

## The Cooperation Between Local Government And Foreign Institutions

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***Abstract-The implementation of Local Government system is directed to realize the welfare of Indonesian society. This is in accordance with the objectives of the country based on the fourth paragraph of the Preamble of the 1945 Constitution of Republic of Indonesia. The implementation of Local Government through this regional autonomy system needs to be improved in terms of the efficiency and effectiveness of national development as the emerging global competition in globalization era. In the realization of the achievement of equity of the community, the Central Government gives authority to the Local Government to regulate and develop the potential of natural resources and human resources within in their respective regions. One of the authorities given by the Central Government to the Local Government is that the Local Government can carry out relations and cooperation with foreign institutions. Based on the concept of the Unitary State, in conducting foreign cooperation, the Local Government cannot decide its own policies; there are matters that become the boundary for the implementation of foreign cooperation conducted by the Local Government.***

***Keywords-Local Government cooperation; foreign institution; international dispute settlement.***

### I. INTRODUCTION

In this era of globalization, a State should be prepared to face all any potential risks and processes of globalization. Equity of welfare and prosperity of society should be fulfilled by a State. The main pillar of the globalization process is the flow of trade with market liberalization as its primary dimension. By 2015, ASEAN has launched a new era of ASEAN economic community (AEC), and Indonesia becomes one of the participating countries and welcomes this era of AEC. The AECpartnership means an opportunity for investment flows in Indonesia, and vice versa. However, in relation to AEC, Indonesia is facing crisis in public infrastructure services, that the current condition may trigger Indonesia to make major changes in almost all sectors of life to meet the needs of the community, and changes made to this sector are considered multidimensional crises.

One of the efforts of major changes to be achieved is national development across Indonesia and improving public services in key sectors. In addition, the deregulation of licensing and policy reform is one of Indonesia's investment opportunities in facing the AEC. If Indonesia does not immediately prepare for facing the era of AEC, then Indonesia will be left behind in global economic and investment constellation with foreign countries, even within members of ASEAN countries.

National development aims to realize the equitable distribution of prosperous and prosperous welfare society based on Five Principles of Republic of Indonesia (Pancasila)

and the 1945 Constitution of Indonesia. In this case, the government seeks to conduct national development in various sectors. In order to achieve the development goals, it requires the support and active role of Local Governments and all Indonesian people so that the main target for the public welfare can be achieved with the maximum possibility.

In the realization of the achievement of the equitable distribution of the people's welfare, the Central Government gives authority to the Local Government to regulate and develop the potential of natural resources and human resources in their respective regions, by implementing relations and cooperation with foreign institutions. Giving authority of foreign cooperation by Local Government is expected to be able to develop regional potentials so that it may compete in the vast competition of globalization era.

Based on the concept of the Unitary State of the Republic of Indonesia (hereinafter abbreviated NKRI), in conducting foreign cooperation, the Local Government cannot decide its own policies; the implementation of the international cooperation conducted by the Local Government has limited authority. These limits are related to the regulation, authority and capability of each Local Government in conducting foreign cooperations. The problems that then arise in the implementation of foreign cooperation by the Local Government, namely the position of Local Government as the subject of international law in the manufacture of contracts or agreements of the cooperation, and also the accountability of the Local Government. These problems should certainly be examined in accordance with the concept of the NKRI.

## II. RESEARCH QUESTIONS

Based on the elaboration above, there are two main research issues as follows:

- (1) The implementation of foreign cooperation by the Local Government
- (2) The accountability of the Local Government in the implementation of foreign cooperation

## III. RESULTS

### 1. The Implementation of International Cooperation between Local Government and Foreign Institution

In order to maintain the implementation of Local Government in accordance with the mandate stipulated in the 1945 Constitution of Republic of Indonesia, the Local Government is given the authority to regulate and manage the governmental affairs according to the principle of

autonomy and assisting task (medebewind). The implementation of international cooperation conducted by the Local Government is basically part of the authority of the Central Government affairs. However, in order to accelerate the realization of the welfare of the community and increase the participation of the community, as well as to achieving the national development in the face of globalization development, the authority embedded to the Local Government includes the execution of foreign cooperation based on the concept of NKRI.

The concept of the Unitary State becomes the cornerstone of the definition of the autonomy. The concept of 'unitary state' means that a sovereign state shall be organized as a single entity, in which the Central Government as the highest body and its subnational units only runs the powers as assigned by the Central Government for the delegatory bodies.

The delegation of the authority related to international cooperation with foreign institutions by the Local Government is based

on legislation. Theoretically, the authority derived from the legislation can be obtained through three ways: attribution, delegation and mandate. H.D. Van Wijk or Willem Konijnenbelt defines these three terms as follows [1]:

- a. Attribution (atributie) Attribution is the granting of government authority by the legislator to the organ of government
- b. Delegation (delegatie)  
It is the delegation of governmental authority from a governmental organ to another governmental organ
- c. Mandate (mandaat)  
The mandate occurs when the organ of government allows its authority to be run by another governmental organ and on its behalf

The authority of the Local Government to execute the international cooperation as well as other foreign affairs has been stated explicitly in Law Number 23 of 2014 on Local Government and Article 1 paragraph (1) Law Number 37 of 1999 on Foreign Relations. The granting of authority to the Local Government in implementing foreign relations and cooperation is also stipulated in Article 5 paragraph (1) of Law of Republic of Indonesia Number 24 of 2000 on International Agreement.

In executing the authority in relation to the Local Government in conducting the foreign relations and cooperation, the Local Government shall fulfill the following matters:

- a) It is not contrary to the political and foreign policy of the Central Government
- b) It should not threaten domestic security
- c) It should not contrary to the relevant technical ministerial policies.

This becomes the justification that the implementation of international cooperation with foreign institution by the Local Government should remain guided by the interests and concepts of NKRI.

In the implementation of the government system of the Republic of Indonesia, it is closely related to the relationship between the Central Government and the Local Government. Basically the relationship between the levels of the government should be distinguished between the following [2]:

- Vertical relationship
- Horizontal relationship

In the vertical relationship, it is closely related to the supervisory function undertaken by the Central Government to the Local Government. This supervisory function is intended for decentralization and the sharing of power from the Central Government to the Local Governments, so that it can be managed in accordance with the concept of NKRI. There are several forms of supervision and control [3]:

- a. Repressive Supervision, i.e supervision conducted later after the program
- b. Preventive supervision,  
i.e. supervision conducted prior the program
- c. Positive supervision, i.e. supervision by higher bodies to provide direction and direction is intended to the lower bodies
- d. Obligation to provide notification
- e. Consultation and Negotiation
- f. Right on Administrative Appeal
- g. Decentralized government offices
- h. Financing

- i. Planning
- j. Appointment of Central Government Interests

In addition, in the horizontal relationship mainly deals with the cooperation between regions or agencies. A cooperation undertaken among agencies or other institutions, which are intended to improve public service and welfare.

In principle, the issues discussed in this section are as follows: First, when conducting transactions at the international level, the Local Government cannot be considered as the representation of its own region even though the region acts for its own sake, not the national interest. Consequently, it implies on the mechanism of the responsibility. The process of responsibility lies with the central government, although the agents are the Local Governments. This is because in the context of international law, the subject of international law is only known to non-Local Governments. Second, issues related to regional authority to establish foreign relations are transnational as evidenced by the continuity of foreign relations and cooperations related to the area of public international law, constitutional law and state administrative law [4]. In addition, the polemic of the issue is that when it concerns with the authority of the Local Government to implement the international cooperation: is the provision of the authority through legislation or any form of delegation of authority from the Central Government? If such authority constitutes the granting of laws and regulations, then the law only explicitly states the granting of authority of the Local Government in implementing the foreign cooperation. However, if the authority of the Local Government is a delegation of authority from the Central Government, then the Memorandum of Understanding (MoU) should only state that the agreement between the two governments, and it should only be signed by each regional head. In this case, the problem that arises is if

the implementation of this cooperation is delegation from the central government, it is reasonable if there is a role of the Central Government related to the MoU. If the signing of the MoU is by the head of the region, it is clear that the party that should be responsible for the agreement is the head of the region. Asserted by the author, to clarify that the delegation of authority related to the foreign cooperation from the Central Government to the Local Government, there should be a Decree from the Central Government (or the representation) underlying the MoU. The Decree issued by the Central Government may be justification that the implementation of such cooperation has been acknowledged and approved by the Central Government. The existence of a Decree from a representative of the Government, indicates that based on the concept of the Unitary State, the foreign policy is basically the authority of the Central Government and the implementation must be one door policy; through this mechanism, the role and position of the Central Government in organizing this cooperation are clear.

In relation to the implementation of foreign cooperation by the Local Government in the concept of NKRI, a state is obliged to be responsible for the form of violations committed against agreed agreements. The accountability in this form may occur against a country that is found to be in breach of an agreement or contract [5]. In the case of breaching the agreement, under International Law, the state's liability is to pay compensation equivalent to the loss as the results of the violation of the agreement.

The international society considers that the breach of such treaty constitutes negligence of a country. This violation may reduce the confidence of other countries, and it is a violation of the doctrine of *pakta sunt servanda*. The possible violation is in the presence of either party or body or state officials. In general, in the case of a violation related to the conduct of foreign cooperation by the Local

Government, the state shall not be liable for any actions taken by an individual [6].

Regulations governing the authority of the Local Government to establish cooperation with international parties state that the cooperation is a series of activities that occur because of formal ties between the Local Government with the foreign parties to jointly achieve certain goal in the context of the implementation of the Local Government affairs. In this case, the foreign parties are State Government or Local Government Overseas (of other countries), other international organizations or institutions, non-governmental organizations as well as state-owned enterprises overseas (of other countries), and private entities outside country. Furthermore, stated in Ministry Regulation of Home Affairs Number 74 of 2012 on Guidelines for Regional Cooperation with Foreign Private Body [7] also explains the meaning of Local Government cooperation with foreign private entities hereinafter called cooperation is a formal engagement between Local Government and foreign private entities to jointly manage certain activities in order to improve the quality of service to the community based on the principles of mutual benefit.

The authority granted to the Local Government in implementing foreign cooperation covers various aspects of the broad fields, namely: investment, foreign trade, tourism, education, finance, and other fields. Foreign cooperation by the Local Government may be carried out as long as the cooperation does not deal with particular issues concerning the foreign political affairs, defense, security, judicial, monetary and fiscal policies of national and religious affairs. In Article 3 of the Ministry Regulation of Home Affairs Number 03 of 2008 on Guidelines for Implementation of Local Government Cooperation with Foreign Parties explains the form of foreign cooperation that can be done by the Local Government, namely:

a. provincial and district / city cooperation;

b. technical cooperation including humanitarian assistance;

c. cooperation of equity participation; and

d. other cooperation in accordance with the laws and regulations.

Therefore, any policies related to international relations and cooperation by the Local Government are basically a “one door policy” policy.

## 2. Liability of Local Government in Implementing Foreign Cooperation

According to the Indonesian Dictionary, accountability implies the state of being obligated to bear everything, in the event of something occurring, subject to prosecution, blame, imprisonment, and so forth [8]. In the legal dictionary, there are two terms that refer to accountability, namely liability and responsibility. Liability (aansprakelijkheid) is a specific form of responsibility. The definition of liability shall refer to the position of a person or legal entity deemed to have to pay a form of compensation after a legal event or legal action, while liability refers to the most comprehensive meaning, encompassing almost any character of risk or liability [9], which must be dependent, or which may be responsible. Liability is defined to designate all characters of rights and obligations. In addition, liability is also a condition to be subject to actual or potential obligations, conditions for being liable to actual or possible matters such as harm, threat, crime, expense, or burden, conditions which create the duty to implement the provisions of the law immediately or in the future [10].

*According to John Bell in his book “Governmental Liability: Some Comparative Reflection” states that the emergence of the concept or theory of accountability is based on the concept of*



*error and risk. John Bell states that the basis for the concept of liability is as follows [11]:*

*Why should the state be liable: The first concept is fault. We have amoral responsibility to make good the harm, which has been caused by our neglect or wrongdoing. Clearly there is an issue about the standards that are expected of, but the concept of responsibility for fault is clear. The second concept is that of risk. Even without fault, if we have created a situation of risk of harm for our own purposes (or for the community which we serve), then there is ground for holding it responsible. The idea that taking the benefits implies sharing the burdens is well acknowledged.*

In her book, Tatiek Sri Djatmiati [12] argues that the concept of mistake in liability is divided into 2, namely personal mistakes and positional mistakes. This concept of mistakes was originally developed in France, in relation to the use of authority. The use of authority by the Government according to the concept of French law stems from two main principles, namely legality and responsibility. In this case, legality means that the government must act in accordance with the law. Therefore, its decisions are at risk of being canceled by the Administrative Court. In addition, the responsibility identifies that the government will be responsible for compensation for citizens who suffer losses by decisions or actions by the government.

In the French legal system, governments are liable in some situations. This accountability occurs because of the principle of public burden (equality before public burdens) as set forth in Article 13 of the Declaration of the Rights of Man of 1789. In the case of Agnes Blanco, the Tribunal des Conflicts of 1873 set out three principles [13]:

a) Principles of State accountability for the errors of its officials

b) Accountability is subject to rules that separate and differentiate it from private law

c) The principle of liability is the jurisdiction of the Administrative Court.

A State shall be responsible for any acts of violation committed by the State. In relation to the forms of state responsibility, the state's rights and duties in international law and in its international agreements should be understood. In international law, the rights and duties of the state have been laid down in the American Institute of International Law in 1916, the Montevideo Convention 1933 on State Rights and Duties, and in the Declaration on the Right and Duties of State compiled by the UN International Law Commission 1949.

The responsibility of a country will arise if it is accompanied by the granting of rights and duties. If either party is found to be in breach of a duty as agreed in the International Treaty, then a state's responsibility will arise. Based on the *pacta sunt servanda*, the parties may resolve the dispute arising as agreed in the international agreement or the contract.

In conducting cooperation with international institutions, basically every government official in carrying out the governmental act is entitled with responsibilities qualified as personal and official responsibilities.

The distinction between the responsibilities of official and personal responsibilities for the acts of government brings consequences related to criminal responsibility, civil responsibility, and administrative or administrative responsibility of the state. Criminal responsibility is personal responsibility of local government officials in relation with governmental acts of maladministration. Civil responsibility is official responsibility in relation to lawlessness by the authorities (*onrechtmatige overheidsdaad*), whereas civil responsibility is a personal responsibility if there is an element of maladministration. Meanwhile, administrative responsibility is

basically any responsibility related to the job description.

In the implementation of foreign cooperation by the Local Government, in the concept of NKRI, a state is obliged to take responsibility for any violations committed against the agreements. Responsibility may occur against a country that is found to be in breach of an agreement or contract.[14] In case of breaching the agreement, under the International Law, the state's responsibility is to pay compensation equivalent to the loss as the result from a violation of the agreement. In the case of a violation related to the conduct of foreign cooperation by the Local Government, the state shall not be liable for any actions taken by an individual [15].

#### IV. CONCLUSION

The implementation of foreign cooperation by the Local Government is a form of the implementation of regional autonomy based on the concept of NKRI. The authority of such cooperation is the delegation of authority in order to increase the potential of natural resources and human resources in the region. In this case, the foreign cooperation policy by the Local Government should be "one door policy", where the Central Government has the function of control and supervision on the implementation of foreign cooperation by the Local Government.

The implementation of foreign cooperation by the Local Government, in the concept of NKRI, a state is obliged to be responsible for any violations committed against the agreements. Responsibility may occur against a country that is found to be in breach of an agreement or contract [16]. In case of breaching the agreement, then the state's responsibility is to pay compensation equivalent to the loss as a result of the violation of the agreement.

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