

Research Article

The Relativity in the Absolute Authority of the Central Government in Religious Affairs

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Abstract.

The legal policy of the regional government, post-political reform, puts religious affairs under the absolute administrative authority of the central government. However, the development of society requires religious affairs to also be taken care of by the regional government. We argued that there is relativity in the absolute administrative affairs of the central government authority in the scope of religion. This research aimed to analyze and identify the form of relativity in the absolute administration of the central government in religious affairs. Second, the advantages and disadvantages of the absence of certainty related to the absolute administration of the central government in religious affairs were discussed. The method used in the study was legal doctrinal research with statutory and conceptual approaches. The results of the study concluded that the implementation of absolute government administration in the field of religion turned out to be relative, with the involvement of the regional government in managing and regulating religious affairs. This occurs in the affairs of Islamic boarding schools, hajj and umrah, zakat, and the maintenance of religious harmony. Second, there are advantages and disadvantages to the involvement of regional governments in carrying out religious affairs. Among the advantages, namely the financial burden and the activities of the central government in the administration of religious affairs can be assisted by the regional government budget. The weakness was in the regulation and implementation of the absolute government administration in religious affairs by regional governments due to a lack of understanding of the development of government affairs.

Keywords: Relativity, Government Administration, Central Government, Religion

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1. Introduction

Experts have concluded that although the Indonesia explicitly states that it adheres to a unitary state system, the overall design leads to a federal system[1, p. 7]. This is indicated by the design of the relationship between the central and the regional authorities which regulates the absolute administrative authority of the central government and the autonomous authority of the regional governments. Because of the strong division of authority, experts also refer to Indonesia as a quasi-federal system that preserves the integrationist approach.[2, p. 604] Based on the theoretical framework, the choice of a unitary state with a strong decentralization concept through the distribution of authorities between the center and the regions as chosen by Indonesia is to bridge the many interests. [3, p. 251]

The distribution of authority between the center and the regions in Indonesia is manifested in the division of government administrative affairs which consists of absolute, concurrent and general government affairs. One of the absolute government administrative affairs is found in the scope of religion. Absolute administration by government can only be carried out by the Central Government alone and through the Governor as the representative of the central government based on the principle of deconcentration. This means that religious affairs are placed as part of the absolute administration of the Central Government which cannot be distributed to the provinces and districts/cities. [4, p. 10]

The problem identified in this research is when the legislation actually gives the role of regional government to carry out government administrative affairs in the scope of religion. Government administration in the field of religion includes: support and facilitation of Islamic boarding schools (places for religious education), organizing hajj[5, p. 34], zakat[6, p. 8], and maintenance of religious harmony.[7, p. 75] Even some regional governments legitimize their authority through regional regulations.[8, p. 36] The involvement of regional governments in religious affairs has shifted the absolutism nature of the administration that previously could only be carried out by the central government. This phenomenon certainly has both positive and negative legal consequences.

Based on the background above, this research focuses on examining, first, what is the form of relativity in absolute central government administration in religious affairs? Second, what are the advantages and disadvantages in the absence of certainty in relation to the absolute administration of the Central Government in religious affairs?

To ensure the originality of this research, a literature review has been carried out on several previous studies that have similarities and describe the differences with this research, among others. First, Deni Jaya Saputra's research which focuses on the legal rationalization of why regional governments have authority in religious matters. [6] Meanwhile, the research that will be studied focuses on the relativity of absolute administrative authority which can also be carried out by regional governments and the legal consequences of this relativity. Second, this study from the Deputy for Coordination of National Unity at the Ministry of Politics, Law and Security of the Republic of Indonesia that was investigated in 2021 which focused not only on religious affairs but on the absolute administrative authority in general and the general government administration. Meanwhile, this research focuses on the relativity of absolute administrative authority that can also be implemented by regional governments and the legal consequences of this relativity. This research is important and interesting to do in order to enrich references on the development of constitutional law, especially the relation between central and regional government authorities in religious affairs.

2. Methods

The research method used in this research is doctrinal legal research.[9, p. 43] Using a statutory and conceptual approaches [10, p. 93] Legal materials used are primary legal materials[11, p. 67] includes laws and regulations; and secondary legal materials include books, expert legal opinions, scientific studies from the legal community, as well as journals relevant to this issues.

3. Results and Discussion

3.1. The relativity of the Absolute Administration of the Central Government in Religious Affairs

Indonesia as a unitary state is divided into provinces and these provinces are divided into districts and cities. Each province, district, and city has a regional government. Regional governments carry out the widest possible autonomy, except for the government administration which are determined by law as the authority of the Central Government. This provision indicates the existence of government administration that cannot be carried out by regional governments based on the principle of the widest possible autonomy.

The government administration according to the Regional Government Law are referred to as absolute government administration. Absolute government administration is one of the 3 (three) classifications of government administration in Indonesia, in addition to concurrent government administration and general government administration.

The Law on Regional Government stipulates that absolute government administration refer to government affairs which are fully under the authority of the Central Government. However, in carrying out these absolute government administration, the Central Government can carry out itself or delegate authority to Vertical Agencies in the Regions or governors as representatives of the Central Government based on the principle of Deconcentration. According to the law, there is no opportunity for district/city local governments to participate in carrying out absolute government affairs. However, one of the absolute government administration, namely religious affairs, is in fact not completely carried out in absolute terms by the central government.

In its development there are a number of government administration in the field of religion that involve the roles and responsibilities of the Regional Government to participate in carrying out these government affairs.

Islamic boarding schools

The implementation of Islamic boarding schools is aimed at forming a moderate understanding of religion and religiosity and love for the homeland as well as forming behaviors that encourage the creation of religious harmony. Law Number 18 of 2019 on Islamic Boarding Schools has regulated the role of the Central Government and Regional Governments to provide support and facilitation to Islamic Boarding Schools to carry out da'wah functions and community empowerment functions in the form of program cooperation, policy facilitation, and funding. The Regional Government in accordance with its authority is obliged to provide support and facilitation to pesantren. On this basis, many local governments have finally issued regional regulations governing Islamic boarding schools.

3.1.1. Organization of Hajj and Umrah

The implementation of the Hajj is a series of religious worship that has been guaranteed in the 1945 Constitution of the Republic of Indonesia. The implementation of this pilgrimage and Umrah when viewed from the perspective of government administration is classified as absolute government administration in the scope of religion. As an

absolute government administration, it should absolutely be under the authority of the Central Government. However, the central government does not exercise this authority absolutely. In terms of organizing regular pilgrimages, which according to Article 10 paragraph (1) of the Law on Organizing Hajj and Umrah pilgrimages is the responsibility of the Central Government, but in terms of transportation services, the role of the Regional Government is involved.

In accordance with Article 36 of the Law on the Implementation of Hajj and Umrah, the Regional Government is responsible for serving the transportation of Hajj pilgrims from the area of origin to embarkation and/or from debarkation to the area of origin. These responsibilities include accommodation and provision of food for the pilgrims. Implementation of the responsibility of the Regional Government to serve the transportation of pilgrims is also charged to the local Revenue and Expenditure Budget. The Central Government in fact requires the involvement of the Regional Government in carrying out absolute government affairs in the field of religion, which in this context aims so that the public pilgrimage can be served optimally.

3.1.2. Zakat Management

Paying zakat is an obligation for Muslims who are able to comply with Islamic law. The Indonesian government considers it necessary to regulate the management of zakat in an institutionalized manner in accordance with Islamic law in order to increase the efficiency and effectiveness of zakat. As part of the category of government administration in the scope of religion, the affairs relating to zakat management can also be categorized as absolute government administration. This is indicated by the establishment of the National Amil Zakat Agency (BAZNAS) by the Central Government. BAZNAS is a non-structural government institution that is independent and responsible to the President through the Minister. BAZNAS is authorized to carry out the task of managing zakat nationally. In terms of institutional design, BAZNAS is an organ of the Central Government, because it was formed by and is responsible to the President. However, the position of BAZNAS is not only at the national level, but also at the provincial and district/city levels. Although the authority for its formation remains with the Central Government through the Minister who carries out government affairs in the field of religion.

It is just that, even though the position and authority for forming BAZNAS is with the Central Government, Heads of Region have a role in proposing the formation of BAZNAS in their regions. In fact, provincial BAZNAS and regency/municipal BAZNAS in carrying out their duties are financed by the Regional Revenue and Expenditure Budget. The Central Government in carrying out religious affairs, the management of zakat is not absolute. The Central Government continues to involve the roles and responsibilities of the Regional Government.

3.1.3. Maintenance of Religious Harmony Affairs

Recognizing the complexities of government affairs in the religious field, in 2006, the Minister of Religion and the Minister of Home Affairs enacted Joint Regulations No. 8 and 9 of 2006 on Guidelines for the Implementation of Duties of Regional Heads/Deputy Regional Heads in Maintaining Religious Harmony, Empowering Religious Harmony Forums, and the Establishment of a House of Worship. Through this Joint Regulation, the Central Government expressly withdraws the role of the Regional Government to take part in the responsibility and obligation to maintain religious harmony. Not only in maintaining religious harmony, the Central Government through this Joint Regulation of the Minister of Religion and the Minister of Home Affairs also assigns tasks to the Regional Government to facilitate the establishment of the Forum for Religious Harmony (FKUB), as well as empowering FKUB through the establishment of the FKUB Advisory Council. In addition, the local Government is also burdened with the obligation to facilitate the availability of places for the construction of houses of worship. The implementation of the maintenance of religious harmony, the empowerment of religious harmony forums, and the establishment of houses of worship which are also assigned to the Regional Government by the Central Government indicate that absolute government administration in the field of religion are increasingly proven not to be completely the domain of the Central Government's affairs.

3.2. Strengths and Weaknesses in Blended in the Relationship Between the Central and the Regional Government

The involvement of regional governments in religious affairs has shifted the implementation of the absolute administration of the Central Government. This uncertainty certainly has both positive and negative legal consequences. From the aspect of advantages,

first, the budget burden and activities of the central government in the administration of religious affairs will be assisted. By handing over some government affairs in the field of religion, especially the support and facilitation of Islamic boarding schools, organizing hajj, zakat, and maintaining religious harmony, in addition to carrying out activities, the regions will be assisted by the regional government, but from a budget perspective, it can also ease the burden on the central government.

Second, handing over to the regions will facilitate the implementation of administrative function in the scope of religion because the regional governments certainly understand and know the real situation and the real needs of the community related to matters in the religious affairs, so that it will be more effective and efficient.

As for the shortcomings, first, it can trigger differences in the regulation and implementation of absolute government administration in religious affairs, especially the support and facilitation of Islamic boarding schools, organizing hajj, zakat, and maintaining religious harmony because they are held by each region which has diversity. This difference is due to the fact that it is possible for each region to regulate and apply local content material in their regional regulations.[12] With the granting of authority to regional governments, it will also be vulnerable to the emergence of arbitrariness under the pretext of discretion and local content, making it very difficult to control.

Second, it is vulnerable to discrimination against the constitutional rights of religious minorities. Such discrimination can occur when the regional government through the Forum for Religious Harmony (FKUB) carries out the maintenance of religious harmony in the field of building houses of worship. Followers of religious minorities will find it difficult to establish a religion in the regions because they often experience rejection.[13] The refusal was due to the mechanism for the minimum number of users of the house of worship, community support, and recommendations from the Regency/City religious office, as well as recommendations from the Regency/City FKUB.

Third, increase the burden on regional budgets. The burden of providing support and facilitation of Islamic boarding schools, organizing hajj (transportation of pilgrims and proposing hajj candidates), zakat (financing of Regency BAZNAZ), and maintaining religious harmony are borne by the Regional Revenue and Expenditure Budget. In fact, this authority in the field of religion is an absolute authority that imposes a budget on the central government. Therefore, there should be a transfer/assistance of funds from the central government according to the principle of deconcentration or at least incentives and subsidies.[14, p. 46]

4. Conclusions

Based on the discussion above, this study concludes: First, there is a relativity in the absolute government administration in religious affairs. It is shown by the involvement of the Regional Government in managing and regulating government affairs in the field of religion. This occurs in the affairs of Islamic boarding schools, hajj and umrah, zakat, and the maintenance of religious harmony. Second, there are advantages and disadvantages due to the absence of certainty in the administration of absolute central government affairs in the scope of religion. From the advantageous point of view, the budget burden and activities of the central government in the implementation of religious affairs, especially the support and facilitation of Islamic boarding schools, the implementation of hajj, zakat, and the maintenance of religious harmony will be assisted by the Regional Government. In addition, it will facilitate the implementation of affairs in the field of religion because the local government better understands and knows the real situation and the real needs of the community, so that it will be more effective and efficient. Meanwhile, from the disadvantageous aspect, it has the potential to trigger differences in the regulation and implementation of absolute government administration in religious affairs because each region has diversity. On the one hand, this diversity has a good impact, because it is in accordance with local wisdom, but on the other hand, uncontrolled diversity has the potential to harm local communities, and even trigger discrimination.

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