

LOCAL GOVERNMENT AUTHORITY IN PERFORMING INTERNATIONAL RELATION
(CASE STUDY OF WEST JAVA AND DIY)

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Abstract

Local governments, though they may establish international collaboration, they can not be considered as a subject of law in the international law, but rather as an auxiliary instrument of the central government. From the perspective of international law, the responsibilities raised by such international collaboration or international agreement is not in the hand of local government. Another significant point with regards to the said collaboration is that this is also does not contradict with the principle of national unity (NKRI). Because, the local government is merely as an agent of the state which is a subject of international law. In case of any disputes that may the agreements cause shall also be emphasized to be settled within national legal system of Indonesia.

Keywords : *Authority, Local Government, Collaboration, MoU, Sister City, Foreign Private*

Fundamental changes which happened in national, regional, and global has required new policy and new tool in international relation. The technology and communication development has made globalization dependence between states became stronger. As the result, borderless world which creates a global village for world society is born.¹

As the globalization process goes, the actor of international relation is also broadened,² not only in the scope of state actors, but also non-state actors, such as international organization, NGO, MNCs, media, local, minority groups, even individual. The various actors involved in the relation and international cooperation does not only made the decision-making more complex, but also open the chance for the diplomacy stabilization of Indonesia. Endeavoring all international relation and cooperation actors is expected to create a diplomacy that views the problem substance in integrative way and involves all national components in a synergy called Total Diplomacy.³

¹ See the Appendix of Minister of Foreign Affair Decree No: 09/A/KP/XII/2006/01 Dated: December 28 2006 About *Panduan Umum Tata Cara Hubungan dan Kerjasama Luar Negeri Oleh Pemerintah Daerah*, Departmet of Foreign Affair, Jakarta, page 1.

² One of those is the impact towards subjects of international law which is not only state and other traditional subjects, but also international NGO, individual, transnational company, See Malcolm N. Shaw, 2003, *International Law*, Cambridge University Press, Cambridge, Chapter V.

³ *Ibid.*

Act No. 23 2004 on Local Government indicates the needs of adaptation of authority in the practice of international relation and cooperation which in the previous governed in Act No. 22 1999 about Local Government. Basically, the implementation of foreign politic (Politik Luar Negeri) is the authority of central government. However, as the local autonomy law activated, the policy in international relation and diplomacy by central government is aimed to endeavor and promote the local potencies in the framework of Republic of Indonesia.⁴

International relation paradigm change through local autonomy act caused local government open cooperation access to local government in other state recently by sister city/province cooperation, and others. Previously, this authority is explicitly governed in Article 18 Act No. 22 1999 about Local Government. However as the development, the implementation of that Article 18 tended to be similar with the practice of federal states, therefore in the Act No. 32 2004 the local authority is no longer explicitly stated.

One of some regions which have opened cooperation towards foreign party is Daerah Istimewa Yogyakarta (DIY) with some states.⁵ However, besides DIY there are also other city which create international relation such as Jakarta to Berlin and West Java to South Autralia.⁶ All the forms of the cooperation is performed through Memorandum of Understanding (MoU). MoU is one of international agreements stated in Act No. 24 2000 about International Agreement.⁷

Based on the background description above, it shows that there was a move and strengthening of local government in the context of international relation. Related to that, there are 3 problem formulations, which are: (1) Does local government has the capacity to be one of international law subject in international responsibility law?; (2) How is the legal status of MoU in international law system and its implication when conflict happens?; (3) Does the authority transfer towards local government to perform international cooperation contradict with the construction of Republic of Indonesia in the context of Act No. 32 2004?

⁴ *Ibid.*

⁵ Supriyanto and Sandi A.T.T., 2002, "Pengembangan Potensi Propinsi Daerah Istimewa Yogyakarta melalui Kerjasama Sister Province," in *Mimbar Hukum* 41, page 127-30.

⁶ Supriyanto, 2003, "Departemen Luar Negeri dan Pemerintah Daerah dalam Menyelenggarakan Kerjasama Internasional Sister City," dalam *Mimbar Hukum* 43, page 92.

⁷ See Tsani, Mohd. Burdan, "Kajian Undang-Undang No. 37 year 1999 tentang Hubungan Luar Negeri dikaitkan dengan Otonomi Daerah," in Toni Ristanto (ed.), *Sister City dan Sister Province Agreements*, Yogyakarta: Without Publisher, Without Year, page 3. See also Philipus M. Hadjon *et al.*, *Pengantar Hukum Admnistrasi Indonesia*, Yogyakarta: Gajah Mada University Press, 1995. page 113.

Authority Theory

Authority (gezag) is well-formalized power to certain groups of people, or power to a whole governance sector which comes from a legislative or government.⁸ Meanwhile, competence (bevoegdheid) is only about one certain sector. Besides that, competence is also an ability to perform a public legal act or legally competence is an ability to act given by legislation to do legal relations.

According to Indroharto,⁹ characteristic of government competence is express simplified, which is clear purpose and objective, bound in a certain period, and subjected to written and unwritten law limitation. The content can be abstract. For example, making a regulation and can be concrete in the form of a decision or a plan, such as making a plan of layout and giving advice.

There is also a facultative competence, which means if the basic rule determines when and in which condition the competence can be implemented, so the administrative apparatus are not obliged to implement that, because there is still alternative and the choice can only be implemented when the determined condition in the basic regulation is fulfilled.¹⁰

To know whether the competence is facultative or not, it depends on the basic regulation. Meanwhile a binding government competence (gebondenbestuur) is, if the basic regulation determines the substance of the decision should be taken in detail, the administrative apparatus can not do anything other than performing the regulation literally like in the basic regulation.¹¹

Local Government and International Relation Competence

Local government competence to do international relation can not be separated from Act No. 32 2004 as the amendment of Act No. 22 1999. In both legislation there is no provision explicitly recognizes the local competence.¹² Local competence in international relation covers many wide aspects, from investment, international trade, tourism, education, and finance to other important sectors such as development.

⁸ See S.F Marbun, 1997, *Hukum Administrasi dan Peralihan Administrasi di Indonesia*, Liberty, Yogyakarta, page 154.

⁹ Indroharto, 1989, *Usaha Memahami Undang-Undang Tentang Usaha Negara*, Sinar Harapan, Jakarta, page 70.

¹⁰ *Ibid.*

¹¹ S.F Marbun...Op. Cit., page 155.

¹² See Act No. 32 2004.

In brief, as long as the cooperation does not concern about: foreign politics, defense, security, *yustisi*, monetary, and national fiscal, and religion, all form of cooperation is possible to be performed.¹³ Further explanation about the scope of provincial competence in international relation can be found in *Panduan Umum Tata Cara Hubungan Luar Negeri oleh Pemerintah Daerah*.¹⁴ The textbook mentions some possible form of cooperation such as: (1) Economic Cooperation: (a) Trade; (b) Investment; (c) Employment; (d) Maritime and Fishery; (e) Science and Technology; (f) Forestry; (g) Agriculture; (h) Mining; (i) Citizenship; (j) Tourism; (k) Environment; and (l) Communication. (2) Social and Culture Cooperation: (a) Education; (b) Health; (c) Youth; (d) Woman; (e) Sport; and (f) Art. (3) Other Form of Cooperation.¹⁵

Furthermore, the textbook underlined the the position of Department of foreign affair as The Coordinator which owns the authority to give suggestion or any political/juridical consideration towards the cooperation program.¹⁶ The conditions are: - must be with states that has diplomatic relation in the framework of the republic; - in accordance with the legislations and regulations; - there is approval from the Local House of Representative; - does not disturb the national politic stability and security; - does not violate the non-intervention principle; - based on equality of rights; and - support the governance.¹⁷ Then the textbook added that international relation must: not contradict with politic and foreign policy of central government; not thread domestic security; legally no possibility which can cause losses; and not contradict with the related technical department.¹⁸

Cooperation of West Java Local Government and Foreign

Based on the field data as described above, that the cooperation performed by local government of West Java and foreign party in the practice can be divided into 3 groups. The first group is a form of cooperation where the parties involved are government (Local Government and Foreign Local Government).

The cooperation which ever performed in this form of cooperation is the formation of sister city/province, such as the Local Government of Australia and Local Government of West Java as the leading sector submitted to the Biro Sarana dan Perekonomian. This MoU tends to be the umbrella of other cooperation in technical level including some instances and institution.

¹³ Article 10 (3) Act No. 32 2004.

¹⁴ Departmet of Foreign Affair, *Panduan Umum Tata Cara Hubungan dan Kerjasama Luar Negeri Oleh Pemerintah Daerah*, Jakarta: Direktorat Perjanjian Ekonomi dan Sosial Budaya, 2003.

¹⁵ *Ibid*, page 16.

¹⁶ *Ibid*, page 17.

¹⁷ *Ibid*, page 20.

¹⁸ *Ibid*, page 21.

The next is Local Government of West Java and the province of Cholanamdo of Republic of Korea, as the leading sector the Local Government of West Java submitted to Biro Sarek. The assertion of the MoU is supported by the decision of Local House of Representative of West Java No. 193/Kep-DPRD 44/2000 about Local House of Representative approval of the MoU. Then, technically the MoU was followed by the issuing of Full Powers Letter from the Minister of Foreign Affair in January 15 2001. The object of the cooperation is the agreement of cooperation in the fishery fleet aid program as much as 15M from the Local Government of Cholanamdo Province of Republic of Korea to the West Java fishermen.

The next is West Java Local Government and The Kingdom of Pulau Pinang Malaysia. The purpose of the agreement formulated in the Letter of Intent is purposed to open the gate of relationship in investment sector, because in the view of the local government of West Java, the state of Pulau Pinang Malaysia is the fourth state after Kuala Lumpur, Johor, Selangor which is leading in the industry and harbor sector and lots of investor invest. In the practice, Local Government delegated Biro Desentralisasi to use this cooperation by inviting related instances and institution to actively participate. After the issuing of Full powers of the Minister of Foreign Affair in December 2003.

The second group includes the cooperation involved two parties, which are foreign private and local government. The example of the cooperation is PT BnV LLC AS in the purpose of improving promotion in trade especially low and middle entrepreneur sector, investment, tourism, and culture of West Java in New York, United States. The operation institution appointed by Local Government of West Java, the implementation of the cooperation is department of industry and trade (Disperindag), through decision of West Java Governor No. 501.1/Kep.387.Sarek/2003 with the period of the cooperation is 5 years.

The next is the consent with HMP Numismatic Dealer, in the purpose of realizing the beneficial cooperation relationship for both parties in economic sector. The cooperation is technically performed by Biro Sarek and Local Government of West Java. The legal instrument used by both parties in the cooperation is Cooperation Agreement No: 193/10/Sarek/04/2004.

The next is Local Government of West Java with PT. Umpan Jaya SDN BHD, Malaysia about detailed Proper Study of privatization of city trash management service in Metropolitan Bandung at the same time. The same agreement of the cooperation is also performed by Local

Government of West Java and PT. Pantai Mendivest SDN BHD, Malaysia, with the object is Medical Waste and Dangerous and Poisoned Waste Management.

The next cooperation is Local Government of West Java and PT. The South Australian Water Corporation, with the cooperation object is water infrastructure development sector. The same cooperation is also done by Local Government of West Java and PT. United Engineers, PTE, LTD Singapore with the cooperation object is about the formulation of detailed proper study in the investment of drunken water service. The period of the cooperation implementation is 6 months. Meanwhile the period of cooperation with The South Australian Water Corporation is 3 years and the practice is handled by Biro Sarek of West Java.

The other cooperation is Local Government of West Java with PT. CITIC Constructions Co, Ltd, Beijing. The object of the cooperation is participation in ifrastructur building in West Java. The same agreement is also performed with PT. GEO Fusion SDN BHD, Malaysia in the period of 6 months. Besides that, the agreement of the infrastructure building was also done with PT. KIIKFORUM. INC, Korea in 1 year period. There was also agreement with PT. SAM-AN Engineering Consultants CO, LTD, Republic of Korea in 2 years period.

Local Government of West Java with PT. Keppel Integrated Engineering Limited, Singapore with the object of cooperation is Trash and Clean Water Management which became the crucial problem in Bandung as the capital city of West Java. The same cooperation was also done by Local Government of West Java and AGNI ENERGIE SDN BHD, in 1 year period.

The third model of cooperation is with foreign NGO, which is Research Triangle Institute (RTI), International Educational Development Center (EDC) Save the Children. Technically the cooperation is performed with District Government of Indramayu, and Sukabumi. The object of the cooperation is USAID technical aid for education and government improvement. Besides that, the scope of the cooperation is about study and skill quality improvement of West Java society, especially in the operation location activity through USAID program about local decentralization/autonomy.

Legal instrument used in sister city/province model of agreement is MoU. The function of MoU is an umbrella instrument for the other technical cooperations between Local Government of West Java and Foreign Local Government. Therefore, the related institution will need other technical consent which is sufficient with the agreed type and object of cooperation.

Local Government of DIY Cooperation with Foreign

There are two models of cooperation done by Local Government of DIY with foreign government or private institution. The first one is a cooperation done by local government which its characteristic is Government to Government in the form of Sister City/Province model of cooperation; where the two province tends to have a similar geographical background, social culture, and tendency of city development, therefore ease the existence of the cooperation relation in many beneficial and continuous life aspects.

Some MoU in this model of cooperation which has been done are DIY with Kyoto, Japan. The cooperation between DIY and the Government of Kyoto Prefecture, dated July 16 1985 is considered as the oldest in the history of foreign cooperation in Republic of Indonesia.

The objective of cooperation done by two parties is to create a friendship cooperation relationship related to art and culture, science and technology, culture and industry development.

The next is, DIY and Ismailiya Province, Egypt, with the cooperation objects in trade, tourism, technology, education, culture, and industry. Unfortunately, the implementation of the MoU could not be realized optimally because of some obstacles.

The first one is the program formulation was too general, even the target was not clear. The second one is the fund was not provided by Ismailiya Province and Government of Indonesia yet. The absence of budget allocation became the obstacle factor of the success of the cooperation program. The third one is the unclear legal position of each party. Centralistic authority system caused the bureaucracy became uneasy, because of international relation is central government's authority at that time. The fourth one is the lack of sufficient information and data for both states.

The next is DIY with State of California of United States of America, with the purpose of cooperation in development in economy and trade, industry and tourism, agriculture, education and culture, environment, and investment.

The next is DIY and Tyrol Province, Republic of Austria, which at first rose because of scholarship offer for Post-Graduate Students in Gajah Mada University and the building of Laboratory, Chemical Computer which was sponsored by Prof. B.M. Rode.

The other DIY cooperation is with two province of Republic of Korea which are Chungcheongnam and Gyeongsangbuk Province of Republic of Korea, through an initiation from the rector of Sun Moon University, Daejeon while they were opening Korean Study Center in Jogjakarta State University (UNJ).

The second model of cooperation is Local Government of DIY with private institution, which is the Suruga Miyaga Company, Japan. The sectors which cooperated by both party was industry and complex trade development, agriculture development, investment negotiation for Japanese company in Indonesia, especially in DIY. From the realized program, the cooperation relation between Local Government of DIY and Surya Miyaga Company has ran in harmony until the activity was still recorded until October 2005.

The next is the cooperation of DIY and University of Karlsruhe, Germany. The initiation of the cooperation between Local Government of DIY and University of Karlsruhe, Germany was started from the alumnus of post-graduate students who got scholarship for the doctoral program, BATAN DIY from University of Karlsruhe, Germany with some Professors. Therefore, the first step in this cooperation program, started with cooperation between BATAN and Local Government of DIY through Cooperation Letter (Surat Kerjasama Bersama) No. 107 1999 and No. 366/VIII/1999 about the use of nuclear science and technology in supporting DIY society prosperity. Cooperation Letter between Local Government of DIY with BATAN was signed in August 12 1999.

Form of Cooperation and the Legal Implications

As explained above, that generally the form of cooperation done by Local Governmnd (West Java and DIY) is divided into two models, which are Local Government with Foreign Private and Local Governmnd with Foreign Local Government. The first model of cooperation has more private contracts which its regulation refers to the regulation of contract law in the scope of private international law.

a) Local Government Cooperation with Foreign Local Government

The type which is included in the second group is Local Government of West Java and Foreign Local Government (Government to Government) covers all form of cooperation done by Local Government and Foreign Local Government. Cooperation categorized in this second group is mostly aimed to open the gate of further cooperation. For example, as the gate for the cooperation between society in both region such as commercial and business activity. Legal instrument used in this model of cooperation is Memorandum of Understanding (MoU) or Letter of Intent (LoI) between two parties (Local Government and Foreign Local Government).

Besides the function as a umbrella of MoU made by Local Government and Foreign local government, it can also be expressed through sister city and LoI. The cooperation procedure of

sister city made by Local Government of West Java is like with the Foreign Local Government of South Australia. The sister city procedure is done based on the procedure expressed in the Minister of Foreign Affairs of Indonesia Regulation No. 09/A/KP/XII/2006/01 about The General Guidance of International Relation and Cooperation Procedure which is explained in other section in detail of this research report.

The procedure of cooperation with foreign party is explained in detail in *Panduan Umum Tata Cara Hubungan dan Kerjasama Luar Negeri* book published by Department of Foreign Affairs,¹⁹ which are: (a) done with the states who has diplomatic relation with Indonesia in the framework of Republic of Indonesia; (b) in accordance with the authority of local government regulated in the national legislations of Republic of Indonesia; (c) granted approval from Local House of Representative; (d) does not disturb the political stability and national security; (e) does not tend to be involved in the national affairs of each state; (f) based on the principle of rights equality and non-force; (g) pay attention on the principle of equality and beneficial for both local government and society; (h) support the governance, national development, and society improvement.

Whenever there is any act which is not compatible with national interest or contradict to the foreign policy of Republic of Indonesia, national legislations, international law and international customary law, the Minister of Foreign Affairs could take steps which is considered for the enforcement of the regulation as explained in Act No. 37 1999 about International Relation and Act No. 24 2000 about International Agreement.

When local government needed information, consultation, and coordination related to foreign relation and cooperation, local government will contact Department of Foreign Affairs, General Director of Law and International Agreement. (Ditjen HPI)

b) Local Government Cooperation with Foreign Private

Conceptually the cooperation involves local government and foreign private in international concept is known as Public Private Partnership (PPP) or government cooperation with private. The concept of Public Private Partnership (PPP) shows various conditions and depends on the variation interpretation subject. There are some definitions, but the popular definition is given by UK Commission on Public Private Partnership, which is: "Public Private Partnership is a risk-

¹⁹ *Ibid*, page 19-23.

sharing relationship between the public and private sectors based upon a shared aspiration to bring about a desired public policy outcome".²⁰

The background of Public Private Partnership (PPP) existence is a failure of market in creating mutual accountability and the unity of transaction between government and private in a cooperation activity. The idea of PPP is aimed for a beneficial achievement. The role of government is not only giving service, but also monitoring the market and creating a good regulation framework, improving the benefit for government through a cooperation which works efficiently and optimally towards the resources in accordance with the target of policy. In other side, this cooperation will give security to the private sector in terms of regulation, transfer, and commercial dispute authority (kesewenangan perselisihan komersial), respect the agreement and the proportional distribution of cost and benefit from a risk.²¹

The legal implication is rights and obligation of both parties in accordance with the regulation of contract law in Private International Law. The scope of cooperation and dispute resolution procedures occur in this first model of cooperation is expressed clearly in the provision of the cooperation contract made and agreed by both parties. One general principle which is used for the principle of agreement above is the principle of *pacta sunt servanda*, which emphasized that agreement made by the parties, is binding to the parties.

c. Local Government Cooperation with Foreign NGO

The next type of cooperation is between local government foreign Non-Governmental Organization. In this third group of cooperation the characteristic is community development. Three of the activities are training, research, and proper governance in accordance with the latest development.

Legal Instrument of the Cooperation

Local government usually expresses the cooperation in the form of Memorandum of Understanding (MoU) or Letter of Intent (LoI). MoU is categorized as form of legal instrument

²⁰ Boeuf, Patrick 2003, *Public-Private Partnerships For Transport Infrastructure Projects. Seminar on Transport Infrastructure Development For A Wider Europe*. Paris, 27-28 November, page 3.

²¹ Pongsiri, N. *Regulation And Public Private Partnerships*. The International Journal of Public Sector Management, Vol. 15 No. 6, 2002, page 487-495. See also Diana Jamali 2004. *Success and failure mechanisms of public private partnerships (PPPs) in developing countries Insights from the Lebanese context*, The International Journal of Public Sector Management Vol. 17 No. 5, 2004, page 414-430. See also Nijkamp, P., Van der Burch, M. and Vidigini, G.A *Comparative Institutional Evaluation Of Public Private Partnerships In Dutch Urban Land-Use And Revitalization Projects*. Urban Studies, Vol. 39 No. 10, 2002, page 1865-80. Leitch, S. and Motion, J. *Public Private Partnerships: Consultation, Cooperation And Collusion*. Journal of Public Affairs, Vol. 3 No. 3, 2003, page 273-8.

(treaty) in the law of treaty which has legally binding power. This is in accordance with the demand of the Act No. 24 2000 about International Agreement. The binding validity of this MoU can not be separated from Article 24 of Act No. 24 2000 which explicitly stated that local government as the pioneer institution of the making of international agreement.²²

Related to the MoU legal instrument as the written agreement used by Local Government, therefore the legal status of MoU in the context of the cooperation can be explained by using law of treaty. Principally, the main issue of this section has to be expressed through two things as below:

The first one, when local government does transaction in international level, it can not be considered represents itself – although local government act for its own interest, not for national interest. As the consequences, it gives impact to the matter of responsibility. In brief, the responsibility is in the national government, although the contractor is local government. It is because international law is only recognized by state – not local government.

The second one is problem related to local authority to create cross-law international relation. It is involves, at least public international law, constitutional law, and administrative law. From the cross points between the three, it creates confusion in the management. It is clearly shown in the practice of Indonesia.

It can be concluded that an international agreement is not obliged to use certain terminology. In other words, it is not impossible if the terminology of Memorandum of Understanding is used as the local government used in legal instrument used as the basis of international cooperation practice. Even the consent which is only performed orally is included in the category of agreement governed in Vienna Convention 1969.²³ In brief, the most determining factor in making a document as an international agreement is the contexts which accompany the formulation process.

Legal Status of Local Region

The local authority in making international relation can not be separated from the demand to develop and promote potention in the framework of Republic of Indonesia (NKRI).²⁴

²² See the leaflet of *Prosedur Kerjasama Kota Bersaudara (Sister City) dan Propinsi Bersaudara (Sister Province)* issued by Department of Internal Affair, page 21.

²³ *Ibid*, page 176.

²⁴ *Ibid*, page 5.

From the statement above, it can be concluded that while all activities are being ran by local government can not be considered as the local government itself, but also as representation of the whole Republic of Indonesia.

In the relation with local authority in making international relation must be understood as merely a technical authority. This thing is different from authorities for foreign politic which its character is basically a policy. Therefore, this local government authority is only understood as implementation of the previous policy which was determined by central government previously. So it is common when a local region can only make cooperation with the states which already has diplomatic relation before. For the states which have no diplomatic relationship before, the relation is applied in some special regulation.²⁵

Furthermore, in applying local authority, it is tied by many regulation and procedure provided by central government. It is aimed at involvement from the introduction process until evaluation process by Department of National Affair and Department of International Affair²⁶ in which the two institutions are as the representation of the central government.²⁷ Even in the process of signing it must be done by submitting full power letter issued by Department of International Affair. In brief, the issuing of the full power letter by the Department of International Affair shows that it is as a form of control.

Central Government Relationship with Local Government

Related to the local authority in making international relation, the above view became clearer. International Relation, as emphasized by Article 3 (a) Act No. 32 2003 which is the authority of central government.²⁸ It is in harmony with Article 5 (1) Act No. 24 2000 about International Agreement which stated that 'state institution and government institution, department

²⁵ See Department of Foreign Affair, *Panduan Tata Cara Hubungan dan Kerjasama Luar Negeri Oleh Pemerintah Daerah, Department of Foreign Affair, Jakarta*, Department of Foreign Affair, Chapter XI.

²⁶ The role of Department of Foreign Affair and Republic of Indonesia Representative in other state related to the local interest in performing international relation and cooperation are: a) Combine all the local cooperation potency in order to create synergy in the international relation and cooperation (coordinator); b) to search for new solution (initiator); c) to provide the needed data (informatory); b) to search for foreign partner (mediator); e) Promote local potency in other state (promoter); f) to facilitate international relation and cooperation (facilitator); g) to give protection to local region (protector); h) to guide the cooperation to make it effective (consultant/supervisor). See in *Ibid*, page 8.

²⁷ See chapter IV which specifically discusses procedural aspect of international cooperation.

²⁸ The General Explanation of the article emphasized that "foreign politic matter means ..perform an agreement with other state...".

or non-department institution, in central government or local government, which has plan to do consultation and coordination about the plan with the Minister of International Affair.

Besides that, the issuing of full power letter by the Minister of International Affair emphasized more the position of contractor (signing) as one of the functionary in central level. Therefore, in the context of International relation, local government can not be considered as a representation of itself. However, the local government must be considered as state which is the subject of international law. This is in accordance with the Vienna Convention 1963 about Consular Relation which only recognize the interest of Republic of Indonesia representation – not the local government of Republic of Indonesia.

Dispute Settlement Mechanism

In MoU or Lol made by Local Government of West Java there is no clause that discusses the mechanism of dispute settlement mechanism clearly. The same thing can also be found in the General Guidance published by Department of Foreign Affair. However, according to Sri A. Kusumawardani, the Head of Local Government of West Java Cooperation Section, and the anticipation of Local Government of West Java if there any disputes, some regulation will be applied. The dispute will be settled in Indonesia using institution and local regulation of Indonesia.

Although until this time there is no dispute caused by this kind of cooperation. However, this situation has caused a serious legal confusion. In one side it is regulated by international law regime as shown by the recognition from Act No. 24 2000 about International Agreement, but in other side dispute s settled by local law mechanism.

In the practice there is some confusions. It can not be separated from the ambiguity construction about authority relation between central-local governments. For example, although the cooperation section is under Biro Desentralisasi, as what happened in the Local Government of West Java I, it does not mean that authority of making international cooperation is not the part of decentralization. It is more proper if the authority of making international cooperation is a part of deconcentration. This thing will create impact towards the local region position itself, which only acts as the representation of central. In brief, the whole authority is in central government, local government only acts as an initiator.

Besides that, between a region and others has different structure. For example, in the structure of Local Government of West Java I the cooperation section is placed under Biro

Desentralisasi. It is not like a structure of Local Government I which places it in special bureau. The other problem identified in this research is the overlapping of regulation between the regulation made by Department of National Affairs in one side and Department of Foreign Affairs in other side. This can not be separated from the confusion caused by the confusion of regulation.

In one side, local government authority to make international relation is seen as a part of deconcentration which in its turn will make central government – in this case represented by department of foreign affairs – can intervene further. In other side, by Act No. 37 1999 about International Relations emphasizes that only Department of Foreign Affairs, in this case the Minister who has the authority to make international relation.

The Termination of Cooperation

Until this time there is no extermination of local government and foreign in the practice. This situation can not be separated from the facts that the newly-born authority of doing this cooperation. As the common agreement, basically an agreement will be terminated when the objective of the agreement has been achieved. In the condition of big occurrence such as some acts which are considered not in accordance with the basic policy of Indonesia, the Minister of Foreign Affairs can take some “important steps”.

This is aimed so that the provision in Act No. 37 1999 about International Relations and Act No. 24 2000 about International Agreements will be obeyed. However, the guidance does not explain what “important steps” are itself, but it can be understood that the act of terminating agreement in one side.

Conclusion

Based on the analysis about the practice of local government and foreign cooperation, as explained above, some conclusions can be taken which are: Although local government can perform international agreement, it can not be seen as the subject of international law such as state, but more likely to be the extension of state authority from the central government to the local government. In the context of international law, the burden of agreement responsibility is not in the hand of local government, but in the central government which represents the sovereign state. The local government authority in doing international cooperation based on MoU which its regulation is referred to Act No. 24 2000 about International Agreements. Because MoU is one of international

agreement expresses the will of the parties in creating new legal obligation which is legally binding and regulated in international law, this agreement is subjected to the regulation of international law. In the practice, as what have done by the Local Government of West Java and DIY, there are three models of international agreement, which are: (a) cooperation between local government (of West Java and DIY) with foreign local government (government to government) which commonly in the form of sister city/province; (b) cooperation between local government and foreign private such as economy, social, culture, tourism, and infrastructure, technology, and employment, and (c) cooperation between local government and foreign NGO in the development of society and government apparatus activity. The international relation done by local government does not contradict with the construction of Republic of Indonesia, because the local capacity in the context of the cooperation is only as the agent of state as the subject of International Law. It is proven by the full powers from the Department of Foreign Affair which will perform the international cooperation, while it is aimed for improving the quality and national interest.

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