

# Rechtsidee

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# The Fact of Inter-Regional Cooperation on Environmental Law in Lampung, Indonesia

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## Abstract

This study aims to analyze the regulation of inter-regional cooperation law in environmental management in Lampung Province. The findings of this research are expected to be a basis in determining the model of legal policy of interregional cooperation in the field of environmental management in Lampung Province. Thus, the implementation of regional autonomy will be protected from regional ego and sector ego, and will eventually realize the ultimate goal of regional autonomy in the field of environment that is the welfare of local communities and environmental sustainability. This research method using *socio-legal* approach. The practice is primarily concerned with Local Government involvement and communities in upstream-downstream relationships in watershed (DAS) management in Lampung Province. Therefore, this study, in addition to reviewing the environmental policy of the Lampung Provincial Government, also examines district and city government environmental policies, especially in environmental management involving more than one district / city. The results showed that the legal arrangement of interregional cooperation in management of the environment in Lampung Province has not been specifically regulated. The basis of inter-regional cooperation is based only on the principles of regional autonomy and has not been based on the ecological characteristics and conditions in the region. Therefore, the approach still tends to be economic oriented and regional administration. The ideal concept is that the legal arrangement of cooperation inter-regional in the field of environment should be based on the principle of ecoregion.

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## Introduction

Environmental issues are always inseparable from development, including in the context of the implementation of regional autonomy. Environmental damage and scarcity of natural resources as a result of environmentally insecure development tends to increase in the era of regional autonomy.<sup>1</sup> Society political access is increasingly fulfilled, but regional autonomy has led to the development of anthropocentrism paradigm in the treatment of the environment. The widespread authority in environmental management in local government instead expresses local egoism of local government and / or community in the region. Raising environmental conflicts is one of the consequences. This is exacerbated by the weak coordination between regions that was formerly conducted by the provincial government.<sup>2</sup> In Law no. 23 of 2014 on Regional Government has been given the foundation of legal arrangement of interregional cooperation. For that in some areas including in Lampung Province has issued a Regional Regulation which governs inter-regional cooperation. But unfortunately the provisional study shows that the legal arrangements are still very few and the regulatory substance is still very common. Each region tends to regulate its own local environment. Whereas environmental management is very important to be done jointly, especially between regions which is upstream with areas in parts of downstream watersheds (DAS).

For that reason, research with an environmental law policy approach is needed to answer the anxiety. *Science informs decision making throughout the policy cycle. Environmental policy can be initiated by identification of a problem, which is verified by research or monitoring and appraised for an appropriate policy response.*<sup>3</sup> Inter-regional cooperation needs to be done in environmental management, especially in cross-administrative areas, for example in the management of Watersheds (DAS). This is because the management based on ecoregion can not be limited by regional administrative boundaries (co-indecent). Therefore, it is necessary to reviewed more deeply the substance of its legal arrangement so that it can be developed a model

<sup>1</sup> The principle of regional autonomy has actually been implemented since Indonesia's independence, even by the Dutch East Indies government, but found its peak momentum since the enactment of Law 22/1999 on Regional Government on 1 January 2001.

<sup>2</sup> Hardi Warsono, "Kolaborasi dan Kerjasama Antardaerah ", in Agus Pramusinto and Erwan Agus Purwanto (editor), *Reformasi Birokrasi, Kepemimpinan dan Pelayanan Publik: Kajian tentang Pelaksanaan Otonomi Daerah di Indonesia*, Yogyakarta: Media-JIAN UGM-MAP UGM, 2009 , p.109.

<sup>3</sup> Laurie C. Alexander, "Science at the boundaries: scientific support for the Clean Water Rule", *Journal Freshwater Science*, Vol. 34, No. 4 (December 2015), pp. 1588-1594, The University of Chicago Press on behalf of Society for Freshwater Science, URL:

of law policy on interregional cooperation in environmental management which is in line with ecoregion principle. This research takes the setting in Lampung Province which has various environmental characteristics (forest, watershed, and coastal) which can be used as pilot project and model of law regulation which can be applied widely in Provincial Region and also National.

## Research Methods

Problem approach in this research using legal approach (legal approach), namely to review various policies and arrangements on regional cooperation in the field of environment, both national and in Lampung.

The legal materials used are primary legal materials and secondary legal materials. Primary legal material consists of two parts, namely environmental legislation related to regional autonomy and regulations in the field of regional autonomy related to the environment. Secondary legal materials used in the form of legal literature, scientific papers, research results, dictionaries, scientific journals (periodical), especially related to environmental law and regional autonomy. Field data is used only as a complement to the analysis of legal materials.

Legal material is collected through identification procedures, inventory, and classification of legal materials according to the research problem. The collected legal material is processed through the process of editing, classification and systematization thematically (according to subject matter), for further analysis. The analytical method used is the legal analysis (legal analysis), namely by analyzing the contents (structure) of applicable law, systematization of legal symptoms described and analyzed, interpretation, and assessment of applicable law<sup>4</sup>.

## Results and Discussion

### Problems of Legal Regulation of Inter-Regional Cooperation in the Field of Environment

In the era of regional autonomy cooperation inter-regional is so important. It can not be denied that the strengthening of regional autonomy, has led to the phenomenon of ethnocentrism expressing local egoism of local

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government and / or local communities. The phenomenon of ethnocentrism is getting stronger along with the weak coordination between regions which was

<sup>4</sup>Meuwissen, D.H.M., 2007, *Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum, dan Filsafat Hukum*

(Penerjemah B. Arief Sidharta), Bandung: Refika Aditama.

once intensively undertaken by the provincial government.<sup>5</sup> The results showed that one of the important factors that caused the conflict inter-regional was sourced from the utilization of natural resources.

In the perspective of regional autonomy, inter-regional conflicts - including in the environmental field - can occur in the absence of good inter-regional cooperation relationships in environmental management. Each region with its economic rights prioritizes egoism to manage the environment in its territory based on territorial-administrative approach. Whereas the character of the environment can not always be restricted territorially-administratively. Environmental management within a particular area can have widespread impact across certain regional boundaries, even countries. For that requires the handling together in order to achieve common goals.<sup>6</sup>

Nationally, the policy of cooperation inter-regional is not found its legal arrangement, especially in the field of environment. The legal basis of this policy in general has been regulated in Law no. 23 of 2014 on Regional Government, that is in Articles 363 to 370. In the article has been regulated on the consideration of the implementation of cooperation, the categories of cooperation (mandatory and voluntary), the parties in cooperation, and the role of central government. It also deals with financing cooperation, joint secretariat, scope of cooperation, monitoring and evaluation, and dispute settlement.

Further provisions as mandated by Article 369 of Law no. 23 of 2014 on Regional Government until now still use the old rules issued earlier. The regulations are: Government Regulation no. 50 of 2007 on Procedures for Implementation of Regional Cooperation, Minister of Home Affairs Regulation no. 22 of 2009 on Technical Guidelines for Procedures for Regional Cooperation; and Minister of Home Affairs Regulation no. 23 of 2009 on Procedures for the Development and Supervision of Regional Cooperation. While the Government Regulation Draft, which was compiled since 2016 and planned as a substitute for Government Regulation no. 50 of 2007 to date has not been ratified.

In line with the provisions that apply nationally, the arrangement of cooperation inter-regional in Lampung Province is still regulated in general. Inter-regional cooperation is only

<sup>5</sup>Hardi Warsono, " Kolaborasi dan Kerjasama Antardaerah ", in Agus Pramusinto and Erwan Agus Purwanto (editor), *Reformasi Birokrasi, Kepemimpinan dan Pelayanan Publik: Kajian tentang Pelaksanaan Otonomi Daerah di Indonesia*, Yogyakarta: Media-JIAN UGM-MAP UGM, 2009 , p. 109.

<sup>6</sup> hat Patterson in Ibid., p. 112.

regulated in Local Regulation no. 14 of 2013 on Regional Cooperation. Substantively, the regional regulation has not been regulated comprehensively about inter-regional cooperation, moreover linked to environmental management. There is only one Regional Regulation related to cooperation in the field of environment, that is the Provincial Regulation of Lampung Province. 22 Year 2014 on Integrated River Basin Management in Lampung Province. This Regulation in several aspects needs to be reviewed in line with changes in environmental management authority in watershed areas, such as the authority of forest management which is now the authority of the provincial government.

Some districts / cities in Lampung Province already have Local Regulations on the Protection and Management of the Environment, but also has not yet integrated the provisions on inter-regional cooperation in environmental management. This indicates that the regions do not yet have a legal policy on cooperation which is oriented environmental management with ecoregion approach.

A review of the legal arrangements for interregional cooperation as outlined above found several problems or troubles. First, the legal arrangement is general, which means it applies to all government affairs that are the object of cooperation. There are no rules that specifically regulate cooperation in the field of environmental management. Whereas the environmental affairs have a special character, which requires a special arrangement as well. Secondly, the regulatory substance in the Government Regulation and the Minister of Home Affairs regulation has not been aligned with the latest Law. For example, it has not yet been regulated in the implementing regulation on the aspect of the classification of cooperation and the role of provincial and central government both in the implementation of cooperation and in the settlement of disputes. Third, there is no clear regulation on the legal form and the general framework of inter-regional cooperation models that can be applied. The results of literature search, until now the form of cooperation law is poured in the form of decisions with the head of the region,<sup>7</sup> regulations with the head of the region,<sup>8</sup> and joint decisions of local environmental agencies.<sup>9</sup> Fifth, the

<sup>7</sup> Applied in cooperation "Kartamantul", with Joint Decree of Mayor of Yogyakarta, Sleman Regent, and Bupati of Bantul no. 01 of 2001, No. 01 / PK.KDH / 2001, No. 18 of 2001 on Management Cooperation of Urban



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Infrastructure and Facilities between Bantul Regency, Sleman Regency, and Yogyakarta City.

<sup>8</sup> Applied in integrated waste management "Sarbagita" Bali Province, namely by Joint Regulation between Government of Gianyar Regency, Badung, Tabanan, and Government of Denpasar City. 840 Year 2000, No. 658.1 / 3367 / EK, and No. 390.B of 2000 on Principles of Governance, Development and Community Cooperation in Waste Management between Gianyar, Badung, Tabanan, and Denpasar.

institutions that are formed also vary without criteria and clear boundaries. There are forums and non-structural bodies, but some are quite progressive by forming bodies such as inter-regional technical institutions. Though this kind of institution its nomenclature is not regulated in Government Regulation no. 18 of 2016 on Regional Devices. This is certainly difficult in addition to the implementation, also in terms of supervision and coaching and in the settlement of disputes.

From the perspective of the legal system, the legal arrangement of cooperation between regions only limited to reflect the principles of autonomy as the elaboration of the concept of democracy and the concept of welfare state law. Concepts of ecocracy concretely described in the principles of bioregion / ecoregion and ecological sustainability have not been reflected in the legal arrangement of inter-regional cooperation. As a result inter-regional cooperation that develops usually put forward short-term profits from the economic side than the long-term benefits of ecological sustainability.

Legal Concept of Intergovernmental Cooperation Policy in Environmental Management

On the basis of the problematic arrangement of inter-regional cooperation law as mentioned above, put forward some thoughts on the concept of the ideal legal arrangement of inter-regional cooperation in environmental management in the future. This concept would require further study normatively or empirically. The ideal concept is as follows. First, the scope of legal arrangement of cooperation inter-regional is not only focused on procedural aspects, but also includes aspects of authority and substance in accordance with the affairs that become the object of cooperation. Ideally the environmental affairs that are the object of inter-regional cooperation are affairs that affect cross-border areas and / or related to public services and affairs that have not been able to be implemented independently.

Substantially, if referring to Law no. 32 of 2009 on Environmental Protection and Management (abbreviated UUPPLH-2009), then the scope of cooperation should include aspects of planning, utilization, control, maintenance, supervision and law enforcement. This substance

<sup>9</sup> Applied in environmental cooperation "Subosukawono-sraten", with the decision of the Head of Surakarta City Environment Office, Head of PEDAL Office of Boyolali District, Head of Sukoharjo District Environmental Office, Head of Environmental Office of Karanganyar, Head of Environment, Forestry, and Mining of Wonogiri Regency, Head of Environmental Office of Sragen Regency, Head of Environmental Office of Klaten Regency. 660.1 / 977 / XII / 2003, 660.1 / 737.A / XII / 2003, 660.1 / 737/2003, 660.1 / 660.1 / 258/24/2003 on Inter-city Cooperation Surakarta, Boyolali District, Sukoharjo District, Karanganyar Regency, Wonogiri Regency, Sragen Regency, and Klaten Regency (Subosukawonosraten) in the environment sector.

is not regulated either in national law or in the product of local law in Lampung Province. This distinction can not be resolved through the application of the legal principle of *lex specialist derogat lege inferiori*, because between the laws on Regional Government and the Law on Environmental Management are in a different legal regime. If it refers to the legal principle of *posterior lex derogat legi priori*, then the scope of environmental management that becomes the object of cooperation ideally uses the provisions of UUPPLH-2009.

Second, the basic principles of cooperation between regions should integrate the basic principles of cooperation in general with the basic principles of environmental protection and management. In general, the basic principles of cooperation are regulated in PP. 50 of 2007, that are: efficiency, effectiveness, synergy, mutual benefit, mutual agreement, good faith, prioritizing the national interest and territorial integrity of NKRI, equality of position, transparency, justice, and legal certainty.<sup>10</sup> In addition to these eleven principles, there are several other principles that are also important, namely: needs-based, engagement and ownership, flexible, and legitimately political and juridical.<sup>11</sup>

The basic principles are still general, while the environmental affairs have their own ecological characteristics that are cross-border administrative areas. Therefore, the principle of cooperation should be integrated with the principles of environmental protection and management as contained in the 1945 Constitution and UUPPLH-2009. There are at least three main principles, namely: (a) the recognition of the basic rights of a good and healthy environment as part of human rights (Article 28H paragraph (1), and (b) state control over the earth, water and natural resources (Article 33 paragraph (3) and (c) environmentally sound and sustainable in every economic activity (Article 33 paragraph (4)). These three principles have been further elaborated in the principles contained in the UUPPLH-2009, namely: the principle of state responsibility, sustainability and continuity, harmony and balance, integrity, benefit, prudence, justice, ecoregion, biodiversity, pollution pay, participatory, local wisdom, good governance, and regional autonomy. namely: the principle of state responsibility, sustainability and sustainability, harmony and balance, integrity, benefit, prudence, justice, ecoregion, biodiversity, pollution pay,

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participatory, local wisdom, good governance, and regional autonomy.

<sup>10</sup> See the provisions of Article 2 PP. 50 Year 2007.

<sup>11</sup> Anonim, *Model Kerjasama Antardaerah*, Yogyakarta: PLOD UGM dan Apeksi, 2006, hlm. 62-65.

Interregional cooperation in environmental management must pay attention to these principles, especially the three basic principles contained in the 1945 Constitution and several other important principles in the UUPPLH-2009, especially the principle of ecoregion. Through the principle of ecoregion can resolve the regional ego as a result of the fragmentation of authority of each region. Based on this principle, the environment can be managed jointly by several areas that are ecologically located within a certain region or ecological region. The integration of these principles philosophically aims to achieve the goals of cooperation in harmony with the intent and purpose of environmental management.

Third, the legal form of cooperation agreement with fellow regional governments ideally poured in two stages, namely memorandum of understanding (MoU) and cooperation agreements. The MoU is the first stage of the cooperation process, because through this MoU the new parties declare the will to do the cooperation, not set the contents of the agreement in detail, and has not regulate the rights and obligations of the parties in detail and the legal consequences. In the second phase, the MoU is followed up with a cooperation agreement. Through this agreement strictly regulated the subjects of cooperation, cooperation objects, scope of cooperation, rights and obligations, duration of cooperation, termination of cooperation, circumstances of force, and dispute settlement. Thus has a strong legal basis for proof in case of dispute. Of course, cooperation agreements inter-regional have a legal character that is not entirely the same as the ordinary covenant agreement. Inter-regional cooperation agreements have more public character (*publiekrechtelijkesamenwerkings-overeenkomst*),<sup>12</sup> because the promised is the affairs of government (public affairs) and the legal subject is also a government organ. A cooperation agreement is a legal act that makes public policy an object of agreement. The nature of the policy agreement is primarily to make the act of agreement held by the state administration agency or official as a means of realizing the government's policy (de overeenkomstalsbeleidsinstrument).<sup>13</sup> The typical character of the policy agreement, in its implementation more dominated by public law. The rules and principles of public law apply not only in the date occurrence of the agreement but is applicable in terms of implementation and law enforcement.

<sup>12</sup> See W. Riawan Tjandra, *Law of State Administration*, Yogyakarta: Atmajaya University Yogyakarta, 2008, p.

52.

<sup>13</sup> Laica Marzuki, *Kebijaksanaan Yang Diperjanjikan (Beleidsvereenkomst)*: Hukum dan Pembangunan, No. 3, Year XXI, Juni

1991, h. 269.

While the legal form of cooperation between the government and third parties or the private sector ideally form a cooperative contract. In this contract at least contains rights and obligations of the parties, terms of cooperation, dispute settlement; and sanctions for parties that do not meet the agreement. In this cooperation contract must be regulated in detail the above aspects, so in addition to facilitate the implementation and enforcement of the law in case of dispute.

Fourth, there is clear regulation on the role of the government and provincial governments in the mechanisms of inter-regional cooperation. This role has already been regulated in Law no. 23 of 2014 on Regional Government. For example: the role of central and provincial governments in terms of financial assistance, monitoring and evaluation, and in dispute settlement. Ideally, the role has been initiated since the planning, so that strategic environmental issues that are cross-border or have broad impact on some areas can be easier to protect and manage. The strategic role of central and provincial governments in the implementation of interregional cooperation is in line with the inter-regional cooperation philosophy as an instrument to further strengthen relations and inter-regional ties within the framework of regional autonomy. Interregional cooperation is an important instrument for implementing regional autonomy which is welfare in welfare state's perspective. The harmony of inter-regional development, synergic between disadvantages and advantages potential regional, the ultimate aim to achieve mutual prosperity, in this case the welfare of all people in Indonesia.

The inclusion of provinces and / or governments in inter-regional cooperation in environmental management is in line with the ecosystem approach that should be the main base or basis for inter-regional cooperation in environmental management. The welfare of the people in the region as the ultimate goal of cooperation should not ignore ecological sustainability as a prerequisite for sustainable prosperity. Based on the strategic role, the provincial government can issue legal products that regulate cooperation inter-regional districts / cities in the region. In the legal products can be set more specific things according to the characteristics of the region, such as strategic environmental issues that become the object of cooperation.

Fifth, the arranged of institutional model and format of inter-regional cooperation in the field of environment. Ideally environmental management models, such as watershed approach management model, integrated waste

management model, integrated coastal zone management model, etc. are integrated in the application of inter-regional cooperation models. The choice of

which model is applied depends on the policy of each region and the characteristics of the cooperative environmental issues. Whichever model is chosen, the success of the cooperation will be largely determined by several things, namely: the commitment of regional leaders, the identification of needs that are worthy of cooperation, integration and harmonization of needs issues to be in cooperation into existing or planned regional planning systems, participatory, and with institutional or institutional modeling.<sup>14</sup> The institutional cooperation format can be: (1) cooperative institution; (2) coordination forum; (3) coordination, monitoring and evaluation forum; and (4) joint business entities.

For environmental cooperation, the first and third institutional models are more ideal, because their formation is relatively not difficult. In addition, these two institutional models not only serve as coordination forums or information sharing containers, but has the power to form and implement joint programs. Environmental management requires a coordination function, but at the same time contributes to the formation and implementation of joint programs over the long term.

## Conclusion

Based on the results and discussion above, can be summarized as follows:

1. The legal arrangement of interregional cooperation in the environmental field in Lampung Province is still general. There is only one Regional Regulation that is directly related to the Local Regulation no. 14 of 2013 on Regional Cooperation. The problem is that the environmental affairs have special characters, which require special arrangements as well. The substance of the regulation in the Government Regulation has not been aligned with the mandate of Law on Regional Government and UUPPLH-2009. Has not been set clearly on the legal form, institutional, and cooperative models causing its implementation to be very diverse and usually more short-term economic oriented.
2. The ideal setting concept of inter-regional cooperation in the field of environment, among others: the scope of legal arrangement of cooperation between regions is not only focused on procedural aspects, but also includes aspects of authority and substance in accordance with the affairs that become the object of cooperation, the basic principles of cooperation between

<sup>14</sup>Thres Sanctyeka, "Merajut Kepentingan, Menebar Kesejahteraan: Upaya Peningkatan Pelayanan Dasar Melalui Kerjasama Antardaerah", in *Sewindu Otonomi Daerah*, KPPOD, Jakarta, 2009, hlm. 6-7.

regions must integrate the basic principles of cooperation, the legal form of cooperation agreement with fellow regional governments ideally set forth in the form of memorandum of understanding (MoU) and cooperation agreement, there is clear regulation on the role of government and provincial governments in inter-regional cooperation mechanisms and arranged models and institutional cooperation format inter-regional in the environmental field.

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