

REGIONAL EXPANSION IN INDONESIA: PERSPECTIVES ON DEVELOPMENT LAW THEORY

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Article	Abstract
<p>Keywords: Development, Regional Expansion, Development</p> <p>DOI: 10.28946/scls.v1i1.2610</p>	<p>The research purpose is to find out the development of regional expansion in Indonesia from the point of view of development law theory. The research method used in this study indeed uses the type of juridical normative research. While the approach to be taken by the author is a statutory approach and a conceptual approach. The data analysis used by the author is descriptive qualitative data analysis. The discussion results in this study are two things: first, expansion in Indonesia is considered quite significant, primarily. This expansion is carried out in the framework of national development. But regional expansion cannot be separated from dilemmas, especially political dilemmas, administrative dilemmas, and dilemmas in terms of regional inequality. Second, regional expansion viewed from the point of view of development law theory is undoubtedly related to the role of law as a means. Law occupies a vital role in the means of regional expansion. The law plays an essential role in the legislative process of regional expansion because the autonomous regions that will secede must be based on the products of the law.</p>

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A. INTRODUCTION

The reforms in 1998 brought about many changes. These changes are in various fields, such as politics, law, and social culture. The existing reforms resulted in amendments to the Indonesian constitution, namely the 1945 Constitution. The substance of the constitutional amendment has a significant impact on the Indonesian legal system. Fundamental changes occur and give rise to new institutions in the constellation of the Indonesian constitutional system. Power in the political system is no longer unlimited, *check and balance* mechanisms are strengthened, and other impacts are felt in the regions.¹

The impact felt by the region is the occurrence of regional expansion, often known as the formation of new autonomous regions. Development that was previously centralized is required to change in order to be more spread. The development of the concept of decentralization has strengthened, so many regions are expanding. The expansion of the area is massively

¹ Rahmad Suaib, "Urgensi Pemekaran Daerah Di Indonesia," *Jurnal Government Of Archipelago - JGOA* 1, no. 1 (March 2020): 34–44, <https://doi.org/10.52046/JGOA.V1I1.364>.

carried out like it has several sides.² On the first side, regional expansion is considered an effort to improve people's welfare, develop local democracy, and maximize public access to the government. However, it can also be an effort to bring closer relations between the people and their local government.³ The other side can be seen from the pragmatic aspect, which shows that the expansion of this area is in the interest of the elite in the name of the people's interests to carry out their interests. The reason is simple: when there is a regional expansion, there will be plots of new positions of power that will appear in regional leaders. The budget sector conditions will change and separate.

Regional expansion data must be seen and observed in 1945 when Indonesia first only had eight provinces. Reformation in 1999 after East Timor decided to secede and officially became independent in 2002. There was a division of 9 provinces: West Irian Jaya expansion, North Maluku, Banten, and Bangka Islands. In this condition, at least Indonesia already has 30 Indonesian Provinces. After that, it was followed by Gorontalo, Riau Islands, West Sulawesi, and North Kalimantan. Since then, Indonesia has had 34 provinces.

Further data on regional expansion in 2000. In 2000, a regional expansion of 4 regions will become new provinces for the Unitary State of the Republic of Indonesia. There are South Papua, Central Papua, Mountain Papua, and Southwest Papua. This expansion occurred after the passage of bills from their respective provinces passed by the House of Representatives.

The number of regions carrying out regional expansion is a disturbance that needs attention. The regional formation is not just a gift from the center to the regions. There is a point of view that expansion occurs and is carried out to strengthen the existence of the Republic of Indonesia. The reason for national integration is an existing issue because it prevents any action to separate from the Republic of Indonesia. Of course, there is a mandate from the 1945 Constitution right in Article 18, which relates to dividing provinces, regencies, and cities with their governments.⁴ However, expanding existing areas certainly has problems that arise in the future. Regional expansion is not an existing solution without loopholes.

For example, the problem is when regional expansion occurs due to coercion. The regional expansion has no basis of interest behind it. Short-term interests that have a destructive nature arise when regional expansion is based only on the interests of a few people. In the past, right in 2005, it was recorded that 48 districts/cities formed over four years resulted in 110 new districts/cities due to the regional expansion process.⁵ In addition, many politicians also feel that regional expansion must continue without attaching importance to a clear basis or reason. The phrase from the Politician from Commission II of the House of Representatives justifies it based on erroneous legal logic. He said that the law regulates the division of this area. If prohibited by Indonesia President, it means that our president encourages us to violate the law.⁶ In addition, sociologically, expansion has adverse effects in the form of spatial fragmentation, selfishness from the region or local, and causes financial burdens, increasingly creating conflict and violence and raising local elites' existence.⁷ Of course, these problems will affect the development process in Indonesia. Given that law has a massive role in the development process for a country. Based on this background, at least the author wants to raise the formulation

² Katalin Siska, "Slavery in the Ottoman Empire | Merryn Allingham," *Journal on European History of Law* 2, no. 2 (2016): 71–79, <https://www.ceeol.com/search/article-detail?id=463192>.

³ Tri Ratnawati, *Pemekaran Daerah Lokal Dan Beberapa Isu Terdeteksi* (Yogyakarta: Pustaka Pelajar, 2009), 32.

⁴ Hamrin Hamrin and Albert Tanjung, "Politik Hukum Pemekaran Daerah Dalam Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah," *National Journal Of Law* 2, no. 1 (April 2020): 187–99.

⁵ Krismayati Tasrin, "Dilema Pemekaran Wilayah Dalam Era Otonomi Daerah," *Jurnal Wacana Kinerja: Kajian Praktis-Akademis Kinerja Dan Administrasi Pelayanan Publik* 10, no. 1 (March 2020): 83–93, <https://doi.org/10.31845/JWK.V10I1.418>.

⁶ *Ibid.*

⁷ Alfath Bagus Panuntun El Nur Indonesia, "Pemekaran Dan Konsolidasi Sosial," *Kompas.id*, 2022.

of the problem of how the Development of Regional Expansion in Indonesia: Perspectives on Development Law Theory.

B. RESEARCH METHODS

This research method uses a juridical normative type of research. The approach chosen by the author is the conceptual approach.⁸ The data analysis that the author will use is descriptive qualitative data analysis. This study focuses on secondary data.⁹ The secondary data used by the author relates to the 1945 Constitution, laws and regulations related to regional expansion, regional government, and regional autonomy. The secondary legal sources the author will use will relate to written literature and research on regional expansion, regional autonomy, and the concept of development law theory.

C. ANALYSIS AND DISCUSSION

1. Regional Expansion in the Constitution System

This new autonomous region is a phenomenon that needs to be examined. The lack of adequate human resources (HR) causes delays in the implementation of regional government and chaotic governance in several regions in Indonesia due to the expansion or addition of autonomous regions. The government's strategy to improve task implementation quality in service, empowerment, and development is seen as a step towards realizing a more advanced, independent, prosperous, just, and prosperous community life order. Therefore, there is a division of territory. In addition, regional expansion aims to make public services more accessible. Local government to the community is to manage potential more effectively and efficiently according to the needs or characteristics of each region. Therefore, regional expansion must be more open, widen its development path to all regions, and be supported by constitutional reasons, as outlined in the 1945 Constitution.

In Indonesia, new regional, provincial, and city administrative regions and districts from their parent regions are regional expansions. The legal basis for the latest division of Indonesian territory is Law No. 3 of 2014 concerning the Regional Government. The formation of specific regions or regional divisions is not regulated in the 1945 Constitution. However, the following is referred to in Article 18B paragraph (1): The State respects and recognizes special or unique local government units regulated by law. In addition, the following sentence can be found in the second paragraph of the same article: The Unitary State of the Republic of Indonesia is regulated by law. "The State recognizes and respects the unity of indigenous peoples and their traditional rights throughout their lives and follows the development of society and its principles."

There is a dilemma, especially in three dimensions in seeing the aspect of regional expansion: the political dimension, the administration dimension, and the territorial inequality dimension.

a. Political Dimension

From the beginning, the need for decentralization or the establishment of autonomous regions was caused not by technical considerations but rather by tug-of-war or political conflict between regions and the center. Local government, which is part of the recognition or recognition of a community group as a political entity, as part of the foundation of political conven-

⁸ Yati Nurhayati, Ifrani, and M. Yasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum," *Jurnal Penegakan Hukum Indonesia (JPHI)* 2, no. 1 (2021): 1-20, <https://doi.org/https://doi.org/10.51749/jphi.v2i1.14>.

⁹ Kornelius Benuf, Siti Mahmudah, and Ery Agus Priyono, "Perlindungan Hukum Terhadap Keamanan Data Konsumen Financial Technology Di Indonesia," *Refleksi Hukum: Jurnal Ilmu Hukum* 3, no. 2 (2019): 145-60, <https://doi.org/10.24246/jrh.2019.v3.i2.p145-160>.

ience and freedom, is a political dimension of regional formation or decentralization. The political dimension includes the following: Historical, sociocultural, demographic, and geographical factors all play a role.¹⁰

b. Administrative Dimension

Decentralization can provide administrative and service customization opportunities with regional characteristics that vary due to geographical differences. As a result, regions with autonomy or decentralization are believed to improve the administration and implementation of community services. From that perspective, administration, decentralization, technical aspects of performance, and objective institutional formation are needed.

c. Dimensions of the Territorial Gap

Various examples of national governance intersecting with regional governments often cause inequality in regional development. On the other hand, some areas are regressing while others are experiencing rapid development. Given the problem of creating an autonomous component, the thinking of relations between regions is based on this idea. According to this theory, independent territories are formed when regional disparities arise. Neglected areas for development will strengthen solidarity collectively. Underestimated people, therefore, demand their independent territorial arrangement to have the option to create and manage their territories openly. These three dilemmas will undoubtedly affect the development of expansion in each region. In addition, it will certainly affect the existence of national development.

2. Regional Expansion as a Form of Development in the Perspective of Development Law Theory

Mochtar Kusumaatmadja was a central figure in this idea. In addition, the thinking version of Development Law Theory has been adopted normatively as a definition of legal development in Indonesia since 1973 by the needs of state development (in GBHN). According to this idea, cultural influences significantly impact the ability of laws to be enforced due to the multicultural nature of Indonesian society and the way laws are used as development-oriented social engineering tools.¹¹ In addition to the Social Engineering ideas of Roscoe Pound and McDougal, Northrop significantly influenced the "legal theory of development" in the fields of culture and philosophy.¹² One of the critical theories in legal science is the theory of social change in law. The relationship between social change and the legal field is one of interaction; On the one hand, social change impacts changes in the field of law, and on the other hand, legal changes also impact social change. The function of law as a tool of social change or as a way of engineering society is one of the legal changes that can impact society (social engineering). Consequently, law is an instrument for governing society (*a tool of social engineering*).¹³

In contrast to the idea of "law as social engineering" promoted by the jurisprudence of the Supreme Court (MA) in the United States, Indonesia emphasizes the use of law as a tool of development, including legal reform, through laws and regulations that pay attention to telling the country's historical experience since the colonial era.

¹⁰ Wilda Umami and Ferizaldi Ferizaldi, "Urgensi Kebijakan Pemekaran Daerah Otonom Baru Aceh Malaka," *Asia-Pacific Journal Of Public Policy* 8, no. 1 (April 2022): 1-15, <https://doi.org/10.52137/APJPP.V8I1.72>.

¹¹ Shidarta et al., *Mochtar Kusuma-Atmaja Dan Teori Hukum Pembangunan* (Jakarta: Epistema Institute, 2012).

¹² Nazaruddin Lathif, "Teori Hukum Sebagai Sarana Alat Untuk Memperbaharui Atau Merekayasa Masyarakat," *PALAR (Pakuan Law Review)* 3, no. 1 (January 2017): 78-87, <https://doi.org/10.33751/PALAR.V3I1.402>.

¹³ Nur Fadillah, "Tinjauan Teori Hukum Pembangunan Mochtar Kusumatmadja Dalam Undang-Undang Ibu Kota Negara (IKN)," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 11, no. 1 (2022): 45-65, <https://doi.org/10.14710/mmh.51.1.2022.29-39>.

One of the arguments has attracted the attention of the general public and academics following the history of the development of Indonesian law. This idea is based on Mochtar Kusumaatmadja's theory of development law. Development law theory receives a lot of attention from professionals for several reasons. First, the theory of development law now comes from Indonesia because its supporters are Indonesians. The culture of Indonesian society strongly influences the elements of this idea. The evolution of Indonesian society's situation raises this theory's dimensional benchmark, given the environment and the plural nature of Indonesian society.

Second, the Indonesian view of life-based on familial Pancasila is referred to in development law theory. The theory of development law has three main components: structure, culture, and substance. Third, law is seen as an essential system for the people of Indonesia and other nations who are currently in the developing stage. Development law theory essentially describes law's core role as a "means of social transformation" (law as a social engineering instrument). A "concept" of legal development modified and adapted from Roscoe Pound's theory of "Laws as a tool of social engineering" developed in the United States, this is the historical perspective on the birth and development of development law theory meant to be. Mochtar Kusumaatmadja's development law theory was influenced by Herold D. Laswell and Myres S. Mc Dougal (Policy Approach) and Roscoe Pound's legal theory (minus mechanical conception) for a more profound elaboration of the theory.¹⁴

Mochtar oversaw its conception and adapted it based on these ideas to Indonesian conditions. He explained the importance of cooperation in the public policy-making process between theoretical law developers and students in general (scholars) and practical law developers (specialists in decision-making), an exciting concept from the theory developed by Laswell and Mc Dougal. It is instructive while also considered effective from a political point of view. In this connection, Mochtar's development law theory shows a pattern of cooperation that unites all social stakeholders of society.¹⁵

Mochtar also said that the practical goal is to advance development. The ideas of Roscoe Pound and Eugen Ehrlich align with the statements of Laswell and McDougal. They explain that law students and legal practitioners working together must be able to produce legal theories that can be called practical uses or have a pragmatic dimension. Remarkably, Mochtar Kusumaatmadja changed the meaning of law from a tool to a tool for building society. Law which in this case is a means to direct human activities in the desired direction in development and renewal, as well as order and order to build and implement essential renewal, is the foundation. Therefore, a means is needed in the form of legal regulations whose values align with the laws that govern society.

Mochtar argues that the concept of law as a means can go beyond the concept of law as a tool. The reasons include the following: First, Indonesia emphasizes legislation more in the process of implementing legal reform compared to the United States, which emphasizes jurisprudence (especially Supreme Court rulings); Secondly, the law as a "tool" will be able to achieve results comparable to those achieved by "legalism" in the days of the Dutch East Indies; Indonesia's current situation shows people's sensitivity to resist the application of the concept. Third, if international law falls within the sense of "law," then the idea of law as a tool of social change existed long before it was officially accepted as the cornerstone of national legal policy.

¹⁴ Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan* (Bandung: Alumni, 2002), 45.

¹⁵ Arya Setya Novanto and Ratna Herawati, "Efektivitas Undang-Undang Cipta Kerja Dalam Pembangunan Hukum Indonesia," *Jurnal USM Law Review* 5, no. 1 (May 2022): 401-11, <https://doi.org/10.26623/JULR.V5I1.5084>.

The details review attempted to be explained in depth by Sidharta regarding the points of Mochtar's views related to development law theory are:¹⁶

- a. Law is one of the social rules (there are other rules such as moral rules, religion, decency, decency, customs, etc.). All of these things reflect the values that exist in social life, so a good law is one that follows the laws that live in society.
Relevant to regional expansion activities. Regional expansion is seen as a reflection of the local community's wishes, especially those that are local.
- b. Law is a complex of rules and principles that govern and includes the institutions and processes needed to bring the law into force in reality.
The author views that the region's expansion is in line with the opinion of the development law. The effect of regional expansion will undoubtedly produce new local government institutions. Of course, the existence of these institutions will help realize what the people want in the region into reality.
- c. The characteristic of law is coercion by the state. It is using the equipment because, without that, the power of law is only a rule of a recommended nature. So, power is needed for orderly living; Law without power is wishful thinking, and power must also have limits (power without the law is tyranny).
- d. The authority of power needs to be raised. Raising the existence of authority must be supported by partiality from the controlled party. When the controlled party sides with the ruler, the power will become authoritative. Therefore, rulers must have the spirit to serve the public interest (*sense of public service*). The controlled party must submit and obey *the ruler (the duty of civil obedience)*. Both must be educated to have *public interest awareness (public spirit)*. In line with regional expansion activities, the new regional government must bring partiality to the local community to gain authority because an authoritative government will undoubtedly be seen as one that prioritizes the public interest.
- e. The essential and primary purpose of all law is order, which is a fundamental condition for an orderly society. So, the state has to declare order and certainty. It is needed as the dynamics and association of humans in society. The second goal after order is justice. Talking about justice will undoubtedly vary based on the society and the era in which the society lives.
- f. Indonesian society is transitioning from closed to open, dynamic, and advanced (modern). The essence of development problems is the renewal of ways of thinking (nature, nature, values), advanced (modern), both in the ruler and the ruled. For example, members of society must change from being mental as a state hall to being mentally as citizens (not only passively following the orders of the ruler but also actively knowing and even daring to claim their rights).
- g. In a society in the development process, law is not enough only to maintain and maintain what has been achieved (the conservative nature of law) but also plays the role of an engineering society. However, there must still be order (as long as changes are made orderly and the place for the role of law).
- h. Development must be infused as widely as possible to cover all kinds of people's lives, not only economic life alone.
- i. Law is seen as a tool of renewal in a developing society. The law as a means of reform can be detrimental, so it must be done carefully; Therefore, the use of law must be

¹⁶ RR Lyia Aina Prihardiati and Sekolah Tinggi Ilmu Hukum Iblam, "Teori Hukum Pembangunan Antara Das Sein Dan Das Sollen," *Hermeneutika: Jurnal Ilmu Hukum* 5, no. 1 (February 2021): 2021, <https://doi.org/10.33603/HERMENEUTIKA.V5I1.4898>.

linked to aspects of sociology, anthropology, and culture. Existing jurists in society need to study positive law with a spectrum of social and cultural sciences.

- j. Law has a role in development to ensure that change occurs in an orderly manner. The law has a role in laws, regulations, and court decisions or the existence of a combination of these two things. However, the formation of legislation is the most realistic and fast way compared to other legal development methods such as jurisprudence and customary law.¹⁷ The author also views the law's role in regional expansion as a form of national development. It can be seen that forming and creating a new autonomous region requires legislation at the national level and based on the relevant regional bill.
- k. The obstacles that exist in the framework of the role of law in development are: first, it is difficult to determine the objectives of legal development; second, there is little empirical data that can be used to conduct a descriptive and predictive analysis; third, it is difficult to establish an objective measure of the success or failure of the effort of legal reform; fourth, there is a charismatic leadership that most have contrary to the interests of legal engineering ideals towards a society or legal state; fifth, trust in the law is still very low, and so is its role in society, especially in societies born due to political shocks (revolutions); Sixth, the reaction from the public because they think the change can hurt national pride; Seventh, the reaction of intellectuals is not to practice the values and traits advocated.
- l. The framework for forming legislation in the Indonesian era is in the development process. It is necessary to prioritize the formation of laws and regulations in the field of law that are neutral (not sensitive). Such a legal realm will practically not impact controversies related to customs, religion, and other primordial values.

This discussion certainly shows that regional expansion activities are a form of development. Of course, the law has a role as a means in line with the views of the development law theory. The law in the legislative process certainly plays a vital role in providing a juridically strong foundation for all actions taken.

D. CONCLUSION

Regional expansion in Indonesia is quite significant. Many new regions with legal foundations in the form of laws become regions with their autonomy. Of course, this is an effort from the government to carry out national development. But development in the form of regional expansion raises many problems in a multidimensional manner both from the political, administrative, and regional gap dimensions. Regional expansion carried out by the government is a form of national development. From the perspective of development law theory, the law is a means to an end. The expansion must undoubtedly be based on the establishment of regional law. The role of law is vital to determine whether such expansion occurs—both the fulfillment of the requirements and the urgency philosophically, juridically, and sociologically.

¹⁷ Saeful Kholik, Syamsyul Bahri Siregar, and Kodrat Alam, "Sentimental Hukum Otonomi Daerah Dalam Pembangunan Ekonomi Negera Berkonsep Kesejahteraan," *Gema Wiralodra* 13, no. 1 (2022): 247-55.

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