

Legal-Politic Reconstruction of Worker Regulation in the Regional Corporation Bumd

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ABSTRACT

This research is based on the basic assumption that a change of legal politics is necessary against the prevailing employees' administration of the regional company (corporation) in Indonesia, it is based on the fact that the employees regulation in the regional company employees which has never changed for almost 52 years, so that it causes new problems which have negative effects on development of regional companies and development of economy and regional autonomy as well. The Indonesian Constitution of 1945, in the fourth paragraph of preamble clearly states that public welfare is the main objective of the state, and so does the article 33 point (2), (3) and (4), in which it states that production branches which are vital to the state and govern the life of many people are mostly ruled by the state. Other regulation which is still in accordance with the Constitution is the act No 5 of 1962 about regional company, all are focused and meant to bring about public welfare based on reflection of democratic spirit. It is based on the act No 32 of 2004 about regional government, the regional company has an important role to play, that is to support the achievement of public welfare which is related to regional development in the economy area which in turn results in national economy development. But with this imperfect employee's administration, regional companies cannot achieve their maximal productivities. So from the explanation, the problem of public welfare is democratization. From the analytical result can be concluded: that legal politics of employees administration of the regional company workingman in positive law is not consistent with democracy aspect, fundamental values (justice, usefulness, legal assurance); indicates that there is a weakness in the element of legal politics of employees administration which is central to legal characteristic relating to the achievement of state's goal.

Keywords: Legal policy, regional corporation, legal-politic reconstruction, worker regulation

INTRODUCTION

Indonesian national hopes formulated in the preamble of the 1945 Constitution, paragraph IV states that Indonesian national goals are to protect all Indonesian people and areas, to further public welfare, to educate national life, and to participate in upholding world order, eternal peace and social justice.

The Indonesian hopes are state's goals which should be realized by government by way of legal administration (regulation) that is the Indonesian Constitution of 1945.

From this goal of regulation, it be seen that Indonesia is the state of law (legal politics) adheres to welfare state and according to lemaire is modern legal state which has objectives to safeguard security and implement public welfare (bestuuzorg). According to Utrecht, the role of modern legal state is very wide in bringing about the welfare. For the state, to realize public welfare should be in accordance with values and norms in the article 33 of the Constitution.

If the welfare is to be achieved by making use of regional company and autonomy, the government should be consistent with constitutional directive in its regulation and it needs legal politics which emphasizes democratic aspect, basic values and the employee of regional company. Here it is where the crucial role of legal politics will color characteristic of the law.

Legal politics is related to power use in regulating the country, nation and people, and it will also determine direction and objective for achieving public welfare. All of these should be achieved based on philosophy of Pancasila, not on a way of capitalistic, communist life, or religious fanatics, so legal politics is as an instrument or a vehicle and government step to create a national legal system in reaching national objectives.

Regional company regulated in act No 5 of 1962 on regional company (corporation), is still polemic in legal politics in particular relating to employees management of Regional Corporation.

From viewpoint of ontology; the workingmen (employees) are useful to bring about Indonesian public welfare by way of regional economic development (agent of development) resulting in development of national economy as written in the article 33 of the 1945 Constitution.

All activities of regional company (corporation) should be aimed at regional development in particular and national economic development in general in the framework of guided economy to fulfill people needs by prioritizing industrialization and peace and working satisfaction in the company towards a fair and prosperous society.

A productive branch which is important and vital to the region and dominant in the life of people in the region in question is carried out by the regional corporation with capital on the whole is capital of the region in question.

In the background there are philosophic, theoretic, and juridical problems;

Philosophic problem, there is a value shift in the positive law of regulation of regional corporate employees, because public servants (PNS) who were at first as state and public attendants, and governmental apparatuses whose orientation was public service shift to become employees of regional corporation whose orientation is profit-oriented, so that from epistemological area, it diminishes the value of social justice.

Regulation of employees which is more than one acts comes from general explanation of Act No 5 of 1962 on Regional Corporation. Explanation No 2 says as follows:

In order to implement the aforementioned purpose (.....A regional company (corporation) is basically a company whose capital on the whole consists of separated state riches (assets) and in the framework of fund and force usage is in accordance with MPRS decree, it is necessary to give a chance of participation to other progressive parties in regional corporation),as the first ground in managing or regulating regional corporation, all companies which are founded according to this Act whose capital come from state corporation based on Act No 1 of 1957 and Act No 19 of 1960 (about nationalization of Dutch company) to the region are regional corporations according to this act.

So it can be inferred that: regional corporation founded is based on Act No 5 of 1962; its capital comes from the separated regional riches and in framework of fund and force usage according to MPRS decree No 1/MPRS/1960, other parties can be participated to strengthen regional corporation, that is state corporation which is founded according to the Act No 1 of 1957 and Act No 19 Prp of 1960 (nationalized Dutch company).

Especially Article 27 paragraph 1 and 2 of Act no 19 Prp of 1960 which states as follows:

1. With governmental regulation to Daerah Swatantra can be given in:
 - a. Certain state corporation ;
 - b. A part of cosmos developmental fund written in Article 18 point 2 sub
2. Daerah Swatantra can be asked to join in development and implementer of certain state corporation in its area which will be regulated by governmental regulation.

Regional and national development continuously grow to fulfill the need, positive law should develop as well according to public demand.

Theoretical problem, function and role of government including regional government is in accord with the principle of state power, entitled to regulate to the employees of regional corporation, therefore positive law utilized to regulate the employees is as follows:

1. Act No 5 of 1962 on Regional Corporation
2. Act No 8 of 1974 Jo Act No 43 of 1999 on principles of employees.
3. Act No 13 of 2003 on workers
4. Act No 32 of 2004 on regional government

The act No 5 of 1962 on Regional Corporation in article 26 chapter XIV obviously regulates the employees; but it is not perfect (incomplete), so in behalf of the employees of regional corporation it has to adopt from other regulation.

Whereas Act No 5 of 1962 on Regional Corporation has not changed yet so far, so that regional corporation for employees' regulation (engagement) doesn't suit demand of Regional Corporation anymore.

Legal policy of regional corporate workers which more than one Acts (from viewpoint of axiological) influences the chance to bring about public prosperity in general and regional corporate workers in particular.

Juridical Problem, there is a norm disharmony between Act No 6 of 1969 on statement no more prevail various acts and Government regulation as replacement of act and article 2 of explanation of Act No 6 of 1969 on statement no more in effect of various acts and government regulation as replacement of the acts.

In the act No 6 of 1969, article 1 states that: since the act has been legalized from the outset, states that no more prevail the act and government regulation as replacement of the act as referred to in the appendix I and II of the act.

Article 2 statement no longer in effect to an act mentioned in the appendix III of the act is set at the time the act as replacement has been put into effect.

In the act No 6 of 1969 on statement no more in effect to various acts and government regulation as replacement of act date July 5, 1969 follows up

- I. the MPRS decree No XIX/MPRS/1966
- II. MPRS decree No XXXIX/MPRS/1968

Sociological problem, the rights of original workers of Regional Corporation (Act No 5 of 1962 on regional corporation) is disregarded due to prevailing legal politics. Basic worker of Regional Corporation (Act No 5 of 1962 on regional corporation) gets salary which is not the same as one the worker of Regional Corporation gets who comes from public servant sent to

the regional corporation (Act No 8 of 1974 Jo act no 43 of 1999 on principles of employment).

So legal issue which is related to legal politics in positive law indicates interest dominance of regional economic development which will support national economic development by utilizing workingman from the outside of regional corporation without being followed by legal politics of employment regulation of regional corporate workers which is more specific.

the task of legal politics to bring about, and to reach, state goal, therefore legal politics has to be present in law or legislation, that is to ensure the fair and useful regulation in order to result in legal certainty, so that the law can work well which is in accordance to the concept of state goal in bringing about public welfare.

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Legal politics as legal policy is legal direction which will be obtained by the state to achieve the state goal, in the form of new law-making or replacement of old law, such as the replacement of Act No 5 of 1962 on Regional Corporation.

The Act No 5 of 1962 on Regional Corporation was published in the era of old order and it has reached 51 years old, so that regulation/legislation has not been in accordance with economy development and business, nationally and internationally. The act no 5 of 1962 on Regional Corporation now still prevails and it is used as a ground in designing and formulating regional regulation.

In the paragraph IV of preamble of the 1945 Constitution states that state goals are:

- I. To protect all Indonesian people and areas
- II. To further public welfare
- III. To enlighten or educate national life
- IV. To partake in carrying out world order

Public welfare is one of the Indonesian state goals. The public welfare in addition to public economic prosperity including order, working satisfaction and legal certainty in working so that working activities increase because there are hopes for the future.

The 1945 Constitution is as follow-up to realize the state goal. In article 33 point 2 & 4 it is stated that:

1. Point 2. Productive branches vital to the state and dominant in life of many people are ruled by state.
2. Point 4. National economy is carried out based on economic democracy by the principle of collectiveness, efficiency, fairness, continuity, environmental oriented; being independent and maintain balance of advancement and unity of national economy.

Based on the article 33 of 1945 Constitution, Regional Corporation is founded. The act No 5 of 1962 is an act on Regional Corporation.

Legal politics about regulation of employees in regional corporation is administered in article 26 of the act no 5 of 1962 on regional corporation. It states as follows:

1. Legal position, salary, pension, and other income from director and employee/worker of Regional Corporation are administered by the prevailing regional regulation after being legitimized by superior office by considering main rules in the regional salary statute.

2. Director appoints and dismisses employee/worker of Regional Corporation according to employment regulation approved by regional head/stockholder based on main rules meant by point (1).

Legal politics of administration of regional corporate worker in positive law of act no 5 of 1962 on Regional Corporation doesn't indicate positive management of employment, so that regional corporation cannot contribute maximally to regional government.

This is attributable to formulation of management is not carried out about principles of regional corporate employment; so that peacefulness and working satisfaction in regional corporation aren't conducive, there is always anxiety about status of employee and the future of workers from regional corporation and their families as well, so that the workers of regional corporation cannot concentrate.

Based on legal politics of administration of workers in the regional corporation which prevails in positive law which cannot fulfill basic values from the workers of Regional Corporation, renewal or restoration is necessary in legal politics of management of workers from Regional Corporation.

The forthcoming legal politics must look at national legal politics as guidance by upholding the interest of workers from Regional Corporation, so it will result in public prosperity. This is a manifestation of responsibility from the state and government in welfare state which will be carried out, suits development of governmental system that will be carried out towards formation of good governance.

To decide the forthcoming legal politics by way of renewal or restoration from the aspect of fundamental values (justice, usefulness, legal certainty), starts from realizing the goal and source of legal politics which carries goal, ground, basic norm of Indonesia that can be seen in the preamble and articles of the 1945 Constitution as indicated in act no 5 of 1962.

If the legal politics in the existing positive law will be renewed, there must be legal thinking which has to be based on legal legitimacy (supremacy of the Constitution) and *rechsidee* (what the law wish for) by considering the following elements:

1. All of national components have commitment to realize and not to deny the goal and ground of national legal politics in Indonesia.
2. To consider axiological value of usefulness of workers from regional corporation in behalf of regional corporation and public.
3. To see the weakness of legal politics in positive law that needs to be renewed in certain area considered as necessary based on goodwill, political will and good governance.

Related to the renewal of legal politics which is not consistent to aspect of fundamental values (justice, usefulness, legal certainty) as the main key of legal politics, the renewal is carried out by considering:

1. Direction of legal politics is consistent to the direction of national legal development with all aspect.
2. The goal of legal politics has to be in accordance with the goal of national law.
3. The expected result is in form of law order in the life of public, nation, and state in the regulation of workers of Regional Corporation in order to bring about public prosperity.

There are some reasons in viewpoint of epistemology why legal politics of regulation of workers from regional corporation in positive law (act no 5 of 1962) is renewed based on theory of welfare state.

1. Philosophic reason that value of usefulness from the workers of Regional Corporation is very high, usefulness for Regional Corporation itself and to stimulate national economy.
2. Juridical reason that management or regulation of workers from regional corporation is very vulnerable to legal cases, among other things because of economic interest and the future of workers, so that justice and legal certainty are not optimal and these will be influence on peacefulness and working enjoyment/satisfaction to the workers/employee from regional corporation
3. Social reason that there is belief that people have not felt the result of legal politics carried out by government in the management or regulation of workers from regional government is imperfect.

Based on the aforementioned reasons, the legal politics in regulation of workers from Regional Corporation indicate that legal politics has to be capable of placing and ensuring the target obedience in the positive law related to general principles of good governance in bringing about public welfare and prosperity.

Those principles are among other things the principles of legal certainty and accountability which are needed to develop the policy bases for regulation of workers from Regional Corporation.

CONCLUSION

The restoration of legal politics in administration or regulation of workers of regional corporation is carried out by reconstructing legal politics of worker regulation in the regional corporation which emphasizes on regulation of authority/power and economic interest reflecting good governance to realize the state goal, that is public prosperity based on aspect of fundamental values consisting of the value of justice (fair and just treatment to the workers in the regional corporation); value of usefulness (for regional corporation and for regional government as well); value of legal certainty (up-to-date regulation of employment for the workers of regional corporation which follows or fulfills demands of public life).

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