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The position of the Lake Toba Authority Body is based on Presidential Regulation Number 49 of 2016 concerning the Lake Toba Tourism Area Management Authority Body

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Abstract

The Lake Toba Tourism Authority Management Body was formed through Presidential Regulation Number 49 of 2016. After the formation of the Lake Toba Tourism Authority Body, many pros and cons occurred, apart from the issue of overlapping authority between the central government and regional governments regarding management rights, representatives of indigenous peoples also claimed that the Authority Body only carries out unilateral development without involving local indigenous peoples, besides that the agrarian problem of customary land in the Lake Toba area is also a fundamental problem, land and land which initially had no legal certainty and had become the land of local indigenous peoples were suddenly empowered to used for the Lake Toba Tourism Authority Board using the legal basis for Presidential Regulation Number 49 of 2016 concerning the Lake Toba Tourism Area Management Authority Body. The research method used in this study uses a normative research approach, while from the nature of this research it is a descriptive research.

INTRODUCTION

Currently the Lake Toba area is designated as a National Tourism Destination (DPN) and Superior Tourism Destination (DPU) in North Sumatra Province. Realizing this, the government designated the Lake Toba Area (KDT) as a National Strategic Area (KSN) in the tourism sector, hereinafter referred to as the National Tourism Strategic Area.

In the Lake Toba Region there are several tourist destinations such as Parapat, Simarjarunjung, Tanjung Camel, Haranggaol, and others. Lake Toba is always experiencing development. This development occurred as a result of the utilization of Natural Resources (SDA) and Human Resources (HR). Lake Toba plays a role in managing regional revenues to improve the welfare of the region and its inhabitants. Government governance to maximize Natural Resources (SDA) and Human Resources (HR), the government decided to manage

specifically the Lake Toba area, North Sumatra. In line with this decision, the area will be managed by the Lake Toba Authority Agency (BODT) as the sole manager.

The Tourism Authority Body consists of 2 parts, the first is the Steering Committee which is responsible for the Coordinating Minister for Maritime Affairs and its members consist of ministers such as the Minister of Home Affairs, the Minister of Transportation, the Minister of Finance, the Minister of Tourism and so on as well as the heads of related regions whose territories become tourism destinations. which is a priority. Meanwhile, the second, the Implementing Body is a work unit under the ministry of tourism which consists of professional parties in their fields appointed directly by the government.

The formation of the Lake Toba Tourism Area Management Authority (Lake Toba Authority) has drawn mixed reactions. On the one hand, a number of people welcomed it, while on the other hand there were parties who expressed their critical attitude. One of the actual developments was the implementation of a Seminar discussing the Development Plan for the Lake Toba Area and the Opportunities of Indigenous Peoples which was held in Parapat, North Sumatra.¹

In terms of its position, this institution is very strategic because Article 1 paragraph (2) of the Presidential Regulation of the Lake Toba Authority Agency states that the Lake Toba Authority Agency is under and is responsible to the President. The Lake Toba Authority Agency carries out its duties for 25 (twenty five) years and ending on December 31, 2041 and can be extended.²

It turned out that the Lake Toba Authority was given management rights to The Lake Toba Tourism Area includes the Lake Toba Area as regulated in Presidential Regulation Number 81 of 2014 concerning Area Spatial Plans Lake Toba and its Surroundings, which includes an area of at least 500 (five hundred) hectares as described on the map listed in the Appendix this press.³

The phenomenon that has occurred since it was proclaimed as a national tourism strategic area and after the formation of the Lake Toba Tourism Authority Board has many pros

¹ “Rencana Pembangunan Kawasan Danau Toba dan Peluang Masyarakat Adat Diseminarkan di Parapat”, 22 Januari 2023, <http://pelitabatak.com/news/RencanaPembangunan-Kawasan-Danau-Toba-dan-Peluang-Masyarakat-Adat-Diseminarkan-di-Parapat>

² Pasal 32 Peraturan Presiden Nomor 49 Tahun 2016 Tentang Badan Otorita Pengelola Kawasan Pariwisata Danau Toba

³ Pasal 2 Ayat (1) dan (2) Peraturan Presiden Nomor 49 Tahun 2016 Tentang Badan Otorita Pengelola Kawasan Pariwisata Danau Toba

and cons, representatives of indigenous peoples claim that the Authority Agency only carries out unilateral development without involving local indigenous peoples, in addition to the agrarian problems of customary lands. in the Lake Toba area is also a fundamental problem. For example the customary forest area (harangan) of Motung Village residents as a source of water for residents around Ajibata covering an area of 100 hectares, the customary area of the Butar-Butar clan covering an area of 120 hectares, and a community forest area of 510 hectares. According to Darius Manurung, Raja Bius Manurung Motung Village Traditional Leader explained that residents had never received socialization regarding the formation of BOPKPDT which would manage land in their area.⁴ Not only in Lake Toba, various pro and contra phenomena for the formation of the Tourism Authority Body have also occurred in various regions of Indonesia, such as the Tomia District, Wakatobi Regency, Southeast Sulawesi Province and Labuan Bajo in East Nusa Tenggara.

Discussing regional autonomy in Indonesia will be related to the concept and theory of local government and how it is applied in the administration of local government in Indonesia. Local government is part of the state, so this concept cannot be separated from the concepts of state sovereignty in unitary and federal systems as well as centralization, decentralization, deconcentration and co-administration.⁵

Regional dissatisfaction with centralized government is also driven by the massive exploitation of natural resources that occurs in areas rich in natural resources. Exploitation of natural resources in the area which is not directly proportional to the optimization of the implementation of development in the area. There has even been a negative impact from the exploitation of natural resources on local communities. This is what wants the authority to regulate and manage their own regions and become one of the backgrounds for regional autonomy in Indonesia.⁶

According to the Big Indonesian Dictionary, the word authority is equated with the word authority, which is defined as the right and power to act, the power to make decisions, govern and delegate responsibility to other people/agencies.⁷ According to HD Stout, authority is an understanding that comes from government organizational law, which can be explained

⁴“Lake Toba Authority Agency Not Yet Clear”, 23 January 2023, <https://kmp.im/app6https://regional.kompas.com/read/2016/09/22/18592371/badan.otorita.danau.toba.yet.clear?page=all>

⁵ H. M. Busrizalti, *Hukum Pemda Otonomi Daerah dan Implikasinya*, (Yogyakarta : Total Media, 2013), 61

⁶ Hambali, *Ilmu Administrasi Birokrasi Publik*, (Yogyakarta : Yayasan Kodama, 2015), 58.

⁷Kamal Hijaz, *Efektivitas Penyelenggaraan Kewenangan Dalam Sistem Pemerintahan Daerah Di Indonesia*, (Makasar: Pustaka Refleksi, 2010), 35

as all the rules relating to the acquisition and use of government authorities by public law subjects in public law relations.⁸ According to Bagir Manan, authority in legal language is not the same as power. Power only describes the right to act and not to act. Authority simultaneously means rights and obligations.⁹ Indroharto, argued that authority is obtained by attribution, delegation, and mandate, each of which is explained as follows: Authority obtained by attribution, namely the granting of new governmental authority by a provision in laws and regulations. So, here was born/created a new government authority. In the delegation, there is the delegation of an authority that already exists by the TUN Agency or Position which has obtained a governmental authority in an attributive manner to another TUN Agency or Position. So, a delegation is always preceded by an attribution of authority. In the mandate, there is no granting of new authority or delegation of authority from one TUN Agency or Position to another.¹⁰

According to the author's view, in the implementation of good tourism governance, what is most needed from the public sector is a centralized administration of government towards a decentralized implementation model. Giving authority by determining the parts that have been determined can help facilitate the task of the central government, besides that local governments know more about the potential that can be developed in their regions.

THE POSITION OF THE TOURISM AUTHORITY BOARD IN THE MANAGEMENT RIGHTS OF THE LAKE TOBA TOURISM AREA

Changes made to the 1945 Constitution have implications for changes to the Indonesian constitutional system, one of which can be seen in the existing structure of state institutions. If before the change, they recognized the existence of the highest state institution and the state high institution, then after the change, the terminology disappeared. Apart from that, state institutions also experienced the addition of several institutions whose existence was not known at first, but after the amendment to the 1945 Constitution, these institutions emerged. The idea of renewal that accompanies the formation of these new institutions is generally based

⁸Ridwan HR, *Hukum Administrasi Negara*, (Jakarta: PT Raja Grafindo Persada, 2013), 71.

⁹Nurmayani, *Hukum Administrasi Daerah*, (Bandar Lampung : Universitas Lampung, 2009), 26

¹⁰ Indroharto, *Usaha Memahami Undang-undang tentang Peradilan Tata Usaha Negara*, (Jakarta :Pustaka Harapan, 1993), 68

on a momentary distrust of existing state institutions and the political momentum that provides more opportunities for democratization in all fields. Therefore.¹¹

Along with the dynamics of state administration, many state institutions were formed by the 1945 Constitution, laws and regulations under it in order to achieve state goals. For example, in the 1945 Constitution, state institutions can be classified into several categories, first, the main institutions that exercise certain powers. Second, state institutions that are not executors of one branch of power, but whose existence is necessary to support one of the implementing agencies of a particular branch of power. Third, institutions are determined to carry out certain powers, without regulating the name and formation of the institution. Fourth, institutions that are determined in general and submit further arrangements to the law. Fifth.¹²

Management of state power based on Trias Politica, Montesquieu in today's modern state is no longer able to support/accommodate the current needs of governance, this is due to changes in political configuration from authoritarianism to democracy.¹³ Then according to A. Ahsin Tohari argues that even an established country is not immune from the idea of correcting the distribution of state power which was previously considered to have reached an ideal point. For example, in England, when there was a socio-political configuration of the Industrial Revolution in the 18th and 19th centuries, it could not rely on existing state institutions, but by forming special bodies which were carried out by parliament. The establishment of these special bodies is considered the most appropriate and ideal answer capable of handling and resolving the complexities of constitutional issues¹⁴. The unitary state according to Cohen and Peterson can be understood as a country where the central government exercises supreme sovereignty in the country.¹⁵

In June 2016 the president formed a work unit in the tourism sector, namely the Lake Toba Tourism Authority Agency (BOPDT) through Presidential Regulation Number 49 of 2016 concerning the Management Authority for the Lake Toba Tourism Area. The authority granted to the Authority is large enough to overpower the regional government's authority as the

¹¹ Ahmad Basari, "Kajian Teoritis Terhadap Auxiliary State`S Organ Dalam Struktur Ketatanegaraan Indonesia, DPR RI", *Jurnal MMH* 43, no, 1 (2014) : 1

¹² Janedri M. Gaffar, *Demokrasi Konstitusional, Praktik Ketatanegaraan Indonesia setelah Perubahan UUD 1945*, (Jakarta : Konpress, 2012), 97

¹³ Gunawan A. Tauda, Komisi Negara Independen, *Eksistensi Independent Agencies Sebagai Cabang Kekuasaan Baru Dalam Sistem Ketatanegaraan*, (Yogyakarta : Genta Press, 2012), 85

¹⁴ *Ibid*, 86

¹⁵ Sadu Wasistiono, "Kajian Hubungan antara Pemerintah Pusat dengan Pemerintah Daerah (Tinjauan dari Sudut Pandang Manajemen Pemerintahan)", *Jurnal Adminirtasi Pemerintahan Daerah* 1, no.2 (2004) : 9

executor of regional autonomy. Although in its formation there were several pros and cons, especially from the people around Lake Toba.

Referring to the arrangements relating to the formation of laws and regulations, preferably, the preambles of Presidential Regulations for the exercise of government power contain philosophical, sociological, and juridical elements which are the considerations and reasons for forming Presidential Regulations.¹⁶ It seems that the philosophical element is not very visible in the basis for considering the presidential regulation

In the context of laws and regulations, it is interesting to analyze the substance of the presidential regulation as the legal basis for establishing this BOP. Law Number 12 of 2011 Concerning the Formation of Legislation and Regulations stipulates that the material for the contents of a Presidential Regulation contains material ordered by law, material for implementing Government Regulations, or material for carrying out the administration of governmental powers.¹⁷ Bagir Manan stated that the President's authority to make Government Regulations (PP), Presidential Regulations (Perpres) is not always on the basis of delegation..¹⁸

Based on the wording of the article, the Presidential Decree has three functions, namely delegation regulations, implementing regulations and independent regulations. Delegation regulations must be sourced from the main law and may not exceed the contents of the delegation.¹⁹ Meanwhile, the Implementing Regulations, according to Bagir Manan, can originate from delegation or independent authority.²⁰ Without delegation regulations and implementing regulations, it is certain that a government will run slowly or even stagnate ²¹ The Independent Presidential Decree has content material that is not certain in scope, thus opening up opportunities for the President to abuse power, considering that power tends to corrupt absolute power corrupt absolutely. ²²

Article 1 of Presidential Regulation Number 49 of 2016 concerning the Lake Toba Tourism Area Management Authority Body states that the Lake Toba Tourism Authority Board (BOPDT) is under, and directly responsible to, the President. In carrying out their duties,

¹⁶ Undang–Undang Republik Indonesia Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang–Undangan, Lampiran II ,Teknik Penyusunan Peraturan Perundang–Undangan

¹⁷ Pasal 13 Undang–Undang Republik Indonesia Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang–Undangan

¹⁸ Moh Fadli, “Perkembangan Peraturan Delegasi di Indonesia”, Disertasi, Universitas Padjadjaran, 2011, 3

¹⁹ *Ibid*, 2

²⁰ *Ibid*, 3

²¹ Moh. Fadli, *Peraturan Delegasi di Indonesia*, (Bandung :UB Press, 2011), 1

²² Sri Soemantri Martosoewirgnjo, *Bunga Rampai Hukum Tata Negara*, (Bandung :Alumni, 1992), 72

BOPDT cooperates with the Vice President and coordinates with and obtains information and technical support from ministries, non-ministerial government agencies, regional governments (Pemda), and other related parties.

In his consideration the legal basis for the formation of the BOPDT considers the need for coordinated, systematic, directed and integrated steps in order to optimize the management, development and development of Lake Toba as one of the national tourism strategic areas and considers the need for special arrangements to accelerate the development and development of the area. Lake Toba Tourism in order to unify the implementation of the authority to manage the area through the formation of this BOP. Referring to the arrangements relating to the formation of statutory regulations, the preambles of Presidential Regulations for the exercise of government power contain philosophical, sociological, and juridical elements which are the considerations and reasons for the formation of Presidential Regulations.²³

Interestingly, in the context of statutory regulations, the substance of the presidential regulation is the legal basis for establishing this BOP. In Law Number 12 of 2011 Concerning the Formation of Legislation, it stipulates that the material for the contents of a Presidential Regulation contains material ordered by law, material for implementing Government Regulations, or material for carrying out the administration of government power.²⁴ In this case, the BOP is not a statutory order or the implementation of government regulations, so that the material is the implementation of the administration of government power.

The development of Lake Toba tourism, which is increasingly rife, has become a subject of discussion as well as in the form of debates that have appeared in the mass media. The assumption is that the tourism development efforts planned by the central government aim to increase the country's foreign exchange and also to support infrastructure development patterns that can support economic progress and also the social life of the surrounding community.

Concerns for the community about the presence of the Lake Toba Authority Body as the sole manager of Lake Toba tourism has great authority in planning the allotment and use of land in the Lake Toba area, this means that it poses a threat to local communities who have been managing customary lands that administratively do not have certificates.

²³ Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan, Lampiran II, Teknik Penyusunan Peraturan Perundang-Undangan

²⁴ Pasal 13 Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan

But the government through Coordinating Minister (Menko) for Maritime Affairs and Resources trying to convince the public of the presence of the Lake Toba Authority Body. The Coordinating Minister (Menko) for Maritime Affairs and Resources Rizal Ramli said the aim of establishing this authority body was so that the management of Lake Toba could be more coordinated. Thus, the tourism climate in the area can develop more quickly.²⁵

Community concerns also lie in the existence of local culture. Tourism development that refers to modernity and westernism becomes a fear for people who care about local culture where the development of western culture and modernity will indirectly erode and eliminate the original culture from the area around Lake Toba.

Seeing the facts on the ground, it is appropriate that the structure of the BPODT as the Executive Board should be evaluated. So that the momentum for the development of Lake Toba tourism which has been promoted by the central government as a world-class tourist destination is not lost, it is appropriate that the structure of the BPODT be evaluated. that several reasons apart from the reasons above to urge the government to evaluate the Lake Toba Authority Executing Body (BPODT).

Since being inaugurated on 30 November 2016 the Minister of Tourism has targeted a tourism master plan for Lake Toba, an infrastructure master plan for the entire area around Lake Toba (North Sumatra), and finally forming a Tourism SEZ must be completed in December 2016 and for the whole to be completed in 2017 but in fact it has not been completed so far . In addition, the preparation of the Integrated Tourism Masterplan for the Lake Toba area, as planned to be completed in July 2019, has not yet been completed. That the presence of the BPODT is considered to lack respect for the indigenous peoples around the authority zone.²⁶

The term authority is often used interchangeably with the term authority or authoritative, but Max Weber more often uses the term authority than the term power.²⁷ Authority means making other people obey an order with a specific purpose, so that when compared to power, power is meaningless if it is not accompanied by authority. Likewise if it is associated with an organization such as the state. An organization or a state will not be

²⁵ “Badan Otoritas Pariwisata Danau Toba Dibentuk Awal 2016”, 22 Januari 2023, <https://ekbis.sindonews.com/berita/1072800/34/badan-otoritas-pariwisata-danau-toba-dibentuk-awal-2016>

²⁶ “BPODT Tidak Menghargai Tanah Adat di Toba, 24 Januari 2023, <https://www.tagar.id/bpodt-tidak-menghargai-tanah-adat-di-toba>

²⁷SF. Marbun, “Pemerintah Berdasarkan Kekuasaan dan Otoritas”, *Jurnal Hukum* 3, no. 6 (1996): 33

able to carry out its functions if it is not accompanied by authority, so that authority has an important meaning.²⁸

Authority is a special form of power because with new authority it appears that a power is accepted and legitimized. Thus in a government authority will manifest and function as government.²⁹ Because of that authority is called institutionalized power. According to Max Weber, the necessity for authority is legitimacy and that legitimacy is always associated with law. Authority is valid if authority is accepted by followers as binding. So that authority demands obedience. The enduring authority is the legitimate authority. Authority has the right to demand obedience and also has the right to give orders.³⁰

Discussion of authority or authority cannot be avoided from the discussion of authority or authority carried out by Max Weber, Authority is the nature and basis of authority that determines for a ruler to have authority. Max Weber classifies the types of authority or authorities on the basis of rational, traditional and charismatic.³¹

The type of authority or rational authority is often also called the legal or formal type. This type of authority is based on legal or formal beliefs that are based on the legal system that applies in society. The community is subject to the government and its leaders because it is based on formal legal rules.³²

In terms of its position, this institution is very strategic because Article 1 paragraph (2) of the Perpres of the Lake Toba Authority states that the Lake Toba Authority is under and responsible to the President. The Toba Lake Authority carries out its duties for 25 (twenty five) years and ends on December 31, 2041 and can be extended.³³ It turns out that the Lake Toba Authority was granted management rights to the Lake Toba Tourism Area covering the Lake Toba Area as stipulated in Presidential Regulation Number 81 of 2014 concerning Spatial Plans for the Lake Toba Area and Surrounding Areas, which includes an area of at least 500 (five hundred) hectares as described in the maps listed in the Appendix to this presidential regulation..³⁴

²⁸ *Ibid.*

²⁹ Mariam Budiardjo, *Aneka Pemikiran tentang Kuasa dan Wibawa*, (Jakarta : Sinar Harapan, 1986), 9

³⁰ SF. Marbun, *Op.Cit*

³¹ *Ibid.*

³² H.G, Surine, *Ilmu Administrasi Negara Suatu Bacaan Pengantar*, (Jakarta : Gramedia, 1987), 221

³³ Article 32 Presidential Regulation Number 49 of 2016 Concerning the Management Authority for the Lake Toba Tourism Area

³⁴ Pasal 2 Ayat (1) dan (2) Peraturan Presiden Nomor 49 Tahun 2016 Tentang Badan Otorita Pengelola Kawasan Pariwisata Danau Toba

Structurally, Article 3 of the Perpres of the Lake Toba Authority determines that there are 2 (two) main structures, namely the Steering Committee and the Executing Body. Both of these structures have their respective duties which are actually interrelated. President Joko Widodo has designated tourism as a leading sector for foreign exchange earnings by establishing a Tourism Authority Board outside the pre-existing Special Economic Zones (KEK). The development of the tourism industry is directly related to land acquisition. Therefore, the development of the tourism industry is constrained by three obstacles, namely, infrastructure, regulation and land.³⁵ Land issues are still a major obstacle in infrastructure development in Indonesia. Land acquisition is closely related to land acquisition, this can trigger conflicts between owners resulting in clashes between the community and the government.

In accordance with the position of a Presidential Regulation according to the 1945 Constitution, a Presidential Regulation is formed to carry out further arrangements for Laws or Government Regulations, both expressly and indirectly ordered to be formed.³⁶ Therefore, the policy strategy of "attracting tourism development in the regions" at the "central" and becoming "central affairs" in the form of an "Authority Body" policy can be justified, because by becoming a matter for the central government, the Central Government can accelerate regional tourism development by more efficient, effective, effective and fast and use the state budget.³⁷ In contrast to KEK, if with the Authority Agency pattern, the central government has full legitimacy to build infrastructure and land procurement in a special area that is its authority, then in SEZ the Government only has relative legitimacy to build infrastructure and land acquisition, because part of it is mandated to business entities that get a SEZ license.³⁸ Thus, through the Authority Agency, the Central Government has the discretion to invest in infrastructure and land compared to KEK.

In contrast to the Authority Body which is a direct extension of the Government, so it has the right to build and manage using government funding through the relevant ministries/institutions. Article 2 Presidential Regulation No. 49 of 2016 concerning the Lake Toba Area Management Authority Agency has the right to manage the scope of several Lake Toba tourism areas and includes an area of at least 500 (five hundred) hectares as stipulated in

³⁵Rian Nugroho, *Kebijakan 10 Bali Baru*, (Jakarta: Yayasan Rumah Reformasi Kebijakan, 2020), 16

³⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta : Kencana, 2005), 137

³⁷ Rian Nugroho, *Loc.Cit.* hlm. 17

³⁸ *Ibid.*

Article 5 of Presidential Decree No. 81 of 2014 concerning Spatial Plans for the Lake Toba Area and Surrounding Areas which includes the Lake Bodies, Water Catchment Areas (DTA) and Groundwater Basins (CAT) related to the waters of Lake Toba, as well as activity centers and infrastructure networks that are not in the Lake Bodies, The Water Catchment Area (DTA) and Groundwater Basin (CAT) are related to the waters of Lake Toba and support the development of Lake Toba waters. So that the Lake Toba Authority Body is aimed at glorifying all natural, cultural, traditional and community wealth, and at the same time utilizing it as a source of income and sustainable community development can be carried out.

Funding for the administration of the Lake Toba Authority comes from the State Revenue and Expenditure Budget, the Regional Revenue and Expenditure Budget and other legal sources in accordance with statutory provisions. This is regulated in Article 28 Presidential Regulation Number 49 of 2016 concerning the Management Authority for the Lake Toba Tourism Area.

The Lake Toba Authority Body is the central institution that takes over the affairs of the Regional Government. One of the reasons for establishing a special agency to manage these tourism destinations was because the central government considered that the seven local governments around Lake Toba had difficulty coordinating and were unable to develop these tourist destinations. The central government should be responsible for facilitating cooperation between districts around Lake Toba. The potential for conflict of authority is very likely to occur especially when this concerns the management of regional revenue sources. In the Perpres of the Lake Toba Authority Agency, there is no significant involvement of local governments around Lake Toba. There is only the Governor of North Sumatra who is a member of the Steering Committee. Meanwhile, there was no involvement of the Regent in areas around Lake Toba..

The Lake Toba Tourism Authority Board needs to pay attention to the involvement of the Regent/Mayor in determining strategic policies. Judging from the structure of the Lake Toba Authority Steering Committee as stipulated in Article 5 of the Presidential Decree on the Lake Toba Authority, only the Governor of North Sumatra is accommodated as a member of the Steering Committee while there are at least seven regencies around Lake Toba. This means that the determination of strategic policies only reaches the level of the Provincial Government Leaders, namely the Governor of North Sumatra. At the very least, the Tourism Authority should think about involving the District Heads around Lake Toba as the Steering Committee,

so that the process of determining strategic policies will guarantee that the District Head will not take over the authority of the District/City Regional Head without clarity.

The Lake Toba Authority Body was given management rights over 500 (five hundred) hectares of land around Lake Toba as well as coordinative authority over 30 (thirty thousand) hectares of Lake Toba. This means that after the formation of the Lake Toba Authority Board, the local government still has the right to carry out the construction and development of a 30 (thirty thousand) hectare land, but the local government must first coordinate regarding the planning and permits that will be carried out.

SYNCHRONIZATION OF CENTRAL AND REGIONAL GOVERNMENT AUTHORITIES IN THE DEVELOPMENT OF TOURISM AREAS AFTER THE ESTABLISHMENT OF THE LAKE TOBA TOURISM AUTHORITY BOARD

The birth of the Lake Toba Authority apparently reaped various reactions. Those who welcomed it believed that the Lake Toba Authority was a breakthrough to improve the economy, investment and revive tourism in North Sumatra Province. On the other hand, there are also those who criticize the existence of this institution by expressing their concerns about the tourism industry that will be developed through the Lake Toba Authority, such as disagreement regarding the nomenclature and form of the institution. Questioned the relationship between the Central and Regional Governments, concerns over possible negative impacts on nature and the environment, the tourism culture has not yet been formed and the lack of clarity regarding the protection of the economic rights of the people living around Lake Toba.

A number of parties are concerned about overlapping authorities between institutions in Lake Toba. Prior to the birth of the Lake Toba Authority, a number of institutions had indeed been active in Lake Toba and its surroundings for a long time. One of the institutions at the provincial level is the Lake Toba Ecosystem Conservation Coordinating Board (BKPEKDT) formed by the Governor of North Sumatra with Decree No. 062.05/245/K/Tahun 2002 dated 2 May 2002.

This is also the case with the existence of the Asahan Authority which was formed based on the Decree of the President of the Republic of Indonesia Number 5 of 1976 concerning the Formation of the Development Authority and the Supervisory Board for the Central Hydroelectricity and Asahan Aluminum Smelting. The management model in Lake Toba has

also undergone a number of evolutions. On June 6, 2004 in Parapat, the Declaration and Agreement for the Management of the EKDT / Lake Toba Ecosystem Management Plan (LTEMP) was signed by the Trustees consisting of the Governor of North Sumatra and the Chair of the North Sumatra DPRD, the Chair of the Asahan Authority, the Regents and the Chair of the DPRD seven districts namely Asahan, Dairi, Karo, Samosir, Simalungun, North Tapanuli, Toba Samosir as well as the Mayor and Chairperson of the Tanjung Balai City DPRD, which was witnessed by the President of the Republic of Indonesia Megawati Sukarnoputri.

Ideally, overlapping authority does not occur. In this regard, Article 24 of the Permenpar Authority of Lake Toba outlines that in carrying out his duties, the Main Director must apply the principles of coordination, integration and synchronization with the heads of work units within the Ministry of Tourism as well as with related agencies in accordance with their field of work.

In general understanding, it can be assumed that the authority of the Tourism Authority Board is limited by the Authority of the Provincial and Regency/City Regional Governments as long as there is no delegation. An analogy can be built through an example relating to arrangements regarding Special Economic Zones (KEK) as contained in Law Number 39 of 2009 concerning Special Economic Zones (SEZ Law). In Article 23 paragraph (1) of the KEK Law it is stated that the KEK Administrator is in charge of (a) carrying out the granting of business licenses and other permits required for Business Actors who establish, operate and develop businesses in KEK; (b) supervise and control the operation of KEK; and (c) submit regular and incidental SEZ operational reports to the Zone Council. In paragraph (2) it is stated that the implementation of the issuance of the permit is carried out through one-stop integrated services. Furthermore, Article 24 letter a of the KEK Law clearly states that in carrying out the tasks referred to in Article 23, the KEK Administrator obtains delegation or delegation of authority in the licensing sector from the Government and regional governments.³⁹

Article 12 paragraph (3) letter b of the Regional Government Law states that the tourism sector is an Optional Government Affairs, namely concurrent government Affairs or Government Affairs which is divided between the Central Government and provincial and district/city regions, which are under the authority of the Regions..⁴⁰ Even though tourism is a

³⁹ I Nyoman Suyatna, dkk, "Harmonisasi Kewenangan Pemerintah Pusat Dan Pemerintah Daerah Dalam Pembentukan Badan Otoritas Pariwisata", *Jurnal Kertha Negara* 2, no. 3 (2014): 27

⁴⁰ Pasal 9 Ayat (3) Dan Pasal 11 Ayat (1) Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah

concurrent government affair, it is important to understand that the legal regime of Regional Government regulates government powers which determines that the President of the Republic of Indonesia holds government power in accordance with the 1945 Constitution of the Republic of Indonesia which is described in various Government Affairs which are carried out based on the principle Decentralization, Deconcentration, and Assistance Tasks⁴¹ In carrying out Government Affairs as referred to in paragraph (2), the President is assisted by the minister who organizes certain Government Affairs.⁴²

Referring to these provisions, Article 25 paragraph (1) letter e determines one of the aspects covered by General Administration Affairs, namely the coordination of the implementation of tasks between government agencies in the provincial and regency/municipal areas to resolve problems that arise by taking into account the principles of democracy, rights human rights, equity, justice, privileges and specificity, regional potential and diversity in accordance with statutory provisions. This function is carried out by Governors and Regents/Mayors in their respective work areas who are assisted by vertical agencies.⁴³ In carrying out general government affairs, the governor is responsible to the President through the Minister and the Regent/Mayor is responsible to the Minister through the Governor as the representative of the Central Government.⁴⁴

In the context of synchronizing the authority of the central and regional governments in the development of tourism areas after the formation of the Lake Toba Tourism Authority Board in the Indonesian government system, there are several things that need to be considered, such as:

- a. The Lake Toba Tourism Authority Board needs to clarify the status of delegation or delegation of authority in the licensing sector from the local government in order to avoid conflicts of authority such as the delegation or delegation of authority in the licensing sector from the central government and regional governments
- b. It is hoped that the Lake Toba Tourism Authority Board can pay attention to the involvement of the Regent/Mayor in Determining Strategic Policy. In Article 5 of the Perpres of the Lake Toba Authority, only the Governor of North Sumatra is accommodated as a member of the Steering Committee. Perhaps the fact that there are seven regencies around Lake Toba makes

⁴¹ Pasal 5 Ayat (1), (2), dan (4) Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah

⁴² Pasal 5 Ayat (1) dan (2) Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah

⁴³ Pasal 25 Ayat (2) dan (3) Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah

⁴⁴ Pasal 25 Ayat (4) Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah

it sufficient for the Governor to coordinate the regents. If we look closely, this means that the determination of strategic policies only reaches the level of the Provincial Government Leaders, namely the Governor of North Sumatra. In the future, especially for priority destinations covering an area of only one regency, it is necessary to think about involving the Regent as the Steering Committee, so that the process of determining strategic policies will ensure that the BOP will not take over the authority of the Regent without clarity..

- c. The Lake Toba Tourism Authority Body needs to pay attention to the function of the Regional People's Representative Council as part of the Regional Government. Article 57 of the Regional Government Law states that "Provincial and district/city Regional Government Administrators consist of regional heads and DPRD assisted by Regional Apparatuses". Furthermore, Article 100 paragraph (1) in conjunction with Article 96 paragraph (1) letter c of the Regional Government Law stipulates that the Provincial DPRD (DPRD Province) has a supervisory function, one of which is manifested in the form of supervising the implementation of other laws and regulations. related to the implementation of provincial Regional Government. Likewise, Article 153 (1) letter b jo Article 149 paragraph (1) letter c of the Regional Government Law stipulates that the Regency/City Regional Representative Council has a supervisory function, one of which is manifested in the form of supervising the implementation of provisions of other laws and regulations. relating to the administration of district/city Regional Government. The results of the study show that the process of establishing the Lake Toba Authority does not really involve the involvement of the DPRD of North Sumatra Province, because the process is carried out more by the executive.

The legal basis regarding the harmonization of authority between the Central Government and Regional Governments can be found in the Tourism Law. In Article 5 letter f of the Tourism Law it is stated that Tourism is organized one of them with the principle of ensuring integration between sectors, between regions, between the center and the regions which is a systemic unit within the framework of regional autonomy, as well as integration among stakeholders; Relates to the relationship between the Central Government and Local Government. Article 6 of the Regional Government Law stipulates that the Central Government establishes policies as the basis for administering Government Affairs. Furthermore.

Article 1 point 15 of the Law on Regional Government defines Preferred Government Affairs as Government Affairs that must be carried out by the Region in accordance with the potential of the Region. Ministries or non-ministerial government agencies together with

Regional Governments carry out mapping of Compulsory Government Affairs that are not related to Basic Services and Optional Government Affairs which are prioritized by each province and district/city area.⁴⁵ Mapping of Preferred Government Affairs is carried out to determine which Regions have Preferred Government Affairs based on potential, projected employment, and land use.⁴⁶

The Appendix to the Regional Government Law clearly describes the Division of Central Government Affairs in the Tourism Sector into a number of sub-affairs. With regard to the Tourism Destinations sub-affairs, the Central Government has the following affairs:⁴⁷

- a. Determination of tourist attractions, strategic tourism areas, and tourism destinations.
- b. Management of national tourist attraction.
- c. Management of national tourism strategic areas.
- d. Management of national tourism destinations.
- e. Determination of cross-provincial tourism business registration certificates.

In the Tourism Marketing sub-affairs, the Central Government has affairs related to marketing of domestic and foreign tourism attractions, destinations and national tourism strategic areas. Furthermore, in the sub-affairs of Creative Economy Development through Utilization and Protection of Intellectual Property Rights, the Central Government has affairs for the development of a national creative economy which is determined by criteria. Finally, in the Tourism Resource Development and Creative Economy sub-affairs, the Central Government has the affairs for developing, implementing and increasing the capacity of human resources, tourism and creative economy at the expert level..⁴⁸

Apart from that, the synchronization and harmonization of Authority related to Tourism Strategic Areas is also very much needed as specified in Article 1 number 1 of the Tourism Law, Tourism Strategic Areas (KSP) are areas that have the main function of tourism or have the potential for tourism development which has an important influence on one or more aspects, such as economic, social and cultural growth, empowerment of natural resources, environmental carrying capacity, and defense and security. KSP is developed to participate in

⁴⁵ Pasal 24 (1) Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah

⁴⁶ Pasal 24 ayat (4) Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah

⁴⁷ Lampiran Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah, Pembagian Urusan Pemerintahan Konkuren Antara Pemerintah Pusat dan Daerah Provinsi dan Daerah Kabupaten/Kota, Bagian I. Matriks Pembagian Urusan Pemerintahan Konkuren Antara Pemerintah Pusat dan Daerah Provinsi dan Daerah Kabupaten/Kota, Huruf Z.

⁴⁸ *Ibid*

the creation of national unity and integrity, the integrity of the Unitary State of the Republic of Indonesia and the improvement of people's welfare and must pay attention to the cultural, social and religious aspects of the local community.⁴⁹ Article 12 paragraph (1) of the Tourism Law stipulates that the KSP is determined by taking into account the following aspects:

- a. natural and cultural tourism resources that have the potential to become tourism attractions;
- b. market potential;
- c. strategic location that plays a role in maintaining national unity and territorial integrity;
- d. protection of certain locations that have a strategic role in maintaining the functions and carrying capacity of the environment;
- e. strategic locations that have a role in efforts to preserve and utilize cultural assets;
- f. community readiness and support; and
- g. specificity of the region.

It turns out that the issue of harmonization of authority has been regulated in the Tourism Law which is an integral part of the national spatial layout plan, provincial spatial layout plan, and district/city spatial layout plan. Article 13 paragraph (2) of the Tourism Law outlines that national tourism strategic areas, provincial tourism strategic areas, and district/city tourism strategic areas are an integral part of the national spatial layout plan, provincial spatial layout plan, and regional spatial layout plan. regency/city.

The formation of the Lake Toba Authority is an example that issues of overlapping authority between the Central Government and Regional Governments have been given adequate portion of attention. Article 4 letters b and c of Presidential Regulation Number 49 of 2016 concerning the Authority Board for the Management of the Lake Toba Tourism Area outlines that the Steering Committee has the task of synchronizing the policies of Ministries/Agencies and Local Government regarding the management, development and construction of the Lake Toba Tourism Area and providing implementation instructions to The Implementing Body regarding the management, development and development of the Lake Toba Tourism Area is in accordance with the general policies of the Central Government and Regional Governments.

Furthermore, Articles 20 and 21 of the Presidential Decree also confirm that in the preparation of the Master Plan for the Development and Development of the Lake Toba

⁴⁹ Pasal 12 ayat (2) dan (3) Undang-Undang Nomor 10 Tahun 2009 Tentang Kepariwisata

Tourism Area for a period of 25 (twenty five) years for the 2016-2041 period and the Detailed 5 (five) annual Development and Development Plan for the Tourism Area Lake Toba, the Implementing Body involves Ministries/Agencies, Regional Government of North Sumatra Province, and District Governments in the Lake Toba Tourism Area and related institutions/parties. Furthermore, Article 22 in conjunction with article 20 of the Perpres of the Lake Toba Authority stipulates that in carrying out planning, development, development, management and control of the Lake Toba Tourism Area, Ministries/Agencies, Regional Government of North Sumatra Province,

Finally, you can also refer to Article 25 in conjunction with Article 2 paragraph (2) of the presidential regulation which stipulates that in the context of changing the designation and function of forest areas to non-forest areas and the process of obtaining management rights in the Lake Toba Tourism Area Minister of Environment and Forestry, Regional Government of Sumatra Province Utara, and the Regional Government of Toba Samosir Regency accelerate the process of changing the designation and function of forest areas into non-forest areas in accordance with statutory provisions; and the Minister of Agrarian Affairs and Spatial Planning, the Regional Government of North Sumatra Province, and the Regional Government of Toba Samosir Regency accelerated the process of obtaining management rights in accordance with statutory provisions.

Regional Government as a State institution in the regions is strictly regulated in Article 18 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "Provincial, Regency and City Regional Governments regulate and manage government according to the principle of autonomy and co-administration". Then in paragraph (5) it is also stated that the authority of the Regional Government as one of the State institutions is "The Regional Government shall exercise the widest possible autonomy, except for government affairs which by law are determined as the affairs of the Central Government".⁵⁰From the theoretical dimension of regional government, the enactment of Law no. 23 of 2014 concerning Regional Government has consequences in the form of a paradigm shift in regional government that prioritizes the principle of decentralization.⁵¹

Seeing that the Lake Toba tourism area intersects with several district governments that are members of the North Sumatra Provincial Government area, of course the intersection

⁵⁰ Eka Nam Sihombing, *Hukum Kelembagaan Negara*, (Yogyakarta : Ruas Media, 2018), 118-119

⁵¹ Bhenyamin Hoessein, , "Kebijakan Desentralisasi", *Jurnal Administrasi Negara* 2, no. 2 (2002): 3

of authority between the Regency/City Government and the Provincial Government as representatives of the central government is very vulnerable to occur. This can happen because the process of implementing Lake Toba tourism development by the Provincial Government is carried out in several Regency areas in the Lake Toba area. The condition of the development site which is located in the Lake Toba area causes the boundaries of the authority of the Provincial and Regency Governments to become vague, meaning that in the process of developing Lake Toba tourism there will be overlapping developments.

From a technical point of view, the authority to implement Lake Toba tourism development, one of which is the State institutional structure, consists of the Central Government, Provincial Governments and Regency/City Governments, where their territorial authority areas intersect with one another. The Provincial Government does not have a territorial area, all Regencies/Cities are under the auspices of the Provincial Government at the Department of Culture and Tourism. The authority of the Provincial Government in the development of Lake Toba tourism will be limited by the territorial area which becomes the Regency/City area in accordance with the mandate of Law Number 23 of 2014 concerning Regional Government. The authority of the Provincial Government will be limited when the construction site is located in the area of one Regency/City.

Apart from being limited by its location, the authority of the Provincial Government will also be limited in the development of Lake Toba tourism if what is built is only useful for the needs of the Regency/City. Then the authority of the Provincial Government in the development of Lake Toba tourism will be limited if the benefits and negative impacts are only felt by the Regency/City area and their resources are more effectively carried out by the Regency/City Government.

Lake Toba is one of the tourism destinations instructed by the Central Government to improve, when seen from the establishment of Presidential Regulation Number 49 of 2016 concerning the Lake Toba Tourism Area Management Authority Body in Article 21 it is explained that in the preparation of the Master Plan and Detailed Development and Development Plans for Tourism Areas Lake Toba, the Implementing Body involves Ministries/Agencies, Regional Government of North Sumatra Province, and Regional Governments in the Lake Toba Tourism Area and related institutions/parties.

Article 22 explains that in carrying out planning, development, construction, management and control of the Lake Toba Tourism Area, Ministries/Agencies, Regional

Government of North Sumatra Province, and District Governments located in the Lake Toba Tourism Area refer to the Master Plan and Detailed Development Plans and Development of the Lake Toba Tourism Area. This Presidential Regulation can be used as a legal basis in implementing Lake Toba tourism development. Based on the provisions of the North Sumatra Province Regional Regulation Number 5 of 2018 concerning the North Sumatra Province Tourism Development Master Plan for 2017-2025 in Article 7 it is explained indirectly that the development of Lake Toba tourism includes the development of the tourist attraction of Lake Toba,

The Regency/City Government has full authority to develop Lake Toba tourism, including in the development of Lake Toba tourism business partnerships. Provincial and Regency/City Governments have the authority to:

- a. Develop a cooperation scheme between the Government, Provincial Government, Regency/City Government, the business world and the community based on the selected tourist attraction of each DPP.
- b. Monitoring and evaluating the effectiveness of cooperation schemes between the Government, Provincial Governments, Regency/City Governments, the business community and the community on the attractiveness of each DPP's choice.
- c. Carry out standardization and certification of tourism businesses referring to international tourism principles in all districts/cities.
- d. Carry out standardization and certification of the Tourism Profession
- e. Building a network for electronic-based safe and reliable transactions.
- f. Develop a guarantee model for micro, small and medium enterprises that produce tourism creative industries in order to gain access to capital
- g. Conduct studies to support the growth of a green economy along the tourism business chain.
- h. Develop a tourism business management model that is friendly and cares about environmental preservation
- i. Establish a forum for facilitating technical assistance and legal assistance to obtain intellectual property rights for creative economy business actors.
- j. Carry out an inventory of the potential of human resources and natural resources in supporting the creative economy.
- k. Building creative economic institutions.
- l. Building Creative Economy Houses in selected DPPs.

After the formation of the Lake Toba Authority Body, the authority for management rights does not only fall under the authority of the Regional Government, both Regency/City and Province, the Central Government is also authorized to carry out the development of Lake Toba Tourism through the Lake Toba Authority Body but still coordinates with the North Sumatra Provincial Government and the District/City that located in the Lake Toba Tourism area.

Prior to the formation of the Lake Toba Authority Board, the management of Lake Toba tourism was handed over to the Regional Government, where the source of funding for the development of Lake Toba Tourism for the Provincial Government was budgeted from the Provincial APBD and Special Allocation Funds (DAK) from the Central Government, while the source of funding for the development of Lake Toba Tourism for the District Government /Cities are sourced from Regency/City APBD funds and Special Allocation Funds that are applied to the Central Government.

However, with the existence of the Lake Toba Authority Body as the manager of Lake Toba, there is concern that there will be a conflict of interest regarding whose authority has the right to manage Lake Toba. For example, regarding the division of authority concerning sources of funding and revenue sharing from the Lake Toba tourism industry. If Lake Toba tourism is managed by the Authority Body, how will the income from the Lake Toba tourist destination be divided, whether it goes to the central treasury or to the regional treasury.

Apart from that, regarding the budget needed for the operation of the Lake Toba Authority Agency, will the Regional Government around Lake Toba continue to allocate budget funds for the management of Lake Toba in the APBD of each Regency/City or is it purely borne by the APBN. If the budget for the operation of the Lake Toba Authority Agency is from the APBN, do the Provincial and Regency/City Governments get revenue sharing from the management of Lake Toba tourist destinations.

The Lake Toba Authority Body itself has management rights over the Lake Toba area of at least 500 (five hundred) hectares which is the authoritative authority for the development area of the Lake Toba Authority Body. In addition, the Lake Toba Authority Body also has coordinative authority over Lake Toba covering an area of 30 thousand hectares (ha) which is not the authority of the local government around Lake Toba, meaning that each party has the right to development and so on. However, for any development around Lake Toba,

approval/permit must be obtained from the Lake Toba Authority Agency and in the permitting or planning process, it is necessary to coordinate with the Authority Agency ⁵²

The designation of the Lake Toba area as a strategic area means that its spatial planning is a priority. With a scope covering "lake bodies, water catchment areas, groundwater basins related to the waters of the Toba Fund, activity centers and infrastructure networks that are not in the lake body, water catchment areas and groundwater basins related to the waters of Lake Toba", it can be we can imagine that the area of the lake which is the priority for handling, as well as the large budget needed for it, will in many ways contain friction with the authority of the Regional Government around the lake which is included in the scope of the lake area. Especially with the statutory order that the management of the Lake Toba area is carried out by the Minister, ministers/heads of relevant state institutions⁵³ then there is the possibility of different perceptions about what is the regional interest and authority. Especially the regencies that are part of the Lake Toba area, related to regional autonomy, which is interpreted as the authority to run regional administration based on the widest possible autonomy,⁵⁴ may feel a lack of flexibility in implementing the widest possible regional autonomy.

CONCLUSION

The position of the Tourism Authority Board in Management Rights of the Lake Toba Tourism Area is under the President and is responsible to the President. Agency established through Presidential Regulation (Perpres) Number 49 of 2016 concerning the Lake Toba Tourism Area Management Authority Body which structurally consists of a Steering Committee led by the Coordinating Minister for Maritime Affairs and the Lake Toba Authority Implementing Body led by a Director. Tourism and related agencies in accordance with their duties. The Lake Toba Authority Body is given the right to manage the Lake Toba area at least an area of 500 (five hundred) hectares.

Synchronizing the authority of the central and regional governments in the development of tourism areas after the establishment of the Lake Toba Tourism Authority was carried out to prevent overlapping of authorities and interests. Synchronization of central and regional government authorities is carried out in the field tourism, then synchronizing related

⁵² "Kembangkan Wisata Daerah, ini Fungsi Badan Otorita Danau Toba", 29 Januari 2023, <http://tobakab.go.id/kembangkan-wisata-daerah-ini-fungsi-badan-otorita-danau-toba/>

⁵³ Pasal 126 Peraturan Presiden Nomor 81 Tahun 2014. Rencana Tata Ruang Kawasan Danau Toba dan Sekitarnya

⁵⁴ Pasal 18 ayat (5) UUD 1945.

to Special Economic Zones and then synchronizing related to tourism strategic areas general policies of the central government and local governments. Besides that the need to clarify the status of delegation or delegation of authority in the field of licensing from the central government to local governments in order to avoid conflicts of authority and involvement of local governments around Lake Toba in determining strategic policies.

ADDITIONAL PARTS

I realize that this paper is still far from perfection, therefore all input and criticism from the author will be received and thanked. Finally, I hope this paper can provide benefits to the world of education and parties related to this research. Thank you all for your attention and help.

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