
**CENTRAL AND REGIONAL FINANCIAL BALANCE:
Juridical-Theoretical Dimension**

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Abstract

The juridical dimension of the constitution determines that the balance of central and regional finance constitutes imperative prescriptions/norms of central and regional relations (Article 18 jo Article 18 A Paragraph (1) and (2) of the 1945 Constitution). The core norm of central and regional financial balances affirms a regulation of funding as a sub-system of state finances in funding governmental affairs under the jurisdiction of decentralization, deconcentration and co-administration (vide Article 279 of Law, Number 23 of 2014 on Regional Government jo Article 2 of Law Number, 33 of 2004 Concerning Financial Balance Between the Central Government and Government Area). The relationship of central and regional authority is theoretically close-related to the doctrine or household teachings, namely the teaching of material autonomy, the teachings of the household/formal autonomy, and the teaching of real autonomy/real. The teachings of real autonomy rely on the idea; initially the center of providing recognition to the real situation or factor grows and develops in the local community. A more comprehensive revitalization and reformulation of central and regional fiscal reforms can be made through the legal authorities of upgrading regional initiatives in accordance with the broadest real autonomy principles, implementing constitutional mandates on other resources that have not been transparently regulated in legislation and required a grand design of Indonesia's fiscal decentralization.

Keywords: central finance, regional finance, and autonomy.

I. INTRODUCTION

Theoretically, Suzane B. Bailly, et al. put the Central and Regional Finance Balance, in the theory of "vertical division of power" modification of separation of power according to the theory of Baron de Montesquieu Triassic Politic of a separation horizontal power which is the separation between legislative power, executive power, and judicial power aims to protect the right of liberty (freedom of citizens) over the arbitrariness of the state. In western philosophy gave birth to liberalism with the doctrine of "everyone is born free to pursuit happiness".¹

Sri Soemantri used the term "power dissipation". From juridical dimension of our Constitution, the Constitution of 1945 of the Republic of Indonesia (hereinafter the 1945 Constitution) determines that "Central and Regional Financial Balance" is an imperative prescription/"central and local relations" (Article 18 jo Article 18A, verse 1 and 2 of the 1945 Constitution). Referring to Chapter 18 paragraph (1) and paragraph (7) that the Unitary State of the Republic of Indonesia is divided into provincial and regional areas of provision divided into districts and cities ...; structure and procedure of governance shall be governed by law ". Article 18A verse (1), "the authority relationship between the central government and the regional government shall be regulated by law". Article 18A paragraph (2), "Financial relationship, public service, utilization of natural resources and other resources shall be regulated by law". The core norm of "central and regional financial balance" affirms a regulation of funding as a sub-system of state finance in funding governmental affairs under the authority of decentralization, deconcentration and co-administration "(vide Constitution, Chapter 279 No. 23 of 2014 on Regional Government jo Constitution Chapter 2, No. 33 of 2004 on Financial Balance between Central and Local Government). Constitutional provision leads to prosperity as much as possible for the people {Article 33 Paragraph (3) of the

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1) Soetandyo Wignyoebroto, *Pergeseran Paradigma dalam Kajian-Kajian Sosial Dan HUKUM*, Setara Press, Malang, 2012, p. 123.

Constitution of 1945}.

Building on the understanding of juridical-theoretical background two issues of the principle law were raised, namely:

- 1) Does the relationship between central and regional authorities conform to the real and broadest pillars of the autonomy doctrine in the balance of central and regional finance?
- 2) How can the legal authorities organize the financial balance between central and local governments in the context of fairness and equitable rationality and proportional theoretical-juridical dimensions?

Two legal issues are expected to be discussed in this National Seminar to address the grievances of the regional people over the imbalance and inequity of the distribution of "allotment" of state revenues.² These two legal issues guide our thinking in the discussion below.

II. DISCUSSION

A. Real and Broadest Autonomy in the Context of Central and Regional Financial Balance

The literature reveals that the balance of central and regional finance is summarized in the implementation of decentralization. Rodendeli and Cheema (1983) understand the decentralization of the essence of transfer of decision-making, central planning to central (administrative) administrative organizations in regional or semi-autonomous organizations of enterprises and local governments. Decentralization is divided into 3 types:

- 1) Decentralization of politics/state administration is the transfer of greater authority to the regions concerning decision-making, setting standards and regulatory norms.
- 2) Administrative decentralization, in the form of redistribution of authority, responsibility and resources among various governments. Capacity with better institutionalization for each level of local government is a requirement to be more effective and efficient.
- 3) Fiscal decentralization, involves the authority of exploring sources of income³

The authors argue in an understanding of the fiscal decentralization in terms of the state finances conceptually emphasizing the concept of "central and regional fiscal balances", theoretically in many countries using the theory of money flow function refers to the making of a plan which will result in the achievement of objectives effectively and efficiently. In the financial relations of the state historically the central and regional financial balances are shared by the union states.⁴

In the context of regional autonomy in a unitary state, the authors understand that central and local relationships need to be interpreted from juridical analysis, there are three pillars (pillars of teachers) of regional autonomy including:

- 1) The division of authority into the central and regional affairs (division of power).
- 2) Sharing of income in funding the exercise of authority in multilevel regional governments;
- 3) The empowerment of local authorities, namely local / regional interests, partisipasi and service of the community oriented on the basis of political, socio-cultural community including local wisdom, recognition and respect for the customary law community (empowering of local authority).⁵

In terms of authority and financial relations and public services and natural resources, other sources are optically prescriptive specified in Article 18A paragraph (1) and paragraph (2), Article 18B paragraph (1) and paragraph (2) of the 1945 Constitution. "Central and local financial relations" has a juridical-constitutional basis in the law's enforceability (juridical legitimacy).

In line with that in the relationship between the central and regional authorities theoretically closely related to the doctrine or teachings of household/regional autonomy the context of a unitary state that is: (a) the teaching of

2) Emil Salim, "Otonomi Daerah", in *Demokratisasi Dan Otonomi Mencegah Disintegrasi Bangsa Debat Publik Seputar Reformasi Kehidupan Berbangsa*, Kompas, Cetakan II, 2001, p. 163.

3) <http://dialumi.blogspot.com.id/2012/perimbangan-keuangan-pusat-dan-daerah.html>.

4) Ibid. lihat juga Bhenyamin Hoessein, *Penyempurnaan UU No.22 Tahun 1999 Menurut Konsepsi Otonomi Daerah Hasil Amademen UUD 1945*, dalam Seminar Hukum Nasional VIII, 2003, Buku 2, p. 68.

5) Emil Salim in the context of state management with straightforwardly declared after decades of our country managed sntralistis, it is time for pendulum management of the country need to shift to decentralization. The required regional autonomy of the region now requires a division of power between the center and the region covering three dimensions. First Matra delegation is to the region of decision-making authority of the sector, which covers the scope of the region. The Center simply limits itself to national tasks. Second Matra is the financial balance between rational and fair center and region. The third Matra, concerning the development of the region as a unique unit to fill the diversity of our country, as revealed in customary law, culture, institutions and the local community structure.

material autonomy rests on the thinking from the beginning of government affairs which is the authority of the region that can be distinguished from the central government. Essentially according to the teachings of material autonomy, the central government determines in detail the matters submitted to the regional government; (b) family teaching formal autonomy, rests on the idea that there is no difference in the nature between central and regional affairs, so that the region with its own initiative can regulate and manage the affairs of its local government without waiting for the delivery as regulated by law as long as it has not been handled by the Government Center; (c) the teachings of real autonomy, based on ideas from the beginning the center gives recognition to the state or real factors that grow and develop in the local community. It is therefore possible for governmental affairs to differ from region to region as long as higher laws and regulations determine that the affairs are not carried out solely by the central authorities or delegated to other authorities to administer and regulate them. Article 18 Paragraph (5) of the 1945 Constitution determines "Regional government shall exercise autonomy to the greatest extent, except those affairs which by law are determined as the affairs of the Central Government. Thus the authority (legal authority) submitted to the hands of local governments, but the power of origin or residual (residual power) remained in the hands of the Central Government as a unique character of the unitary state.⁶ Accordingly, the broadest possible autonomy as prescribed in the Indonesian Constitution is synonymous with the broadest autonomy of the teachings, so that the real factors in each region form the basis of regional initiatives to organize and manage their regional interests according to the interests and aspirations of the people.

The provision of the relationship between Central and Regional authorities are reduced in the Law on Regional Government, namely Law no. 23 of 2014, while on the balance of central and local finance still apply Law no. 33 of 2004 on Fiscal Balance Between Central and Local Government replaces Law no. 25 Year 1999, and the history of regional government also noted when the enactment of Law on Local Government no. 1 of 1957 enacted Law no. 32 of 1956.

The division of governmental affairs is classified into: (i) absolute government affairs ie matters fully entrusted by the Central Government (foreign policy, defense, and security, yustisi, monetary and fiscal, and religious); (ii) the affairs of this concurrent government which is shared between the Central Government and the Provincial Region, and the Regencies/Municipalities. (Concurrent regional government affairs comprising compulsory and optional matters detailed in the matrix as contained in Attachment to Law No. 23 of 2014); and (iii) Public government affairs which are the authority of the President as head of government (executive). The division of government affairs is the basis for budget allocation of decentralization. The matrix of distribution of concurrent government affairs which is the authority of the Region shows that public service/general weight is more in the hands of the Region.

In general, the policy of allocation of financing for the implementation of regional autonomy related to government affairs is determined as follows:

- 1) Submission of tax authorities to be levied as local taxes including regional levies and other income is "local revenue".
- 2) Subsidies/central assistance to regions in the form of autonomous regional subsidies, including Inpres funds both block grants and specific grants.
- 3) Tax and non-tax revenue sharing such as: land and building tax, royalty and license fees for mining and forestry.⁷

Regarding the fiscal decentralization on which regional excavations originate in the context of the relation of central and regional authorities does not seem to provide significant opportunities for "regional initiatives" to determine potential tax objects beyond those delegated by the Local Taxes and Levies Act, Law No. 28 of 2009. Such restrictions also appear to be specified in the Law on Regional Governance. The provisions of Article 286 paragraph (2) of Law No. 23 of 2014, local governments are prohibited from levies or other titles outside the regulation (holding of the authors). Taxes that are transferred to regions are mostly "indirect tax" categories. Indirect taxes do not satisfy the sense of justice because the tariff is not progressive regressive. People whose income is low are subject to the same tax payment as those with high incomes. As an instrument to encourage increased production, indirect taxes are difficult to perceive directly in the production sector. Indirect taxes that are essentially consumer taxes are not actually taxpayers to bear the tax burden according to the law.⁸

The legal provisions of fiscal decentralization show an imbalance between local and central taxes, this is

- 6) imly Asshiddiqie, *Constitution & Indonesian Constitutionalism*, Sekretariat General and Registrar of the Constitutional Court of the Republic of Indonesia, Jakarta, 2006, p. 274. Affirmed as a unitary state the concept of residual power remaining power remains with the Central Government.
- 7) I Dewa Gede Atmadj. *Aspek Hukum dan Birokrasi Penyelenggaraan Pemerintahan: Studi Pelaksanaan Inpres Dati II di Propinsi Daerah Tingkat I Bali*. Disertasi Universitas Airlangga Surabaya, 1994, p. 139.
- 8) M. Suparmoko, *Kuangan Negara Dalam Teori dan Praktek*, BP FE, Yogyakarta, cetakan ke-5, 2000, p. 151.

reflected in the amount of revenue collected by the Regions only about 3.45% of the total tax revenue (Central and Regional tax). Even the distribution of taxes between regions is also very unequal and varied (the highest PAD ratio with the lowest reaching 600 times.⁹ Therefore, the contribution of local taxes and levies is very small in the funding of decentralized authority. The low contribution of taxes and levies of decentralized fiscal areas is very limited "Also due to differences in variable factors such as population size, geographical condition, regional potential (community capacity) and Human Resources (HR).

Based on the study of juridical barriers, it also appears to have an effect on the small contribution of regional revenues to the implementation of decentralization in the framework of real autonomy as far as possible. Paradigmnya that the Central Government can help extract the sources of local revenue based on the law that provides the basis of law (legality).¹⁰ From this legal paradigm the legal authority in the context of the function of law as a means of social engineering is suspected to increase the fiscal contribution of the Region.

B. Legal Authority in Arranging the Central and Regional Financial Balance

"Today's Critical Theory of Law" notes that the enormous legal authority, because law can do anything, such as establishing institutions, gives legitimacy to fair power. Mochtar Kusumaatmadja (Professor of Unpad) in the Theory of Development Law explains that the law can function to build a society that is aspired through the means of legislation.¹¹

Indeed, to reduce vertical inequality between the Center and the Region since the reform of legislation to date has set the pattern of revenue sharing tax and non-tax between the central and regional. However, the profit-sharing system pattern still leaves a vertical imbalance in the Central-Region and also horizontal imbalance between the producing region (rich in Natural Resources region) and non-producing areas (poor in Natural Resources) including Bali (non-Natural Resources). In addition, local tax revenues, and profit sharing of individual and corporate income tax are very lopsided horizontally and vertically due to the significant potential only owned by some regions only.

Of course it is necessary to revitalize and reformulate the policy of financial balance between central and regional government and equitable, rational, proportional equitable distribution among regions in line with the obligations and distribution of government affairs which are the authority of the regions in increasing the quantity and quality of public services. The need for revitalization due to the pattern of central and regional financial balancing policies that are suspected to have the following effects:

- 1) Producer areas of mining, oil and natural gas (natural resources) products, as well as general mining, as well as areas with large forest resources, obtain a relatively high share of regional income. Similarly, areas that have vast and productive marine waters are able to raise their local revenue derived from the acceptance of balancing fund.
- 2) Districts and/or municipalities that do not have the mine and/or forest resources are not affected by the regional autonomy policy in the context of regional balance policies as defined in the laws and regulations.
- 3) The local government can not rely solely on General Allocation Fund and Special Allocation Fund, so the area is facilitated to increase its own Locally-generated revenue. It is also required that the local government service to the public in the provision of public goods should be as much as possible. Eliminate the impression of corruption and fraud in the field of government.¹²

In the assessment of Good Governance and the democratization of fiscal decentralization related to public policy transparency noted the problems faced by the general area, such as:

- 1) The high level of regional needs in terms of fiscal need is not balanced with the fiscal capacity (fiscal capacity) of the region, thus causing a fiscal gap.
- 2) The quality of public services is not prime, one of the reasons for people's reluctance to pay tax and levy.
- 3) Limitation infrastructure infra structure and public facilities.
- 4) Insufficient funding assistance in the form *block grant* (General Allocation Fund).
- 5) Not yet known potential of Locally-generated revenue approaching real condition.

9) Machfud Sidik, *Format Hubungan Keuangan Pusat dan Daerah Yang Mengacu Pada Pencapaian Tujuan Nasional*, Seminar Nasional, "Public Scorcarad", Jakarta 17-18 April 2001, p.5

10) K. J. Davey, *Pembiayaan Pemerintahan Daerah: Praktek-praktek Internasional dan Relevansinya bagi Dunia Ketiga* (terjemahan), UI Press, 1988, p. 263.

11) Mieke Komar (ed.), dalam Mochtar Kusumaatmadja Pendidik & Negarawan, *Kumpulan Karya Tulis Menghormat 70 Tahun Prof. Dr. Mochtar Kusumaatmadja, S.H., LL.M.*, Alumni, Bandung, 1999, p. 253.

12) Suparmoko, *op. cit.*, p. 422.

13) Mardiasmo, *Otonomi & Manajemen Keuangan Daerah*, Andi, Yogyakarta, 2002, p. 144.

6) Political will policy makers/decisions are still limited power.¹³

Recognizing the problems faced by the regions, it should be appreciated by the revitalization and reformulation of fiscal decentralization to improve Locally-generated revenue, but still partial in the pattern of central and regional fiscal policy. For instance are through Constitution of Regional Tax and Regional Retribution (Article 2 the letter of j and k Constitution No. 28 of 2009) stipulates property tax as well as Acquisition of Land and Building Rights become tax of regency/municipality. Since beside significantly, the United Nations can strategically increase Locally-Generated Revenue, the UN is a direct tax, its fair share (equitable), which can also be used as a policy instrument to attract investors by providing property tax incentives for new investors, for example through the provision of *tax holiday*.

From the juridical-theoretical dimension, more comprehensive revitalization and reformulation of central and regional fiscal reforms can be made through legal authority, as follows:

First, to increase local initiatives in accordance with the principle of real autonomy/real as broadest, in exploring the potential area based on real potential. Legal instruments that can be used to revitalize and reformulate both the constitution of Regional Tax and Regional Retribution and the constitution of Regional Governance which prohibit regions to collect Regional Tx and Regional Retribution other than those specified in the constitution "need to be amended", which reads: "Regions may set charges according to real potential as long as they are not contrary to statutory regulations-invitation". The reforms provide the legality of local initiatives to improve the capacity of regions to explore Locally-Generated Revenue sources.

Secondly, the mandate of the Constitution seems to have not been implemented i.e., other resources other than natural resources have not been regulated transparently in the law. For example, Bali with non-natural resources, which has cultural potential, local wisdom, natural beauty that has generated foreign exchange in tourism has not obtained a transparent, fair and equitable distribution, proportional of the foreign exchange of tourism. Therefore, the Representatives and Regional Representatives especially those representatives in Bali to fight for the realization of the mandate of the Constitution Article 18A paragraph (2) and Article 279 paragraph (4) of Constitution No. 23 of 2014 which determines: "Central and local financial relations shall be regulated by the law". Moreover, the Law on Fiscal Balance between Central and Regional (Constitution No. 33 of 2004) is no longer appropriate with the legal requirement for the community, still leaving vertical and horizontal inequality as well as the discussion does not get "touch" Regional Representatives. Under the terms of Article 22D paragraph (1) and paragraph (2) of the Constitution of 1945, Regional Representatives "shall be legally obligated" to participate in discussing the Central and Regional Financial Balance Constitution. Struggling for justice and equitable allocation of financing the implementation of regional autonomy is required to be a "significant" work of the Regional Representatives in its "limited" constitutional authority.

Thirdly, it seems that nowadays a grand design of Indonesian fiscal decentralization is needed. Fiscal decentralization is directed to realize a successful and efficient allocation of national resources. This is triggered by the fact that the balance of central and regional finance vertically and horizontally does not reflect justice and has not been fully proportional in accordance with the proportion of the distribution of government affairs according to the principle of money follow functions, especially in the field of basic services to the community. General Allocation Fund which should also be used for improving the quality of education including higher education in areas that mostly supply human resources to the regional bureaucracy, has not been transparently allocated in "Fiscal Balance between Central Government and Local Government". Through this National Seminar, the entire academic community of Warmadewa University as a community-run college under the auspices of "Korpri Welfare Foundation of Bali Province" of human resources proposes allocation of funds for improving the quality of education in the region to be regulated in the reform of the Central and Regional Financial Balance Law as mandated by the Constitution.

The three forms of revitalization and reformulation of the Central and Regional Financial Balance are at the core of the proposed solution to answer two legal issues proposed by the juridical-theoretical approach.

III.CONCLUSION

The broadest autonomy prescribed in the Indonesian constitution is identical to the broadest of autonomous teachings, so that the real factors in each region form the basis of regional initiatives to organize and manage their regional interests according to the interests and aspirations of the people. A more comprehensive revitalization and reformulation of central and regional fiscal reforms can be made through the legal authorities of upgrading regional initiatives in accordance with the broadest real autonomy principles, implementing constitutional mandates on other resources that have not been transparently regulated in legislation and required a grand design of Indonesia's fiscal decentralization.

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