

Asymmetric Decentralization Aceh; Governor Consultation and Consideration Context on Central Government Administrative Policy

Amrizal,¹ Faisal Rani,² Budiman Ginting,³ Pendastaren Tarigan⁴

¹ Doctoral Student of Legal Studies Program at Faculty of Law, University of North Sumatra, Medan, Indonesia

² Professor at the Faculty of Law University of Syiah Kula, Aceh, Indonesia, ³ Professor at the Faculty of Law University of North Sumatra, Medan, Indonesia, ⁴ Lecturer Faculty of Law University of North Sumatra, Medan, Indonesia

Abstract: Arrangement on Aceh decentralization found in Law Number 11 Year 2006 is on Aceh Governance, included, among others in Article 8 paragraph (3), on the implementation of administrative policies of the Central Government, such as the formation of a Government Regulation and President Regulation directly related with Aceh Government after consultation with the governor. Therefore, basic philosophy of consultation with the governor of Aceh needs to be studied, and based on the perspective of unitary state. The goal is to know the legal basis of consultation with the governor. To achieve the target, juridical normative research method was used to study the regulations related with decentralization and asymmetric decentralization (specific autonomy). Results of the study found that the basis of consultation with the governor, as part of the implementation of asymmetric decentralization, because historical disharmony between the Government of Aceh and the Central Government. Thus, governor authority is set out in points 1.1.2 Helsinki MoU and Article 8, paragraph (3) Law Number 11 Year 2006. This delegation of authority does not exist in other areas, even in asymmetric decentralization areas, such as Papua, West Papua, Jakarta and Yogyakarta. In the perspective of the State, this authority is not contradictory with the 1945 Constitution and form of the Unitary State of Indonesia, as Article 18B paragraph (1) 1945 Constitution, recognizes the special or special areas. Moreover, Pancasila as our philosophy recognize the difference between one region and another also as mentioned in our motto Unity in Diversity.

Keywords: Decentralization, Asymmetric, Consultation and Consideration, Administrative Policy

I. Introduction

Aceh is one of the areas in the Unitary Republic of Indonesia, which has a history of controversial relationship with the Central Government. Thus, President Sukarno declared that Aceh as Indonesia capital region. This is because when the second Dutch aggression in 1949, Aceh supports the Central Government through the reinforcements of the military, political, and economic in facing the Netherlands colonial aggression.¹ The relationship of Aceh and the central government began to disintegrate started by the Darul Islam/Islamic Army of Indonesia (DI/TII) in 1953 led by Tengku Daud Beureueh. This uprising is a consequence of the Central Government's negation, especially the negation against the principles of the Islamic countries and the incorporation of Aceh province into North Sumatra province and it issue ended by peace 'Pledge of Lamteh'.²

Furtherly, the rebellion arisen again from Aceh Freedom (AM) or Aceh Freedom Movement (GAM). This organization was declared on 4th December 1976 and led by Muhammad Hasan Ditiro. Since its declaration, Aceh had in political conflicts. In 1989-1998, President Soeharto enforced Aceh as the Military Operations Area (MOA). This decision was maintained by the next president, Megawati Soekarno Putri, Reform regime in 2003-2004. She alter the term of MOA in Aceh into status of Military Emergency (ME) and Civil Emergency (CE).³ After Crisis Management Initiative (CMI) facilitated the Memorandum of Understanding (MoU) which was led by Martti Ahtisaari, the former president of Finlandia, Indonesia Government and GAM signed the Memorandum of Understanding (MoU) on 15th August 2005 in Helsinki. Therefore, this MoU is known as Helsinki MoU.

¹ Sjamsuddin, Nazaruddin, Revolusi di serambi Mekkah (Jakarta: UI-Press, 1999), p. 282.

² El-Ibrahimi, Nur, Peranan tkg M. Daud Beureueh dalam pergolakan Aceh (Jakarta: Media Da'wah, 2000), p. 22.

³ Prang, Amrizal J. and Amalia, Nanda, Proses pembentukan undang-undang pemerintahan Aceh, Jurnal Hukum Republica, 6(2), 2007, 193.

One of the Helsinki MoU substances is the establishment of new constitutions in Aceh. Although the existence of the MoU plays as an executive agreement between the Government and the GAM,⁴ but the effect is very significant. Furthermore, the draft constitution of Aceh Government was established legitimately as Constitution of No. 11 Year 2006, concerning on Aceh Government, consists of 40 chapters and 273 subsections. One of crucial issues established in chapter 8 subsection (3) related to the relationship of the central government and the Aceh Government is about the implementation of Central Government administrative policies which are directly related to the Aceh Government done through consultation and consideration of the governor. In the elucidation of this chapter, it is mentioned some administrative policies such as regional growth, establishment of special areas, manufacture and alteration planning of constitution regulation directly related to Aceh.

The urgency of governor consultation and consideration is due to the experience of relationship between the central government and Aceh, which was after being given the authority, it alienated back to the central government, as the Order Lama (Old Era) experience, when Aceh Province was incorporated into North Sumatra province.

Before regulated in chapter 8 subsections (3) Law Number 11 Year 2006, it has already been agreed in points 1.1.2 letter d, Helsinki MoU, which stated: "Administrative policies which are taken by Indonesia Government regard to Aceh Province that will be implemented with consultation and consideration of the Head of Aceh Government".⁵ Infact, in UUPA, the term used is "consultation and consideration of Aceh Governor".

Based on the background above, several problems can be formulated as follows:

1. Why is there a regulation consultation and consideration of the governor to the central government administrative policies which are directly related to Aceh government?
2. How is the consultation and consideration of the governor to the Central Government administrative policies which are directly related to Aceh government based on perspective of the Unitary State of Indonesia?

II. Research Methode

This reseach is a juridical normative design. It is conducted by studying all the statute and the regulations which is related to symmetric decentralization and asymmetric decentralization (autonomy). it is fulfilled by prescriptive character. It aims to give a picture of the facts with an accurate analysis of the laws and regulations associated to the law theory and the practice of local government system, and as the result it can contribute as suggestion and solutions.

In addition, there are several approaches used in this this research, namely: (1) statute approach⁶, which covers the principles, juristical norm, and the statute regulation related to regional administration (autonomous regions), particularly in terms of Law Number 11 Year 2006, and Presidnet Regulation number 75 year 2008, and the 1945 National Constitution; (2) conceptual approach and (3) historical approach⁷ which are used to identify the juridical development stages, associated to the historical of the relationship Aceh government and Central Government. The data used is secondary data. It is gathered from (1) the norm or basic rules, including the 1945 National Constitution; (2) the statute regulation; (3) and jurisprudence.⁸ Next, it would be taken from the previews research result, journal, or doctrine which are related to regional administration system.

III. Discussion

3.1. Basis for Arrangment of Consultation and consideration with Governor on Central Government

3.1.1. Unitary State

Indonesia is a unitary state, as Chapter 1 (1) of National Constitution, stated: "Indonesia is a Unitary State, under the form of Republic country". The term of "unitary state" proposed by Rudolf Kranenburg.⁹ According to Thorsten V. Klijarvi, unitary state or a state with centralized power, paired with the term federal states or states with decentralized power.¹⁰ In addition, the CF. Strong refers a unitary state as a country that has the "highest legislative implementation of the customs authority by a central power". Meanwhile, a federal state is a "political instrument which is intended to reconcile the power and national unity with the maintenance of

⁴ Suny, Ismail, Ada materi RUU PA yang bisa dihapus (Kompas, March 1, 2006).

⁵ Original script of Helsinki MoU, Finlandia August 15, 2005.

⁶ HS, Salim, and Nurbani, Erlies Septiana, Penerapan teori hukum pada penelitian tesis dan disertasi (Jakarta: Rajagrafindo Persada, 2013), p. 17-18. Also see, Marzuki, Peter Mahmud, Penelitian hukum, first edition, seventh printing (Jakarta: Kencana Prenada Media Group, 2011), p. 96-104.

⁷ Soekanto, Soerjono and Mamudji, Sri, Penelitian hukum normatif suatu tinjauan singkat, 14th edition (Jakarta: RajaGrafindo Persada, 2012), p. 88.

⁸ Amiruddin and Asikin, Zainal, Pengantar metode penelitian hukum, sixth printing (Jakarta: Raja Grafindo Persada, 2012), p. 31-32. Also see Runtung, Metode penelusuran literatur dan penulisan hukum, Material Lecture in the Doctoral Program of Fakultas Hukum, Universitas Sumatera Utara, (2012).

⁹ Riyanto, Astim, Teori negara kesatuan (Bandung: Yapemdo, 2010), p. 6.

¹⁰ Isjwara, F, Pengantar ilmu politik, tenth printing (Bandung: Binacipta, 1995), p. 202.

“the state liberties”. As the result, legislative authority is shared between central power state or federal with smaller units¹¹. According to Abu Daud Busroh, the state hierarchy is composed of:

..... Unitary state is a state that is not composed of other states, such as in a federation, a state is naturally single state, it means that there is only one state, no state within a state. Therefore, the unitary state only has one government, the central government which has the power or the highest authority in every field of government. This central government which is in the last and highest level can decide everything in the state.¹²

3.2. Symmetric Decentralization

Due to development and needs, unitary state which has Centralization principle can also be done with the decentralization principle, as a federal state done. Thus, the unitary state is also divided into centralization and decentralization design. Centralization design is a state system that regulates the whole territory of the country, without exception, is a territorial unit of administration and law. In other hand, decentralization design is the authority delegation from central government to the regions. However, the authority delegation does not change the basic essence of the unitary state.¹³

Meanwhile, Mahfud MD said that the unitary state is:

The state which the authority scatters to the regions through the autonomy granting or authority delegation to the regions in order to manage and regulate their own households with decentralization or deconcentration. It means that the regions get the liberties which is coming from, or provided by the central government based on the constitution and statute.¹⁴

Therefore, in the history of local autonomy (decentralization), Hilaire Barnet, states: "local government represented an early form of localized self-regulation. The country is divided into local authorities - either the county or district - each having law making and administrative powers as delegated by Parliament".¹⁵ Furthermore, AH Manson states that decentralization divides into two, namely, political decentralization and administrative / bureaucratic decentralization. Political decentralization also called devolution, while the administrative decentralization also called deconcentration.¹⁶ Both decentralization and deconcentration is instrument in the field of power division. It means that the two concepts is the concept of administration, which organizes how the processes carried out the activities to achieve the objectives in organization and management.

In addition, as Axel Hadenius said that:

“Decentralisation may entail the transfer of autonomy in the following areas: (1) Policy autonomy: local bodies are entitled to make their own decisions in certain (more or less restricted) fields of policy; (2) Organisation autonomy: local bodies are free to decide about their organisational structure; (3) Staff autonomy: local political leaders and administrative personnel are selected without interference from central authorities; (4) Fiscal autonomy: local bodies are able to raise revenues independently and/or receive grants from the centre without any strings attached (so-called block grants)”.¹⁷

The above figure shows that in the government system unitary state is divided into two systems, namely, a unitary state with centralization system and decentralization or autonomous system which authority is shared between the Central Government and Local Government. In carrying out this autonomous authority, the absolute authority is still at the central government, so that this authority can be removed or revoked by the Central Government.

Nevertheless, according to Bagir Manan, decentralization in establishing the relationship between central and local government can be formulated in four basic principles as a benchmark (Constitution of 1945), they are:

First, establish the relationship between central and local, it should not diminish the people region liberties to participate (freely) in local government accomplishment, it is accordance to the basic democratic led by the inner wisdom of consultative / representative or the basis of deliberations in the system of state administration which should be held to the local government level. Second, establish the relationship between central and local, it should not diminish the the people region liberties to take the initiative to organize and manage affairs that is considered important for the region. Third, the relationship between the center and regions

¹¹ Strong, CF, *Konstitusi-konstitusi politik modern: studi perbandingan tentang sejarah dan bentuk-bentuk konstitusi dunia*, Translation from *Modern political constitution: an introduction to the comparative study of their history and existing form*, (Bandung: Nuansa dan Nusamedia, 2004), p. 109.

¹² Daud Busroh, Abu, *Ilmu negara* (Jakarta: PT. Bumi Aksara, 1990), p. 64-65.

¹³ Ranadireksa, Hendarmin, *Arsitektur konstitusi demokratik* (Bandung: Fokusmedia, 2007), p. 59-62.

¹⁴ MD, Mahfud, *Membangun politik hukum, menegakkan konstitusi* (Jakarta: Pustaka LP3ES, 2006), p. 221.

¹⁵ Barnet, Hilaire, *Constitutional and administrative law*, third edition, (London: Cavendish Limited, 2000), p. 496.

¹⁶ Nurcholis, Hanif, *Teori dan praktik pemerintahan dan otonomi daerah* (Jakarta: Grasindo, 2005), p. 4.

¹⁷ Hadenius, Axel, *Decentralization and democratic governance experiences from India, Bolivia and South Africa* (Sweden: Almqvist & Wiksell International, 2003), p. 1.

may vary from region to another according to the particular circumstances of each region. And, fourth, the relationship between the center and the region is within the framework of justice and social welfare region.¹⁸

The countries' experiences show that there are two great design in regulating statute and regulations related to the intergovernmental task sharing, namely: 1) the design of general competence (broad autonomy); and 2) the design of ultra vires (limited autonomy). In the design of broad autonomy, it is formulated that affairs are conducted by the Central Government which is limitedly and the remainder (residue affairs) under the authority of regional governments. In the principle of ultra vires, the matters are determined in a limited area and the rest by the Central authority.¹⁹ After the second change of 1945 Constitution in 2000, Indonesia adopts regional autonomy system designed in general competence. As the 1945 Constitution, Chapter 18 subsection (5) of, stated: "The regional government runs broad autonomy, except for governmental affairs determined by law as the affairs of the Central Government.

3.3. Asymmetric decentralization

Application of wide autonomy principle as mentioned above, different application of autonomy among regions. There are 5 (five) regions where asymmetric decentralization is applicable based on article 18B verse 1 of national constitution. Second change, in 2000, by acknowledging several special provinces; Yogyakarta and Aceh. Unlike other provinces as regulated in law number 23 2014 on provincial government and has been changed in Law number 2 in 2015 on law replacement.

These 5 special provinces has the rights to rule themselves. First regulation number 21 in 2001 on special autonomy for Papua. The law regulates Papua and West Papua provinces (asymmetric decentralization), in form of politics, economy, and culture, even to gain aids from central government and are allowed to form ethnic organization such as "Majelis Rakyat Papua".

Secondly, Law number 29 year 2007 on special province of Jakarta as the capital city of the country. Thirdly, law number 13 on the specialty of Special province of Yogyakarta. The regulation govern the specialty for Yogyakarta to have kingdomships, where king and his vice will automatically be governor and vice governor. Fourth is Aceh. Based on law number 44 year 1999. with this law, Aceh has the power to regulate its speciality including; a) religious arrangement setting; b) ethnic life setting; c) education arrangement; and d) the role of imam (ulama) in area policy settings.

As mentioned by Imam Syaekani and Ahsin Thohari, since the inauguration of sharia law in Aceh, 1) there is a tendency that Indonesia does not adopt unification law anymore; 2) even though politics of unification tend to be abandoned, codification law is still applied.²⁰ Aside from speciality regulation of Aceh as arranged in Law Number 11 Year 2006, the status is both special and specific area. The regulation set in law allowed them to, first in article 8, on consultation and consideration of governor and Aceh legislative. Second, article 9, related with direct involvement in art, culture, international even activities. Third, article 75, the declaration of local politics; four, article 96, Aceh can form Wali Nanggroe institution as cultural leadership. Five, article 160, central and Aceh government together manage and control natural and gas resources, six article 167, Sabang free port; seven, article 79 and 183, Aceh government receive special area funds; eight, article 228 and 229, the formation of human right court and commission of truth and reconciliation.

Joachim Wehner says that giving different autonomous to one regions or territories from a few areas of governance is a practice that is quite common of political arrangements experience in many countries. This experience takes place either in the form of decentralized unitary state or in a federative arrangement format. The realm of political science and government, the design which is not comparable arrangement is referred as asymmetrical decentralization, asymmetrical devolution atau asymmetrical federalis, atau secara umum asymmetrical intergovernmental arrangements.²¹ In Spain, the implementation of asymmetric decentralization is regulated in chapter 2 and chapter 143 of the Spanish Constitution of 1978, as amended in 1992, it was regulated explicitly on the use of asymmetric decentralization, by using the term self-government. Furthermore, the elaborations of asymmetric decentralization are regulated in statute of autonomy, which applies to 17 states (regions) in autonomous communities.²²

¹⁸ Manan, Bagir, Hubungan antara pusat dan daerah menurut UUD 1945 ((Jakarta: Pustaka Sinar Harapan, 1994), p. 170.

¹⁹ Suwandi, Made, <http://raconquista.files.wordpress.com/2009/04/minggu-ii-suwandi-konsepsi-otda.pdf>, (2002), p. 3, accessed on November 25, 2013.

²⁰ Syaekani, Imam, dan Thohari, Ahsin, Dasar-dasar politik hukum (Jakarta: RajaGrafindo Persada, 2004), p. 114.

²¹ Djojosoekarto, Agung, dkk., Kebijakan otonomi khusus di Indonesia, pembelajaran dari kasus Aceh, Papua, Jakarta, dan Yogyakarta (Jakarta: Kemitraan, 2008), p. 10.

²² Prang, Amrizal J, Jika self-government (Aceh) diatur konstitusi (Opini: Serambi Indonesia, February, 4, 2010).

Peter Harris and Ben Reilly said, through this asymmetric decentralization, certain regions within a country are given special authority not granted to other areas.²³ Approach and the application of asymmetric decentralization or autonomy, according to Hurst Hannum, who termed the territorial autonomy, there are at least two benefits as stated below:

1. As a solution to the possibility of ethnic conflict, or other physical conflicts. For example, Hong Kong is certainly part of China, but Hong Kong is given important power in the fields of politics, law and economics.
2. As a democratic and peaceful response to complaints / problems of minorities whose rights have been violated / given less attention.²⁴

The above definition shows that asymmetric decentralization in the Republic of Indonesia is known as special autonomy and special regions. This authority is given because of differences in historical background, ethnicity, regions, such as Aceh, Papua and West Papua, Yogyakarta and Jakarta. However, these areas do not have their own sovereignty but is still under Central Government.

The difference is even recognized in philosophy of Pancasila, under the motto Unity in Diversity. Muhammad Hatta said: "Because Indonesia is divided into several islands and groups, it is necessary for each group, small or large, to get the autonomy, to have the right to self-determination"²⁵. Referring to the background of special authority of this "consultation and deliberation", the Minister of Home Affairs, M. Ma'ruf in the meeting of the Special Committee of Aceh Government Law Draft with House of Representatives, of Republic of Indonesia said that:

"..... The authority of the Government, Aceh and district / city, plan of international agreement, decision plan of Indonesian Parliament and administrative policies, cooperation and participation with institutions / agencies of foreign / international. In this connection, it can be reported that:

1. Regulation on the authority of the Government, in principle, be adjusted to the substance contained in Article 10 of Law No. 32 of 2004, and the privilege of Aceh as stipulated in Article 32 of Law No. 44 of 1999.
2. Regulation on the international agreement, in principle, is adapted to the substance of Article 42 letter f of Law No. 32 of 2004 and Article 5 of Law No. 18 of 2001.
3. Meanwhile, the decision of the House of Representatives is still in the form of plans and limited to only involving special interest to Aceh, as in regional expansion as contained in Article 5 (2) and paragraph 93) of Law No. 32 of 2004.
4. Regulation on cooperation with foreign parties, in principle, be adjusted by setting forth in Article 42 paragraph (1) letter g of Law Number 32 Year 2004²⁶

It can be understood from the statement of the Home Affair Minister that the special authority is also based on some legislations of Regional Government and special autonomy. Furthermore, in principle, in the preparation of Aceh Government Law Draft, the government based on:

- 1) The philosophical ground, that is the philosophy of the state Pancasila and keep it within the system and the principles of the Republic of Indonesia;
- 2) Juridical ground:
 - a) Constitution of the Republic of Indonesia Year 1945
 - b) the legislation governing local government and other related laws; and
 - c) The law on privileges and special autonomy for Aceh.
- 3) Sociological ground:

Considering the conditions and aspirations of the people of Aceh which is -specific, urgent and requires priority attention to points in the Memorandum of Understanding, keeping in view the impact on the interests of other regional, national and international.²⁷

²³ Solossa, Jacobus Perviddya, *Otonomi khusus Papua, mengangkat martabat rakyat Papua di dalam NKRI* (Jakarta: Pustaka Sinar Harapan, 2006), p. 53. Also see, Katharina, Riris, *Implementasi otonomi khusus di provinsi Papua (tinjauan terhadap peran DPRP dan MRP)*, dalam http://berkas.dpr.go.id/pengkajian/files/buku_tim/buku-tim-19.pdf, (2011), accessed on Desember, 25, 2013.

²⁴ *Ibid*, p. 55.

²⁵ *Ibid*, also see, Kaelan, *Problem epistemologis, empat pilar berbangsa dan bernegara* (Yogyakarta: Paradigma, 2012), p. 231-232.

²⁶ Explanation of government, at the meeting of the special committee of parliament on draft law on the governing of Aceh, Friday, February 24, 2006.

²⁷ The government answers to the overview and opinion Representative of House and Senate on draft law on the governing of Aceh, Jakarta, March 20, 2006.

Besides these reasons, a former of Aceh Freedom Movement negotiator, Nur Djuli, also said: "that the consultation and consent" is in order that the central government in implementing administrative policies in Aceh are not arbitrary and powers that have been delegated to the Aceh Government no longer be ignored and lied. As, what had happened during the old order, to the substance of the "Ikrar Lamteh", especially on the implementation of Islamic Shariah uprising back".²⁸

Based on the above description it can be seen the authority of the governor's consultation and consideration, sociologically because the experience of the relationship between the Central Government and the Government of Aceh that are not harmonious, where the central government easily revoked the authority that has been given. Meanwhile, politically because of the deal between the government and Aceh Freedom Movement by signing the Helsinki MoU, which then legally regulated in Article 8 paragraph (3) the Law Number 11 Year 2006. The delegation of authority is under the special authority of governor, as part of the implementation of special autonomy in Aceh. Therefore, it is needed to see whether or not it is contradicted with the 1945 Constitution and the perspective of the Republic of Indonesia.

IV. Consultation and Consideration of Aceh Governor in the Prespective of Republic of Indonesia

4.1.Special Authority Delegation

In the 1945 Constitution, there is no arrangement that the Central Government must run administrative policies in the region, needs to have consultation and consideration of the governor. Likewise there is such regulation, in the Local Government Act, but in principle, still referring to the legislation. However, in general, arrangements in Article 8 paragraph (3) Law Number 11 Year 2006 are not in contradiction with the 1945 Constitution of Republic of Indonesia. This is because the regulation on delegation of authority consultation and consideration of the governor, is limited to the administrative policy of the central government relating directly to the Government of Aceh. Meanwhile, the decision of the implementation of administrative policies is in the hands of central government.

The problem is when the Aceh Government Law Draft proposed by the Government include the term "consultation and approval of the governor" to the central government administrative policies relating directly to the Government of Aceh. Meanwhile, some members of Parliament, like Sutradara Ginting, member of Parliament and Special Committee of the Aceh Government Law Draft from the Indonesian Democratic Party of Struggle, do not agree the use of legal norms "consultation and agreement", as argued in the context of a unitary state supreme authority is in the central government.²⁹ While, who agreed with the proposal of the Government, among others are Nasir Jamil, member of the House of Representatives from Prosperous Justice Party, said:

"Substantially we agreed with the proposal of the government, and we think this is a form of recognition of the specificity of State and Local Government privileges especially in Aceh even the Constitution also recognizes this, although not explicitly mentioned, but our interpretation when reading Article 18 (Constitution RI 1945) the State recognizes the units of Local Government which is special, this is a form of state recognition So once again this is not something that is harmful to the Republic of Indonesia, it doesnt confront the constitution and is in line with Pancasila and of course this is part of the efforts to admit unity in diversity in Indonesia. The Law on Special Autonomy No. 18 of 2001, Article 33 was also mentioned although it does not use the word consent, there is mentioned that amendements to this law can be done by taking into consideration the regional council of Nanggroe Aceh Darussalam".³⁰

4.2 Djoehermansyah also stated that:

"If examined further, in terms of decentralization, which is given special authority of the Republic of Indonesia to Aceh in the area of governance as contained in the MoU, arguably still reasonable in order to realize peace in Aceh. In fact, during most of the real authority has been given to the central government through Aceh Law No. 18 of 2001 on Special Autonomy for Aceh and also regulated in Law Number 32 Year 2004, the event that, the authority submitted now expanded , it was presumably still inappropriate for the sake of reconstruction and rehabilitation of Aceh after the tsunami, and the parallel development in Aceh are out decades of other areas. Granting authority to Aceh also will not harm the Homeland. Indonesia remains a unitary state. Only to Aceh because of its status as a special region and also special, handing the central government wider powers and more appropriate concept of asymmetric decentralization, as found in other countries. Granting special authority to Acehpun not conflict with the 1945 Constitution, in fact even more do so

²⁸ Interview with Nur Djuli, negotiator of Freedom Aceh Movement (GAM), February 4, 2015.

²⁹ Minutes of the meeting of the special committee of parliament on draft law on the governing of Aceh, work meeting, session period III, session year 2005-2006, in the event explanation government on draft law on the governing of Aceh, February 24, 2006, p 50-51.

³⁰ Ibid, p. 55.

consistently through the granting broad autonomy accordance with the mandate of Article 18 Paragraph (5) as well as recognition and respect for the specificity or privileges pursuant to Article 18 and Paragraph (1)³¹.

Based on the debate, it was agreed nomenclature used "consultation and consideration". Therefore, addressing the importance of delegation of authority "consultation and consideration" is, in principle, according to Ahmad Farhan Hamid, a member of the House of Representatives and the Special Committee of the draft law, the goal that no longer causing any impressions and negative perceptions between the Government of Aceh and the central government as had happened in the era of the previous government since the old order, the new order and order reforms. Where every authority that has been given to the Government of Aceh, when out new policy of the Central Government, such authority is revoked and without the knowledge of the Governing of Aceh.³²

4.3 Effectiveness and Efficiency Implementation Consultation and Consideration Governor

Despite the special authority of the Government of Aceh, it should also be seen whether the effective and efficient implementation or vice versa. According to Satjipto Rahardjo, expressly says that the working of the law in society are not necessarily and not just happen, because the law is not the result of the work of the factory, which once went straight to work, it requires several steps that allow the provisions of working law. At least there are four steps that must be met in order to seek the law or the rules or regulations can work and function (effectively), namely:

- a. The presence of officials / law enforcement as specified in the rule of law;
- b. The presence of the (individual / community) who conduct legal actions, both of which comply with or violate the law;
- c. People who know the rules;
- d. People as subjects and objects of law are willing to do according to the law.³³

Based on Satjipto point of view on four (4) aspects when running and functioning properly, then the law can be implemented effectively, there are three (3) factors that become the essence of the effectiveness of these laws, namely: 1) the person or human, 2) rule of law, and 3) act according to the law. Where the law enforcement officials and the people who know the existence of the rule of law and legal actions to follow or act in accordance with applicable legal norms.

Furthermore, Soerjono Soekanto said:

The main problem of law enforcement is actually located on the factors that influence so the impact is positive or negative. These factors, namely:

- 1) Law Factors (writer: such as, laws and legislations eat it).
- 2) Law enforcement factor, namely the parties to form and apply the law.
- 3) Means or facilities to support law enforcement.
- 4) Society factor, ie the environment in which the law applies or set.
- 5) The cultural factor, ie, as work, creativity, and a sense that is based on human initiative in social life.

These five factors are interrelated tightly, because the essence of law enforcement, also owns the benchmark rather than the effectiveness of law enforcement..³⁴

Setia Budi, Aceh Government Consultation Team Leader, who is also secretary of Aceh, also said: "Whereas the consultation and consideration of the governor of the administrative policies of the Central Government directly related to the governing of Aceh, has spawned some thing positive to the relationship between the Central Government and the Government of Aceh, among others: have a stronger trust (trust) and the It is when referring to Article 271 of the Law Number 11 Year 2006, states: "The provisions for implementation of this law is the duty of the government established no later than two (2) years from the promulgation of this Act". determination of the substance of the implementing regulations known as well as from the Government of Aceh. Although, most of the substances are still lacking or deficiency. But the essence is partly substance accordance with the Law and Helsinki MoU.³⁵

³¹ Djohan, Djohermasyah, Desentralisasi asimetris ala Aceh, Jurnal Sekretariat Negara RI, No.15, February 2010, p. 132.

³² Interview with Ahmad Farhan Hamid, member and special committee of parliament on Draft Law on the Governing of Aceh, member of representative of house, Period of 1999-2004 and Period of 2004-2009, as well as vice chairman of the assembly the period of 2009-2014, on December 15, 2014.

³³ Ibid, p. 72.

³⁴ Soekanto, Sorjono, Faktor-faktor yang mempengaruhi penegakan hukum (Jakarta: Raja Grafindo Persada, 2010), p. 8-9. Also see, MD, Mahfud, Hukum dan pilar-Pilar demokrasi (Yogyakarta, Gama Media,1999), p. 189-190.

³⁵ Interview with Setia Budi, regional secretary Aceh, the period 2010-2012 and chairman of the Aceh government consultation team, on February 4, 2015.

Nevertheless, the implementation of governor consultation and consideration on the determination of Government and President Regulation, some of its adoption process is still being felt yet effective. It is when referring to Article 271 of the Law Number 11 Year 2006, states: "The provisions for implementation of this law is the duty of the government established no later than two (2) years from the promulgation of this Act". That is, as the Law Number 11 Year 2006 passed on August 1, 2006, and therefore the regulation of implementation must be complete in August 2008. The reality is, until 2015 not all the implementing regulations have been resolved by the central government.

On the other hand discrepancies of consultation in the results of consultation with the substance of Presidential Decree No.23 of 2015 on the transfer of the Regional Office of the National Land Agency of Aceh and the District Land Office/ City to be Aceh Land Agency and Aceh Land Office Regency / City. It is apparent in particular the substance of Article 6 and Article 9 of the regulation contradiction with Article 111 paragraph (4) and (5) of Law Number 11 Year 2006.

This is what Adam Podgorecki said, in order for a law, to be effective, then:

"...In applying the law as a means to hold social engineering, certain capabilities as follows are required:

- a. Good depiction of the situation at hand.
- b. An analysis of these assessments into its hierarchical arrangements. In this way you will get a hold or guidelines, whether the use of a means to produce something positive. That is, whether the means of cure is not worse than the disease.
- c. Verification of the hypotheses proposed. That is, whether the means which have been completely will ensure the achievement of the desired objectives or not.
- d. Measurement of the effects of the necessary regulations.
- e. Identification of the factors that will be able to neutralize the bad effects of regulations treated.
- f. Institutionalization of rules in society, so that the purpose of reform achieved.³⁶

Although in general that "consultation and consideration of the governor" is a good and positive for the central government and the provincial government administrative policy setting and in building relationships Central harmonization and Aceh, but still not efficient. This is because a lot of time and expense that are used both by the Government Consultation Team Aceh and the central government. Especially, the frequency of trips and meetings that reach nine years (2006-2015) and even some of regulations relating to the Aceh Government has not also been fully established.

However, as said by Mahfud, MD, citing rules of *usul fiqh*, namely: "maa laa yudraku kulluh yutraku julluh" (something that did not manage to take entirely, then do not be left out entirely)³⁷. That is, although the implementation of the "consultation and consideration Governor" not all are effective and efficient, but should not be eliminated. Therefore, in order for the change and achieve an effective and efficient implementation of consultation and consideration should be seen the factors that affect the implementation of consultation and consideration of the governor. So, the next solution can be found and executed properly capped.

Since the consultation and consideration on regulation establishment relating to the specificity of Aceh, where as Presidential Regulation No. 75 Year 2008, from the Central Government authorities coordinated by the Ministry of Internal Affairs and the Government of Aceh representing the governor conducted by Team Consulting Aceh Government, chaired by the Regional Secretary Aceh. Until now, that has been set by the President, namely:

1. Government Regulation No. 58 of 2009 on the Terms and Procedures for Appointment and Dismissal of the Aceh Provincial Secretary and Secretary of the District / Town in Aceh;
2. Government Regulation No. 83 Year 2010 regarding Government Authority Delegation to the Board of Sabang Zone;
3. Government Regulation No. 3 of 2015 on Government Authority National Characteristically in Aceh;
4. Government Regulation No. 23 Year 2015 on the Management of Shared Natural Resources Oil and Gas in Aceh;
5. Presidential Regulation No. 75 Year 2008 on Procedures for Consultation and Giving consideration of Plan International, Plan Establishment Act, and the Administrative Policy Relating Directly to the Government of Aceh;
6. Presidential Regulation No. 11 Year 2010 concerning Aceh Government Cooperation with the Institute or International Agency; and,
7. Presidential Regulation No. 23 Year 2015 on the transfer of the Regional Office of the National Land Agency of Aceh and the District Land Office / City Being Land Agency Aceh and Aceh Land Office Regency / City.

³⁶ Ali, Achmad dan Heryani, Wiwie, *Menjelajah kajian empiris terhadap hukum* (Jakarta: Kencana Prenada Media Group, 2012), p. 146.

³⁷ Mahfud, MD, *loc.cit.*, (2006), p. 294.

Previously, in addition to the six Government Regulation and Presidential Regulation above, Government Regulation No. 20 of 2007 on Local Political Parties in Aceh has also been assigned. Eventhough its stipulation was not conducted under consideration of the governor of Aceh, because Presidential Regulation No. 75 of 2008 has not yet been issued. According to some view of the above, then consultation and consideration with governor of Aceh administrative policies that are directly related to the Aceh Government, no contradiction with Pancasila, the 1945 Constitution, the Republic of Indonesia, and other legislation. In addition, a special delegation of authority granted to Aceh was to give a sense of justice for the people of Aceh, as part of the Homeland. As stated John Rawls:

"Justice does not let the sacrifices imposed on a few exacerbated by most of the advantages enjoyed by many people. Therefore, in a just society the freedom of citizens is considered a well-established; the rights secured by justice are not subject to political bargaining or the calculus of social interests. The only thing that allows us to accept the theory that one is the absence of a better theory; analogously injustice can be left only when he needs to avoid greater injustice. As the main virtues of humanity, truth and justice are not biased inviolable".³⁸

V. Conclusions And Suggestions

1. Conclusions

1.1. Consultation and consideration with the governor regarding the Central Government administrative policies that are directly related to the demands of the people of Aceh Government of Aceh, the implications experience disharmony relationship between the Central Government and the Government of Aceh. Furthermore, points 1.1.2. letter d of Helsinki MoU and regulated in Article 8 paragraph (3) UUPA. The goal is that awakened sense of mutual trust and harmony between the Central Government and the Government of Aceh, dignity, and justice for the people of Aceh.

1.2. Giving rights of governor consultation and consideration on administrative policies of central government related with which has direct correlation with article 18B verse (1) of 1945 Law second amandement, year 2000, that admitted special regions and Pancasila and Unity in Diversity (Bhinneka Tunggal Ika).

2. Suggestions

2.1. It is suggested to the central and Aceh government to maintain and do not take out the rights of consultation and consideration of the governor. However, process should be made simpler, more effective and efficient.

2.2. The consultation team of both centra ad Aceh government to be made Ad-Hoc, who understand the substance of Law Number 11 Year 2006 (lex specialist), Regional regulations, and other types of regulations.

2.3. Seriousness and consistency are needed from special autonomy observer by Representative of House, on supervision and observation the speciality of Aceh.

2.4. Aceh government is to to establish regulations and run the government post the establishment of government and presidential regulations on the speciality of Aceh.

References

a. Journal Papers

- [1]. Djohan, Djohermasyah, Desentralisasi asimetris ala Aceh, Jurnal Sekretariat Negara RI, 15, 2010, 132.
- [2]. J. Prang, Amrizal dan Amalia, Nanda, Proses pembentukan undang-undang pemerintahan Aceh, Jurnal Hukum Respublica, 6 (2), 2007, 193.

b. Books

- [1]. Ali, Achmad, dan Heryani, Wiwie, Menjelajah kajian empiris terhadap hukum (Jakarta: Kencana Prenada Media Group, 2012). 146.
- [2]. Amiruddin dan Asikin, Zainal, Pengantar metode penelitian hukum, sixth printing (Jakarta: Raja Grafindo Persada, 2012). 31-32.
- [3]. Barnett, Hilaire, Constitutional and administrative law, third edition (London: Cavendish Limited, 2000). 496.
- [4]. Daud Busroh, Abu, Ilmu negara (Jakarta: PT. Bumi Aksara, 1990). 64-65.
- [5]. Djojosoekarto, Agung, dkk., Kebijakan otonomi khusus di Indonesia, pembelajaran dari kasus Aceh, Papua, Jakarta, dan Yogyakarta (Jakarta: Kemitraan, 2008). 10.
- [6]. El-Ibrahimi, Nur, Peranan tdk m. daud beureueh dalam pergolakan Aceh (Jakarta: Media Da'wah, 2001). 22.
- [7]. Hadenius, Axel, Decentralization and democratic governance experiences from India, Bolivia and South Africa (Sweden: Almqvist & Wiksell International, 2003). 1.
- [8]. HS, Salim, dan Nurbani, Erlies Septiana, Penerapan teori hukum pada penelitian tesis dan disertasi (Jakarta: Rajagrafindo Persada, 2013). 17-18.
- [9]. Isjwara, F, Pengantar ilmu politik (Cet. X), (Bandung: Binacipta, 1995). 202.
- [10]. Kaelan, Problem epistemologis, empat pilar berbangsa dan bernegara (Yogyakarta: Paradigma, 2012). 231-232
- [11]. Manan, Bagir, Hubungan antara pusat dan daerah menurut UUD 1945 (Jakarta: Pustaka Sinar Harapan, 1994). 170.

³⁸ Rawls, John, Teori keadilan dasar-dasar filsafat politik untuk mewujudkan kesejahteraan sosial dalam negara, second printing, translation of A theory of justice (Yogyakarta: Pustaka Pelajar, 2011), p. 4.

- [12]. Marzuki, Peter Mahmud, Penelitian hukum (Ed. I, Cet. VII), (Jakarta: Kencana Prenada Media Group, 2011). 96-104.
- [13]. MD, Mahfud, Hukum dan pilar-pilar demokrasi (Yogyakarta: Gama Media, 1999).
- [14]. -----, Membangun politik hukum, menegakkan konstitusi (Jakarta: Pustaka LP3ES, 2006). 221.
- [15]. Nurcholis, Hanif, Teori dan praktik pemerintahan dan otonomi daerah (Jakarta: Grasindo, 2005). 4.
- [16]. Rahardjo, Satjipto, Ilmu hukum (Bandung: PT. Citra Aditya Bakti, 2000).
- [17]. Ranadireksa, Hendarmin, Arsitektur konstitusi demokratis (Bandung: Fokusmedia, 2007). 59-62.
- [18]. Rawls, John, Teori keadilan dasar-dasar filsafat politik untuk mewujudkan kesejahteraan sosial dalam negara, second printing, translation from A theory of justice (Yogyakarta: Pustaka Pelajar, 2011). 4.
- [19]. Riyanto, Astim, Teori negara kesatuan (Bandung: Yapendo, 2010). 6.
- [20]. Sjamsuddin, Nazaruddin, Revolusi di serambi Mekkah (Jakarta: UI-Press, 1999). 282.
- [21]. Soekanto, Sorjono, Faktor-faktor yang mempengaruhi penegakan hukum (Jakarta: Raja Grafindo Persada, 2010). 189-190.
- [22]. ----- dan Mamudji, Sri, Penelitian hukum normatif suatu tinjauan singkat (Cet. XIV), (Jakarta: RajaGrafindo Persada, 2012). 88.
- [23]. Solossa, Jacobus Perviddy, Otonomi khusus Papua, mengangkat martabat rakyat Papua di dalam NKRI (Jakarta: Pustaka Sinar Harapan, 2006). 53.
- [24]. Strong, CF, Konstitusi-konstitusi politik modern: studi perbandingan tentang sejarah dan bentuk-bentuk konstitusi dunia, translation from Modern political constitution: an introduction to the comparative study of their history and existing form (Bandung: Nuansa dan Nusamedia, 2004). 109.
- [25]. Syaikani, Imam, dan Thohari, Ahsin, Dasar-dasar politik hukum (Jakarta: RajaGrafindo Persada, 2004). 114.

c. Prociding Papers

- [1]. Minutes of the meeting of the special committee of parliament on draft law on the governing of Aceh, work meeting, session period III, session year 2005-2006, in the event explanation government on draft law on the governing of Aceh, Friday, February 24, 2006.
- [2]. Runtung, Metode Penelusuran Literatur dan Penulisan Hukum, Material Lecture at the Doctoral Program of Fakultas Hukum, Universitas Sumatera Utara, (February 17, 2012).

d. Situs and Newspapers

- [1]. Katharina, Riris, Implementasi otonomi khusus di provinsi Papua (tinjauan terhadap peran DPRP dan MRP), on http://berkas.dpr.go.id/pengkajian/files/buku_tim/buku-tim-19.pdf, (accessed on Desember 25, 2013).
- [2]. Prang, Amrizal J, Jika self-government (Aceh) diatur konstitusi (Opini: Serambi Indonesia, February 4, 2010).
- [3]. Suny, Ismail, Ada materi RUU PA yang bisa dihapus (Kompas, March , 2006).
- [4]. Suwandi, Made, 2002, <http://raconquista.files.wordpress.com/2009/04/minggu-ii-suwandi-konsepsi-otda.pdf>, (accessed on November 25, 2013). 3.