

In the context of country form, though Indonesian country has unitary form, however, it implements mechanism that supports growth and development of diversity among areas in the country. The unitary country with decentralization system is conducted with guarantee of widely autonomy to locals to develop in line with their potential and resources they have.

The implementation of local autonomy in Indonesia has to respect specialty and diversity of local without any force to be uniform. Widely autonomy is given to locals in order to develop based on their potensial, culture and resource they have based on principles to keep strong the unitary nation.

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2Kamus Umum Bahasa Indonesia disusun oleh W.J.S Poerwadarminta, (Jakarta, Balai Pusataka, 2007), hlm. 935.


6MPR RI, Panduan..., Op. Cit, hlm. 102-103


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