



## The centralization of agrarian politics of law in the decentralization era in Indonesia

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### Abstract

Since the reformation was proclaimed in 1998, the echo of democratization has started to be the conversation topic of public discussion in this country. The enthusiasm for being released from the authorization fetter that had been a main symbol of the previous regime rolled, formed a snowball (*snow balling effect*) and then led its way to the demand of reformation by defeating the new regime along with its centralistic reigning system. The agrarian affairs in Indonesia which is basically should be managed by local government, is still being managed by central government until today. In fact, several acts related to local government state that agrarian affairs should be managed by local government. By giving irrational reasons such as “if the agrarian affairs are managed by local government, Indonesians would be fragmented or local government does not have enough capable human resources who have proper knowledge to manage the agrarian affairs, and other irrational reasons”, central government seems to make irrelevant excuses. In contrast, some studies showed that the majority of the citizens prefer the agrarian affairs to be managed directly by their own local government. The citizens claim that the local government has capability to manage it and the local government could provide some policy innovations related to the agrarian affairs to simplify the access and reduce the unnecessary expenses of the land certificate due to the minimum service fee and other innovations that could facilitate the agrarian service in the region easily. Besides, local government might have infrastructure networks and other governmental service facilities from the districts to sub-districts because local government has region and community while *The National Land Agency* does not have these. That is why when agrarian conflict appears, it is rare for the community to complain to agrarian office, but the community tends to complain to local government. For addition, there are many negative implications in local areas as long as the agrarian affairs are still being managed by central government. For instance, the service area would be too wide while having limited agrarian affairs offices and human resources. This basically leads to improper and non maximal service for the public. By aiming to have effective application model of agrarian affairs that can be applied in the local regions, the central government still has authority to control the general policy, norms determination, standards, procedures, and criteria, but operational technical service such as land registration, and publication of the land certificate should be performed by local government.

**Keywords:** centralization, local autonomy and agrarian politics of law

### 1. Introduction

#### 1.1 Background of the Study

Democratization demand in Indonesia has become public discussion for most people since the beginning of reformation era. One of the democratization forms is giving autonomy to locals as many as possible. This matter is rooted by a consideration which states that as long as centralization era has become part of the new regime, it has given the negative effects back to the local community especially from its political treatment, development realization, and community service.<sup>1</sup> For these reasons, the effort to improve the local autonomy has become something certain in the governmental system after reformation. According to Hasnon in Hoessei, “this effort is a natural deed refer to centralized tendency aims to the balance lost of fundamental community politics.”<sup>1”</sup> One of several logical judgments related to unsuitable centralized administrations is geographical conditions and social structures of Indonesians which are fragmented in many regions. This creates a distance related to the service reins that has become too far and ineffective. However, it does not mean we leave our nation concept as a united nation. In fact, by

having decentralization, we strengthen our united nation because every region will apply the decentralization principle with responsibility for Republic of Indonesia <sup>[1]</sup>. Decentralization and centralization issue has become interesting topic for public because it correlates decision making in modern country’s administration system <sup>[2]</sup>. Maryanov in Hoessein states that decentralization is a concept to accommodate the complexity, aspiration, and community demand in the border of united nation. Nowadays, the problem in the centralization and decentralization discussion is how to find the nudge point between centralization value and local autonomy value. Theoretically, deconcentration and decentralization are just the media to distribute the government’s authority of the regional basis <sup>[3]</sup>. The essence of local autonomy distribution is an authority transfer by the central government to local government. It is about personal

<sup>1</sup> Loc.cit

<sup>2</sup> Marume dan Jubenkanda, Centralization and Decentralization, 2016, Jurnal, <http://www.questjournals.org/jrhss/papers/vol4-issue6/Q46106110.pdf>, hal

1

<sup>3</sup> Murhaini Suriasyah, Op.cit, hlm 2

managing and enclosing all governmental affairs which are stated based on the acts. Thus, the local has authority to create and to formulate the local policy which is focused on service, involvement service, initiative, and community empowerment that aim to improve the community's prosperity <sup>[4]</sup>.

Unfortunately, when this has been implemented, the local autonomy concept which has previously being seen to be democratic was just implemented unwillingly and passionless. There are still many other authorities that should be decentralization domain, are still managed by central government for any improper reasons. In contrast, The Act No. 32, 2004 about local government declares that decentralization of government authority to local government except 6 (six) authorities that cannot be organized by local government. On the other hand, central government still manage to maintain several authorities which *are not included* in the area of 6 (six) authorities that have been central government domain, for instance, agrarian affairs <sup>[5]</sup>. However, the Act No. 23, 2014 relates to local government states that an agrarian affair is an obligatory affair which has no relation to fundamental service <sup>[6]</sup>. Empirical fact which happens nowadays is actually creates the agrarian politics of law anomaly between the authority of central government and local government in agrarian area. In Presidential Regulation, No. 95, in 2000 about *The National Land Agency* <sup>[7]</sup> is stated that *The National Land Agency* office Regency/City are vertical institutions under the guidance of *The National Land Agency* technically and still need to be responsible for its duty and function till the next judgment. (paragraph: 32, verse: 2). Further, in the Presidential Regulation No. 10 in 2001 about local autonomy in agrarian affairs, on January 17, 2001, It is distinctly stated that before the new regulation has been published, Governmental Regulation No. 25 in 2000 states about government's authority and province's authority as an autonomy territory, the application of autonomy in agrarian affairs would stay valid related to the regulation, decision, instruction and existed circular letter from the Minister of Agrarian.

The delay of local autonomy realization of agrarian affair is still unclear; especially the matter that causes this delay is Presidential Regulation which is actually has lower rank than the acts that control the local autonomy for agrarian affairs. Ironically, those both determinations are actionable by the publication of circular letter of the head of *The National Land Agency* No. 110-201-BPN on January 23, 2001 which claims that the office of *The National Land Agency* of Regency/City is undoubtedly vertical institution in the local regions.

That is why the government's politics of law especially on the agrarian affairs are perceived as the system that humiliate the reformation spirit that advises the firmness of democratic government principles which are the governments are from the community, by the community, and for community. Moreover, some heads of the region do not obey these three

determinations and they still apply agrarian autonomy by forming the institution of regional agrarian to liquid the agrarian offices of the Regency/City which are the institutions of local government <sup>[8]</sup>.

To deal with the rebellion of those heads of regions, the government published Presidential Regulation No. 62 in 2001 about the decision modification of Presidential Regulation No. 166 in 2000 about the duty tasks, function, authority, organization structure, and job descriptions of non department governmental institution as it has been changed the last time by the Presidential Regulation No 42 in 2001 and Minister of Commerce letter No. 593.08/381/UNPEM on July 30, 2001 which states that several of the governmental tasks that have been performed by the *National Land Agency* in the local regions, would be performed by central government till the agrarian acts have been published at least in two years. Ironically, two years later, the government published new Presidential Regulation No. 34 in 2003 about national policy in agrarian affairs which certainly gives limited authority to local government related to agrarian affairs and then postpone the agrarian authority that can be performed by local government (Regency/City) <sup>[9]</sup>. Limited authorities that have been organized by Presidential Regulation No 34 in 2003 to local government are:

- a. The distribution of location permit.
- b. The implementation of the land stock for development purpose.
- c. The settlement of lawsuit land.
- d. The settlement of refunding for the financial loss and the land unit for the construction.
- e. The subject and object determination for redistributing land and refunding the maximum land and absentee land.
- f. The determination and problem solution for the letter of authorization on customary communal land.
- g. The utilization and solution of the empty or unused land.
- h. Permit Determination to open the land.
- i. The land utilization plan in the region of Regency/City

In Paragraph 3 verse 2 of Presidential Regulation No. 34 in 2003 it is stated that the composing of norms and or the standardization of mechanism management, the product quality and qualification of human resources are done at least 3 (three) months after the Presidential Regulation has been published. Meanwhile, the publication of agrarian regulation provision in regions is held by *The National Land Agency* no later than August 1, 2004. However, until the publication day of the Acts No. 32 in 2004 about local government, that replaced the Acts No.22 in 1999, there is still no regulation that has been published by *The National Land Agency* related to the devolution of agrarian affairs to local government <sup>[10]</sup>.

The interesting fact is one of the government's considerations

<sup>4</sup> Hoessein Bhenyamin, Op.cit hlm 5

<sup>5</sup> Ibid hal. 23

<sup>6</sup> Undang-undang Pemerintahan daerah dan perubahannya, Bhuana Ilmu populer, Jakarta, 2017

<sup>7</sup> Khoidin M, Prof. Dr. SH. MH. CN, Hukum Pemerintahan Daerah, Kewenangan Pemerintah Daerah Mengurus bidang Pertanahan, Surabaya, Laksbang Grafika, 2016, hlm. 130

<sup>8</sup> Elita Rahmi, Tarik menarik antara Desentralisasi dan Sentralisasi kewenangan Pemerintah Daerah dalam urusan pertanahan, Jurnal Hukum, edisi 16 Oktober 2009, Fakultas Hukum Universitas Jambi, <https://media.neliti.com/media/publications/85000-ID-tarik-menarik-antara-desentralisasi-dan.pdf>, hal. 139

<sup>9</sup> Khoidin M, Op.cit, hal. 2

<sup>10</sup> Keppres Nomor 34 Tahun 2003, Kebijakan Nasional bidang Pertanahan, <http://www.bpn.go.id/PUBLIKASI/Peraturan-Perundangan/Keputusan-Presiden/keputusan-presiden-nomor-34-tahun-2003-520>

to publish Presidential Regulation no. 34 in 2003 is that all Indonesia's regions are united mother land from the united Indonesia as united Indonesians in the framework of the Republic of Indonesia. It means the government postpones to offer the authority of agrarian affairs to local government because it will cause the separation of united Indonesia. Whereas, without being conscious, the authority of marine affairs have been decentralized to local government. If the marine affairs have been decentralized without causing the separation of the united Indonesia, why agrarian affairs which are actually two sides of a coin that have similar term like marine affairs cannot be decentralized <sup>[11]</sup>.

## 1.2 Problems of the Study

Based on discussions above, there are 3 (three) problems of this study. They are:

- A. Why do the governments still defend the centralization of agrarian politics of law in decentralization era?
- B. How do the implications appear in regions due to centralization of agrarian authority?
- C. What are the ideal agrarian decentralization models to ensure the effectiveness of public service related to agrarian affairs in the local regions?

## 2. Study Framework (Theoretical)

### 2.1 Grand Theory: Constitutional State Theory

Paragraph 1 verse (3) of the *1945 Constitution of the Republic of Indonesia* states that "Indonesia is constitutional state". Constitutional country is a country that erects the supremacy of law to uphold the righteousness and justice and there is no authority that can be had without responsibility. Based on the statements above, constitutional country is a country which stands firmly in the law to ensure the justice for its nation. Justice is the requirement to create well-being for the nations, and as the foundation of the justice, it is necessary for every human being to learn about the morality so that they can be good citizens. This also relates to the legal policy that will whole fully fulfill its role if the so-called legal policy reflects justice for its nation's interaction <sup>[12]</sup>.

Aristotle argues that the one who rules a nation is not an actual human being, but it is a fair mind, while the actual ruler organizes the law and the balance only. The morality will determine whether an Act is proper or not and makes Acts are one of abilities to rule a nation. For this reason, Aristotle claims that the crucial thing is to educate the human being to be a good citizen, because of his fair attitude; the nation's well-being would be secured. The concept of constitutional nation by Aristotle is that every authority and every kind of action should be implemented based on the law itself <sup>[13]</sup>.

Generally, every country which adopts the concept of constitutional nation, always has three main principles, they are; (*supremacy of law*), (*equality before the law*), and the implementation of the law which does not contradict with the law itself (*due process of law*). The crucial principle in

constitutional country is the *equal protection* or (*equality before the law*). The different treatment of law is permitted if there is special case such as the children under 17 years old who have different right with the children who are already above 17 years old. This difference is a rational reason. Different treatment is not permitted to be implemented if there are no logical reasons. For instance, the difference of skin color, gender, religion, believes, or any denomination in a religion or the status difference such as the land master and the poor farmer. However, the different treatment with no logical reasons still can be found in most countries, including developed countries that already have more developed aspects of law in their legal implementations. According to Dicey, the implementation of the *equality before the law*, where everyone should obey the law, and that there is no one who is *above the law* <sup>[14]</sup>.

## 2.2 Middle Theory

### 2.2.1 Distribution of Powers Theory

The centralization of powers in one hand often happens in the practical constitutions, and cause the government management system which is implemented in absolute and authoritative way such as in the monarch form where the powers are in the king's hand. To avoid that kind of event, it is necessary to have power distribution or power separation which aims to create the control and balance among many authorized institutions <sup>[15]</sup>. Power distribution consists of two words, which are "distribution" and "power". According to Indonesia Dictionary (Bahasa), *distribution* means process to separate something into several pieces or to break it, then give it to other parties. Meanwhile, *power* means the authority of something or to determine (rule, represent, manage, etc) something. Literally, power distribution is the process of separating the authority of a country to (rule, represent, manage, etc) into several parts (legislative, executive, and judiciary) then being organized by several institutions of the country to avoid centralization of power (authority) from only one particular institution <sup>[16]</sup>.

Moh. Kusnardi and Harmaily Ibrahim argue that the power should be divided to several components (legislative, executive and juridical), but they cannot be fragmented. This case causes consequence that among those institutions, coordination and corporation are necessary. Jimly Asshiddiqie states that the power needs to be always limited by separating the power into several branches which have the components of *checks* and *balances* in equivalent authority, balance to each other and also control each other. However, both have similarity, which is the existence of coordination and corporation. Besides, a good power distribution in the meaning of distribution and separation that have been claimed by both has the same purpose which is to limit the power so that there is no centralization of power in one hand only and causes any improper arbitrariness <sup>[17]</sup>.

<sup>11</sup> Loc.cit

<sup>12</sup> Kirawan D. Ade, 2018, Artikel, <https://adedidikirawan.wordpress.com/teori-negara-hukum-rechtstaat/>

<sup>13</sup> Alkhawarizmi A. Damang, Konsep Negara Hukum, 2013, Artikel, <http://www.negarahunik.com/hukum/konsep-negara-hukum.html>

<sup>14</sup> Kirawan D. Ade, Op.cit

<sup>15</sup> Soepiadhi Soetanto, Pemisahan dan pembagian kekuasaan, 2012, Artikel, [http://www.surabayapagi.com/read/84996/2012/08/08/Pemisahan\\_dan\\_Pembagian\\_Kekuasaan.html](http://www.surabayapagi.com/read/84996/2012/08/08/Pemisahan_dan_Pembagian_Kekuasaan.html)

<sup>16</sup> Praptono Anton, Teori Pembagian Kekuasaan, 2008, Artikel, <http://click-gtg.blogspot.com/2008/11/teori-pembagian-kekuasaan.html>

<sup>17</sup> Loc.cit

### 2.2.2 Legal Enforcement Theory

The law and the legal enforcement are unity that cannot be separated, both should be applied synergistically. The substance (content) of the law which is written in every regulation of the Acts will just be garbage without the assistance of the legal system and also the legal culture that have been developed in the community. The law should be a media to apply social manipulation, so that legal enforcement should be applied as the expectation to create well ordered, secured, and obedient community<sup>[18]</sup>.

When arguing about the law based on *das sollen*, it means we are talking about the sentiment and expectation of the law. One of the sentiments of the law is when the justice has been upheld in right way. Theories of legal enforcement can be found from any literature review, whether it is derived from the book, magazine, or other medias<sup>[19]</sup>.

A famous law expert who is well known for his theory of law is Freidmann. Freidmann claims that whether the legal enforcement may work successfully or not, it depends to: the legal substance, legal structure, and legal culture. Legal substance is the whole legal principle, legal norms, and legal regulations whether they are written or not, including court order. The legal structure is the legal enforcement institution along with its workers including police force with its cops, the prosecution office with its prosecutors, lawyer office with its lawyers, and the court with its judges.

Legal culture is the habits, opinions, and way of thinking and also the behavior of the upholders and the community. The substance and the apparatus will not be enough to implement the legal system. For this reason, Lawrence M Friedman states that (Legal Culture) is highly necessary<sup>[20]</sup>.

## 2.3 Applied Theory

### 2.3.1 Authority Theory

The focus of authority theory is highly related to the authority source of the government to apply legal deed whether it is public law or private law<sup>[21]</sup>. In the literatures of politics, governmental studies, and legal studies, the term of powers and authority are often to be found. The powers have usually being qualified along with authority, and authority has often been exchanged with the term of powers. Sometimes authority is also being claimed as the same as competence. The powers usually have the form of relation which means “there is a party who rules, and there is another party who is being ruled” (*the rule and the ruled*).

Based on the definition above, it concludes that there can be a possibility to have power which is not related to the law. The power which has no relation with the law has been called as “*blote match*” by Henc van Maarseven. Meanwhile, the power which has relation with law is called as rational or legal competence, where the competence which has relation with the law is comprehended as recognized norms by the

community and even strengthened by the country<sup>[22]</sup>.

### 2.3.2 The Effectiveness of Legal Theory

The regulation of the Acts from the lower to higher level aims to make the community and the apparatus perform it consistently and without distinguishing any citizen. Every individual has the same right before the law (equality before the law). In contrast, in its realization, the acts have been being violated and cause this rule less effective. The ineffectiveness of the acts might be caused because the acts are not clear, inconsistent apparatus, nor the community does not support the implementation of the acts<sup>[23]</sup>.

If the acts have been implemented well, the acts then can be categorized as effective. It may be said as effective because the content of the acts is already clear, does not need any interpretation, the apparatus consistently uphold the law, and the community has been affected by the law. The term of effectiveness of the legal theory comes from English translation, *effectiveness of legal theory*. In Dutch, it is called *effectiviteit van de juridische theorie*. In German, it is *wirksamkeit der rechtlichen theorie*<sup>[24]</sup>.

There are three syllables that contain the effectiveness of legal theory. They are effectiveness, legal, and theory. In Indonesia dictionary, there are two terms that relate to effectiveness, which are effective and effectiveness. Effective means there is an effect (impact, influence, impression), it is efficacious and provide an outcome, successful and useful (about business and action), began to be implemented (about acts and regulations). Effectiveness means influential circumstances, impressive thing, efficacious, and the success (efforts or acts) and started to implement (the acts of regulation)<sup>[25]</sup>.

Hans Kelsen generates the definition of legal effectiveness, legal effectiveness is: “are people in reality do something which aims to avoid the sanction or punishment that has been implemented in the legal norms or not? And will the sanction or punishment be truly implemented whether the requirements are fulfilled or not?”

Legal effectiveness theory is:

“a theory that evaluates and analyzes the success, failure, and influential factors in the implementation of the law.”

There are three main focuses in this theory. They are:

- the success of legal implementation,
- the failure when it is implemented, and
- factors that impact it<sup>[26]</sup>.

## 3. Study Method

The study about the centralization of agrarian politics of law in decentralization perspective in Indonesia is categorized as empirical juridical study. The reason of why it is called empirical juridical study is because this study will analyze the problem by integrating the legal components which are divided into primary and secondary data. This data is obtained

<sup>18</sup> Fuady Munir, *Teori-Teori besar dalam hukum*, 2013, Prenadamedia Group, Jakarta, Hal. 250

<sup>19</sup> Robby aneuknangroeh <https://masalahukum.wordpress.com/2013/10/05/teori-penegakan-hukum/>

<sup>20</sup> Loc.cit

<sup>21</sup> Ardiansyah, *Fokus Kajian Teori Kewenangan*, 2014, Artikel, <https://customslawyer.wordpress.com/2014/09/18/fokus-kajian-teori-kewenangan/>

<sup>22</sup> Damang, *Teori Kewenangan*, 2012, Artikel, <http://www.damang.web.id/2012/11/teori-kewenangan.html>

<sup>23</sup> Redaksi berita transparansi <https://www.beritatransparansi.com/pengertian-teori-efektivitas-hukum/>

<sup>24</sup> Alkhawarizmi A. Damang, *Efektifitas Hukum*, 2011, Artikel, <http://www.negarahunik.com/hukum/efektivitas-hukum.html>

<sup>25</sup> Redaksi Berita Transparan, Op.cit

<sup>26</sup> Loc.cit

from the field by giving questionnaire, doing interview, and survey.

Based on its characteristic, in general, this study can be categorized as descriptive study. According to Sumardjono<sup>[27]</sup>, descriptive study is a study that describes an individual, a group an event, or any particular indication which aims to decide the frequency or distribution of an indication and also decides a frequency of the existence of relation of one indication and another indication. In this study, the author tries to explain about the government's argument that does not support agrarian politics of law decentralization and study about the correlation between empirical facts with the regulations of the acts that signal decentralization of agrarian affair to local government. In the study of the centralization of agrarian politics of law in decentralization era in Indonesia, the author used 3 (three) types of data collection which are document study, questionnaire, and interview<sup>[28]</sup>.

Beside document study, this study also used questionnaire method. For the questionnaire method, the author used closed questionnaire. It is the type of questionnaire where the respondents are not allowed to answer questions openly. The answers have been provided by the author<sup>[29]</sup>. Interviews and observations were also done to observe directly the attitude of the rulers to the decentralization process of agrarian affair in the local regions. The data of this study is secondary data. However, the author also collected the data in the field to support the secondary data by distributing and collecting questionnaire, doing interview and observation because they are related to the study subject and object variables and also the location variables.

#### 4. Findings and Discussion

##### 4.1 The reasons of why the governments defend the agrarian centralization in decentralization era

Governments seem to be unwilling to do the agrarian decentralization although there is already a clear regulation from the legal product that has been made by the legislative institution and governments themselves, which are the acts of local government. In spite of implementing the acts, the governments just tried to publish new regulation and even seemed to find particular reasons to permit their deeds. The reasons mostly oppose the legal norms which have higher position in frontal way although in implicit way the governments use the term "postpone". However, in the legal principle, if there is a regulation from higher level, that regulation of lower level should adjust with it<sup>[30]</sup>.

According to Muhammad Senen (The Vice Mayor of Tidore Kepulauan)<sup>[31]</sup> the agrarian affairs are the authority of central governments, but if some problems appear in the region, the institution that will get the protest is the local governments

and not the central governments. Senen added the agrarian affairs should be fixed in the future. The authority of agrarian affairs should be organized by the locals. Central governments never discern the condition of the local regions. It is necessary to talk to the community of local regions before arranging the acts. If we have contradiction with the acts, it can be categorized as we violate the acts, whereas when we implement the acts, we are contradicted with the community's needs.

For getting more information about how does the community perceive the governments' attitude related to their decision to let the agrarian affairs to be managed by the central government, the author conducted a normative study by looking at the correlation between empirical facts and the regulation of the acts that have relation with the agrarian affairs. Based on the findings that the author obtained, from the 99 respondents who live in 4 (four) regions separately, where the regions are the province of Yogyakarta (the representatives of west Indonesia), the province of Gorontalo and North Sulawesi (the representatives of middle Indonesia), and the province of North Maluku (the representatives of east Indonesia) related to the question "do you agree if agrarian affairs are managed by local government?", the findings showed that 84 respondents (85%) demanded agrarian affairs to be managed directly by local government. Meanwhile, the other 12 respondents (12%) decided that they disagreed if agrarian affairs would be managed by local government. The rest 3 respondents (3%) did not know what they should choose. This data can be seen on (Table 1).

**Table 1:** Question: Do you agree if agrarian affairs are managed by local government?

Category	Frequency	Percentage
Agree	84	85%
Disagree	12	12%
Do not know	3	3%
The Total of Respondents	99	100%

**Research Locus:** Yogyakarta, North Sulawesi, Gorontalo and North Maluku

If we analyze this finding, we will know that the citizens' expectancy is high related to the agrarian affairs should be managed by local government. Most of citizens are unwilling if the agrarian affairs would be managed by central government through the *National Land Agency* which are located in the local regions. This case is shown by the fewer amounts of respondents who disagree if the agrarian affairs would be managed by local government. Next, to affirm citizens' opinion regarding governments' attitude that still defend that agrarian affairs should be managed by central government, the author also conducted interview section with a question: "Do you agree if the central government still manage agrarian affairs because this type of affairs is categorized as "WET" sector"?

Based on the author's finding, from the 99 respondents who live in 4 (four) regions separately, where the regions are the province of Yogyakarta (the representatives of west Indonesia), the province of Gorontalo and North Sulawesi (the

<sup>27</sup> Sumardjono SW. Maria 2007, "Metodologi Penelitian Ilmu Hukum", Bahan Kuliah, Universitas Gadjah Mada, Yogyakarta

<sup>28</sup> Amirudin dan Asikin Zainal, Pengantar Metode Penelitian Hukum, 2014, Rajawali Press, Jakarta, Hal. 67

<sup>29</sup> Prastowo Andi, 2011, "Memahami metode-metode penelitian", Ar-ruzz Media, Yogyakarta

<sup>30</sup> Nursal Muhammad dan Ilyas Amir, Kumpulan Asas-Asas Hukum, 2016, Rajawali Press, Jakarta, Hal. 2

<sup>31</sup> Wawancara Tanggal 08 Mei 2017 jam 12.31 Wita di Bandara Samratulangi Manado

representatives of middle Indonesia), and the province of North Maluku (the representatives of east Indonesia). The responds of the interview showed that there were 63 respondents (64%) agreed that if the reason of why the central government still defend the agrarian affairs was because this affair could categorized as “WET” sector, while there were only 31 respondents who disagreed (31%) about this statement and the rest 5 respondents (5%) stated that they did not know (Table. 2)

**Table 2:** Question: “Do you agree if the reason of why central government still defend the agrarian affairs is because of agrarian affairs could be categorized as “WET” sector?”

Category	Frequency	Percentage
Agree	63	64%
Disagree	31	31%
Do not know	5	5%
Total of the Respondents	99	100%

**Research Locus:** Yogyakarta, North Sulawesi, Gorontalo and North Maluku

By referring from the finding, it showed that the citizens’ opinion about the governments’ attitude that still control the agrarian affairs although based on the regulation this affair actually belongs to local government, is because the agrarian affairs are categorized as “WET” sector. Governments’ worry about if the agrarian affairs are controlled and managed by the local governments, and then the governments will lose their control of the national income from agrarian sector. However, it does not mean that if the agrarian affairs are decentralized to local government, the country will not gain any income anymore. Whereas, the system which is mainly controlled by the central government, the income from agrarian sector might give significant plus points for the country without large amount of expenses for operational service related to agrarian affairs. Nadjib Riphath Keseoma, the ambassador of Republic of Indonesia for Australia mentioned that the positive prospect of Indonesia’s financial development in the future is affected by the income of the agrarian sector <sup>[32]</sup>.

To study more about this problem related to why do the governments still defend the centralization of politics of law in decentralization era in Indonesia, one of the possibilities might be because the central governments think that local governments are still incapable to manage the agrarian affairs. Thus, the author proposed another question to 99 respondents. The question is “does the local government able to manage agrarian affairs?” Based on the findings, from the 99 respondents who live in 4 (four) regions separately, where the regions are the province of Yogyakarta (the representatives of west Indonesia), the province of Gorontalo and North Sulawesi (the representatives of middle Indonesia), and the province of North Maluku (the representatives of east Indonesia) related to the question: “does the local government able to manage agrarian affairs?” showed that there were 91 respondents (92%) stated that local governments are able to

manage agrarian affairs. In contrast, there were only 8 respondents (8%) stated that the local governments are incapable to manage agrarian affairs and there was no one who stated she or he did not know (Table. 3).

**Table 3:** Question: “does the local government able to manage agrarian affairs?”

Category	Frequency	Percentage
Able	91	92%
Disable	8	8%
Do not know	0	0%
The Total of the Respondents	99	100%

**Research Locus:** Yogyakarta, North Sulawesi, Gorontalo and North Maluku

Referring to the finding above, it showed that majority of the respondents claimed that local governments are capable to manage agrarian affairs. This also breaks the governments’ worry of the incompetence or incapability of the local government in managing agrarian affairs.

#### 4.2 Possible Implications that Will Appear in Regions due to the Centralization of Agrarian Authority

All this time, the centralization of agrarian authority has supplied useful percentage for the regional citizens. Authority decentralizations which are organized by the governments to regions undoubtedly cause positive impacts to public service, development, and the citizens. If this kind of decentralization is contributed effectively, the local governments might manage the potency of natural resources that can increase regional income and citizens as well <sup>[33]</sup>. In contrast, it is not the same with the agrarian affairs which are controlled by central government. The implication that can be experienced the most by the citizens when central government does the service is administrative control distance. The administrative service for the corner of rural villages cannot be reached by central governments because central government is lacking of agrarian apparatus.

To reconcile the problem, the author tried to describe the citizens’ expectancy if the local autonomy authority will be organized again by central government. Based on the finding, from the 99 respondents who live in 4 (four) regions separately, where the regions are the province of Yogyakarta (the representatives of west Indonesia), the province of Gorontalo and North Sulawesi (the representatives of middle Indonesia), and the province of North Maluku (the representatives of east Indonesia) related to the question “do you agree if the local autonomy authority will be organized back by central government?” The result showed that 8 respondents (8%) agreed if the local autonomy authority is being controlled again by the central government, whereas 86 respondents (87%) stated that they disagreed if the local autonomy authority is being controlled again by the central government, and there were only 5 respondents (5%) who stated that they did not know (Table. 4).

<sup>32</sup> Pikiran Rakyat, Sektor Pertanahan miliki peran penting dalam perekonomian Indonesia, Publikasi, 2016, <https://www.pwc.com/id/en/media-centre/pwc-in-news/2016/indonesian/sektor-pertanahan-miliki-peran-penting-dalam-perekonomian-indone.html>

<sup>33</sup> Noho Fatchudin, Dampak asas Desentralisasi, 2013, Artikel, <http://fatadesentralisasi.blogspot.com/2013/12/dampak-asas-desentralisasi-by.html>

**Table 4:** Question: “do you agree if the local autonomy authority will be organized by central government again?”

Category	Frequency	Percentage
Agree	8	8%
Disagree	86	87%
Do not know	5	5%
Total of the Respondents	99	100%

**Research Locus:** Yogyakarta, North Sulawesi, Gorontalo and North Maluku

Based on the finding above, it showed that the Indonesians highly disagree if the local autonomy authority will be organized by central government again. In contrast, there are several authorities which are actually needed to be managed by local government are settled by central government including agrarian affairs. This fact brings irony to democratic government which requires authority decentralization except for 6 affairs that cannot be allowed to be decentralized to regions such as security, judicial, monetary, fiscal, international affairs and religion<sup>[34]</sup>.

Next, to confirm about how the implication can appear in the local regions due to agrarian authority centralization, the author also collected questionnaire. The question on the questionnaire is “what are the effects if the agrarian affairs are still managed by central government?” Based on the finding from the 99 respondents who live in 4 (four) regions separately, where the regions are the province of Yogyakarta (the representatives of west Indonesia), the province of Gorontalo and North Sulawesi (the representatives of middle Indonesia), and the province of North Maluku (the representatives of east Indonesia) related to the question “what are the effects if the agrarian services are still managed by central government?” showed that 19 respondents (19%) stated that if agrarian service is managed by central government, it might simplify the service. Meanwhile 73 respondents (74%) if the agrarian service is still managed by central government it would complicate the service, and there were only 7 respondents (7%) who stated they did not know (Table 5).

**Table 5:** Question: “what are the effects if the agrarian services are still managed by central government?”

Category	Frequency	Percentage
Simplify the service	19	19%
Complicate the service	73	74%
Do not know	7	7%
The Total of Respondents	99	100%

**Research Locus:** Yogyakarta, North Sulawesi, Gorontalo, North Maluku

From the finding above, we found out that the majority of Indonesians stated that the impact that could be experienced by the citizens if the agrarian affairs are still being managed by the central government it will complicate the service. There were only 19 percent of the citizens stated that if the agrarian affairs are still being managed by the central government, it will simplify the service.

<sup>34</sup> Kurnia Jaya, Enam urusan Pemerintah pusat yang tidak di serahkan ke daerah, 2017, Artikel, <https://pengayaan.com/6-urusan-pemerintah-pusat-yang-tidak-diserahkan-ke-daerah/>

### 4.3 The Ideal Agrarian Decentralization Implementation Model in Ensuring the Effectiveness of Regional Agrarian Affairs

After analyzing the discussion about governments’ attitude where they still defend centralization of politics of law in the decentralization era and its implications in the local regions due to centralization of agrarian authority, then the next problem is how the ideal agrarian decentralization implication model could ensure the effectiveness of public service related to agrarian affairs. This case aims to ensure the effective agrarian decentralization implication model in the local regions, where one of the main focuses is the publication of land certificate. The land certificate has been one crucial problem in agrarian affairs that can give plus points to financial activities of the citizens. However, it can also become the obstacle for the development of infrastructure activity that requires the land if the land certificate is not processed well and properly due to the service which is located far away from the governmental institution that publish the certificate. The land certificate can also give legal affirmation to the ones who have right of the land<sup>[35]</sup>. Therefore, the author tried to find a description related to citizens’ perception if the land certificate would be published by local government.

According to Jhoni Harikedua (Asistent 3 and the temporary head of the *Agency of Regional Research and Development* in Sangihe Regency), the central government should be consistent with the existed regulation. If the agrarian affairs are still being managed by the central government, the work burden should be addressed to center as well. He argued that the local governments may publish the certificate because they know the origin of the land. In fact, the requirements to fulfill this task are made too intricate by the central government<sup>[36]</sup>. Based on the author’s finding, from the 99 respondents who live in 4 (four) regions separately, where the regions are the province of Yogyakarta (the representatives of west Indonesia), the province of Gorontalo and North Sulawesi (the representatives of middle Indonesia), and the province of North Maluku (the representatives of east Indonesia) related to the question “do you agree if the land certificate is published by the local government?” showed that 83 respondents (84%) demanded the certificate to be published by local government, whereas 15 respondents (15%) disagreed if the land certificate is published by local government and there only 1 respondent (1%) who stated that he did not know (Table 6).

**Table 6:** Question: “Do you agree if the land certificate is published by the local government?”

Category	Frequency	Percentage
Agree	83	84%
Tidak Agree	15	15%
Do not know	1	1%
The Total of Respondents	99	100%

**Research Locus:** Yogyakarta, North Sulawesi, Gorontalo, North Maluku

<sup>35</sup> Syafril, Fungsi Sertifikat hak milik atas tanah bagi pemiliknya menurut UUPA, 2009, Artikel, <https://marungai.wordpress.com/2009/04/27/fungsi-sertifikat-hak-milik-atas-tanah/>

<sup>36</sup> Wawancara Tanggal 18 Mei 2017 Jam 13.30 Wita di Hotel Swissbell Kendari

The majority of the respondents agreed that land certificate should be published by the local government. It means the Indonesians had bad previous experience while the land certificates are being published by the *National Land Agency*. Some problems started to appear because the limit of apparatus of the *National Land Agency* in the local regions and the minimum access and facilities to simplify the publication of land certificate. After that, to get the description of agrarian decentralization implementation model in the local regions, the author also proposed questionnaire with a question “do you agree if central government may only control the general policy of the agrarian affairs while the practical implementation is performed by the locals?”

Based on the author’s finding, from the 99 respondents who live in 4 (four) regions separately, where the regions are the province of Yogyakarta (the representatives of west Indonesia), the province of Gorontalo and North Sulawesi (the representatives of middle Indonesia), and the province of North Maluku (the representatives of east Indonesia) related to the question “do you agree if central government may only control the general policy of the agrarian affairs while the practical implementation is performed by the local government?” showed that 74 respondents (75%) agree if central government may control the general policy of the agrarian affairs only while the practical implementation is performed by the local government. Meanwhile, other 15 respondents (15%) stated their disagreement and only 10 respondents (10%) stated they do not know (Table 7).

**Table 7:** Question: “do you agree if central government may only control the general policy of the agrarian affairs while the practical implementation is performed by the locals?”

Category	Frequency	Percentage
Agree	74	75%
Disagree	15	15%
Do not know	10	10%
The Total of Respondents	99	100%

**Research Locus:** Yogyakarta, North Sulawesi, Gorontalo, North Maluku

The majority of the respondents agree that if central government may control the general policy only while practical implementation is performed by the local government. This finding gives us description if the citizens did not demand the agrarian affairs to be managed by central government. They demanded that the agrarian affairs to be managed by local government including the publication of land certificate.

According to Dr. Ir. Antonius Sihaloho, MT (head of the *Agency of Regional Research and Development* in Maluku), the authority of the agrarian affairs should be organized by the locals, because the institutions who have closer interaction with the citizens are the local government, so the local problems might be solved and managed by the local government. Antonius suggested the agrarian authority to be organized by local government because it could minimize the authorization distance. This aims the locals to be able to report their problem to the local government directly. Antonius also agreed that the central government may manage the general policy while the practical implementation is managed by the

local government. Therefore, technical construction from the central government to local government is highly recommended<sup>[37]</sup>.

For the realization of the decentralization of agrarian affairs, systematic implementation model needs to be arranged so that the unproductive arrangement will not be produced and may cause new unexpected problem. That is why one alternative model that can be implemented if agrarian affairs are going to be managed by the local government is the status transfer from the agrarian employee to local government employee so that decentralization realization of agrarian affairs would be effective and efficient.

Based on the author finding, from the 99 respondents who live in 4 (four) regions separately, where the regions are the province of Yogyakarta (the representatives of west Indonesia), the province of Gorontalo and North Sulawesi (the representatives of middle Indonesia), and the province of North Maluku (the representatives of east Indonesia) related to the question “do you agree if the agrarian office employee is transferred to local government employee?” showed that 70 respondents (71%) agree if the agrarian office employee is transferred to local government employee, while there were 16 respondents (16%) disagree with the statement and the rest 13 respondents (13%) did not know (Table 8).

**Table 8:** Question: “do you agree if the agrarian office employee is transferred to local government employee?”

Category	Frequency	Percentage
Agree	70	71%
Disagree	16	16%
Do not know	13	13%
The Total of Respondents	99	100%

**Research Locus:** Yogyakarta, North Sulawesi, Gorontalo, North Maluku

Most respondents agree if one strategy of the decentralization of the agrarian affairs is the *National Land Agency* office employees should be transferred to local government employees. This decision is implemented so that the central government might have no reasons which state that local government has no enough capable human resources who deal with agrarian affairs. If several recommendations of this study can be implemented, the centralization of agrarian politics of law will gain paradigm changes and turn into decentralization of agrarian politics of law.

## 5. Conclusion

Referring to previous chapters, the conclusions that may be reviewed are:

1. Governments’ reasons of why they still demand centralization of agrarian politics of law in decentralization era are caused by several considerations. They are: a). Incapability of the locals to manage the agrarian affairs; b). Public opinions which state that they want the agrarian affairs to be managed by the local government; c). the importance of country incomes which are mostly supplied by the agrarian affairs.

<sup>37</sup> Wawancara Tanggal 18 Mei 2017 Jam 14.05 Wita di Hotel Swissbell Kendari



2. Implications which are appeared in the locals due to centralization of agrarian affairs authority are: a). *The National Land Agency* cannot give proper service related to agrarian affairs for the public because there are only few of capable human resources; b). If agrarian conflict happens, the target of dissatisfaction is not oriented the *National Land Agency* but to local government; c). Publics experience some insufficiencies for getting agrarian service access which is organized by the *National Land Agency* because *National Land Agency* does not have large service network like what the local government has; d). The high amount of certificate publishing by the *National Land Agency*, where if some are managed by local government, each region can create innovative policy to reduce the certificate fee for the locals; e). Because it has been controlled by central government, *Agrarian National Project* (in Bahasa called: *Proyek Nasional Agraria*) (PRONA) still cannot access every type of the community. In contrast, if the agrarian affair has been managed by local government, every local government might create innovative policy like PRODA so that the locals might have the benefit.
3. When *The Implementation of Ideal Agrarian Decentralization Model* are contributed by local governments, the implications would be: a). central government still has the control of general policy like the norms, standards, procedures, and criteria which are usually implemented in Indonesia; b). local government manage the technical practice of agrarian service such as the land registration, and other technical affairs that simplify the agrarian service for locals c). to operate every agrarian service for locals, it is necessary to have transfer process. The transfer process of the *National Agency Land* employees turn into local government employees; d). For the purpose of giving the effectiveness of the agrarian affair service to the citizen from the lowest level of the society, the local government should delegate their agrarian authority to sub-district government.

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