

## RECONSTRUCTION OF DISTRICT / CITY GOVERNMENT ROLES IN HANDLING PROVINCIAL ROAD DAMAGE PROGRESSIVE LAW-BASED

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### ABSTRACT

*The aim of this study; description of the role and authority of the government in dealing with road damage in Indonesia, reconstruction of roles and authorities of District / City Government in dealing with damage to provincial roads based on progressive law. The research data used is secondary data in the form of library materials. The analysis used inductions-conceptualisation. The results of this study indicate that found many damaged Provincial Roads In the districts / city area, the improvement relies on the responsibilities of the Provincial Government so that sluggish handling can impact road safety. Reconstruction the role of the district / city government is for the construction of provincial roads to be implemented by the Provincial Government. As for the improvement of provincial roads implemented by the District / City government with a budget improvement of the Provincial Revenue and Expenditure Budget.*

**Keywords:** reconstruction, role of government, province, district, city, road.

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### 1. Introduction

Free trade implemented through the scheme World Trade Organization/ General Agreement on Trade in Services and Asean Free Trade Area / Asean Framework Agreement on Services is a challenge as well as opportunities both in national and regional economic development. Transport infrastructure and services are part of the globalization system for the distribution of passengers and goods (Affandy, et al., 2013: 1). The success of development in a country, strongly influenced by the role of transportation as the lifeblood of political, economic, socio-cultural, and defense of security (Murti & Muthohar, 2012: 227).

Transportation network system can be seen in terms of effectiveness, in the sense of safety, high accessibility, integrated, sufficient capacity, regular, smooth and fast, easy to achieve, timely, convenient, affordable, orderly, safe and low pollution. Development of transportation is very important to support and drive the dynamics of development. Because the function of transportation as a catalyst in supporting economic growth and regional development.

Various aspects of the development of the area above raises the problem of transportation covering aspects of network operations, financial, economic, environmental, and safety. Transport safety becomes an untapped issue in the national transport system and good transport governance (Dewanti, et al, 2014: 98). According to the International Road Assessment Program (IRAP), in low-and middle-income per capita countries, 3,500 people die and 100,000 are seriously injured in road accidents every day (McInerney, 2016: 53).

Based on the authors' observation, the condition of provincial roads in Central Java within the district or municipal government area is damaged by tonnage vehicles passing on the road exceeding the maximum limit determined by law. The responsibility for the provincial road lies with the Provincial Government. This is based on Article 15 paragraph (1) and paragraph (2) of the Law of the Republic of Indonesia No. 38 of 2004 about Road that state that the authority of the provincial government in the implementation of roads includes the regulation, guidance, development and supervision of provincial roads. Also stipulated in Article 14 paragraph (2) Regulation of the Minister of Public Works No. 13 / PRT / M / 2011 about Procedures for Maintenance and Road Ownership.

It is often found that provincial roads are damaged in urban districts, the repairs rely on the responsibility of the provincial government so that sluggish handling ignores the safety of road users (Sulistio, 2008: 89). Although provincial roads are the responsibility of the provincial government, according to the authors, the district / city government also needs to be responsible for the provincial road. Based on the above background, the issues to be discussed in this research are: 1) What is the role and authority of the government in dealing with road damage in Indonesia? 2) What is the reconstruction of the roles and authorities of the Regency / City Government in dealing with the destruction of provincial roads based on progressive law?

### 2. Research Purposes

Based on the problems formulated, the purpose of this study are: 1) Description of the role and authority of the government in dealing with road damage in Indonesia. 2) Reconstruction of roles and authorities of District / City Government in handling damage to provincial roads based on progressive law.

### 3. Research Methods

This study includes normative legal research. The approach used is also the normative approach. The data used are secondary data that is written documents obtained through library search. The method of analysis used is induction-interpretation-conceptualization to answer the problem.

### 4. Discussion

#### 4.1. Role and Authority of the Government in Handling Road Damage

Public roads in Indonesia by status are grouped into national roads, provincial roads, district roads, urban roads and village roads. This is stipulated in article 9 paragraph (1) of Law of the Republic of Indonesia Number 38 Year 2004 about Road. The national road is the arterial road and collector road in the primary road network system that connects the provincial capital, and the national strategic road and toll road organized by the Central Government. Then the provincial road is a collector road in the primary road network system that connects the provincial capital with the district / city capitals or between district /city capitals and provincial strategic roads organized by the Provincial Government. District / City Governments are responsible for local roads in the primary road network system linking district capitals with sub-district capitals, inter-district capitals, district capitals with local activity centers, inter-local activity centers, and public roads in secondary road network systems within districts and roads strategic district.

The authority of the Provincial Government in the implementation of provincial roads is regulated in Article 15 paragraph (2) of Law of the Republic of Indonesia Number 38 Year 2004 about Roads concerning the regulation, guidance, development and supervision of provincial roads. However, based on research that the authors do, there are many shortcomings / weaknesses in the implementation of these provisions. These weaknesses are associated with the opinion of Friedman (2002) who argues that the legal system is actually built by three components, namely legal substance, legal structure, and legal culture. The weaknesses can be described as follows:

#### a. Legal Substance

The substance is composed of substantive rules and rules about how institutions should behave. Legal substance is the nature of the content contained in the legislation. Substance includes all the rules of law, both written and unwritten, such as materiiil law (substantive law), formal law (procedural law), and customary law (Suhaibah, 2015: 1). Based on the results of research that the authors do then the legal substance of article 15 paragraph (1) of Law of the Republic of Indonesia No. 38 of 2004 about Road regulating the authority of the Provincial Government in the implementation of provincial roads hamper the Regional Government in improving the provincial road.

The District / City government is not authorized to improve so that road users are disadvantaged. District / city governments are only authorized to report damage to provincial roads to Provincial Highways, so that sooner or later the realization of repair of damaged provincial roads depends on Provincial Highways, and in practice, the provincial road repair takes a long time of 3 (three) months .

#### b. Legal Structure

Structure is the level or composition of law, the implementation of law, judiciary, institutions (institutions) law, and lawmakers (Jainah, 2011: 125). This structure is founded on three independent elements, namely:

- 1) Beteknis-system, ie the whole rules, rules, and legal principles formulated into the system of understanding.
- 2) Instellingen or organizations, is institutions and law enforcement officials, all of which constitute the operational element or enforcement of the law.
- 3) Beslissingen en handeligen, namely decisions and concrete actions, both from legal officials and citizens. However, it is only limited to decisions and actions that have a relationship into relationships that can be done with the system of understanding earlier.

Based on the results of research that the authors do, the legal structure in the form of institutions (institutions) laws related to the implementation of provincial roads already exist such as the Ministry of Transportation, Provincial Highways Department under the auspices of the Ministry of Public Works and Public Works Department within the local government. In practice, however, these institutions are less successful in performing their duties. This is because:

- 1) Officials are often unaware of their duties and view their own duties as the most important tasks compared to other tasks;
- 2) Existence of division of labor or excessive specialization;
- 3) Lack of clarity of the formulation of duties or functions, authority and responsibilities of each official or organizational unit;
- 4) The existence of procedures and procedures are less clear and convoluted;
- 5) Lack of leadership ability to coordinate;
- 6) Lack of communication forums among the officials concerned.

When associated with the World Bank's opinion on Good Governance which includes government based on the law (rules), transparency, accountability, reliability information, and efficiency in government management, good governance in the implementation of roads has not been met (Radjaguguk 2015: 74 ).

c. Legal culture

Legal culture is the parts of culture in general, the habits, opinions of citizens and the exercise of the law, the ways of acting and thinking or acting, whether dimensionless to divert social forces to law or away from the law. Legal culture is a picture of attitudes and behavior toward the law, as well as the overall factors that determine how the legal system obtains an appropriate and acceptable place for citizens within the framework of the culture of society. *Legal culture ... refers, then, to those parts of general culture, ... custom, opinion, ways of doing and thinking ... that bend social forces toward or way from the law and in particular ways. The term roughly describes attitudes about law, more or less analogous the political culture ...*. (Friedman, 2002: 8).

Based on the results of research that the authors do then the neglected legal culture in the implementation of provincial roads, among others:

- 1) The number of built-up heavy vehicles used by entrepreneurs to transport goods with dimensions of vehicles outside the standard set by law.
- 2) Tonnage or overloading of heavy vehicles by entrepreneurs. Weighing vehicles that exceed the limit, certainly has a serious contribution to road damage (Morisca, 2014: 698).
- 3) In addition, the results of the study showed that in various locations of weigh stations, vehicles were used as illegal levies (Wibawa, 2013: 75).

**4.2. Reconstruction of the Roles and Authorities of District / City Governments in Handling Road Damage Provincial-Based Progressive Provinces**

Based on the above description, the provisions concerning the authority of the Provincial Government in the provincial road maintenance need to be reconstructed. This is in line with Satjipto Rahardjo's notion of progressive law, that thinking progressively, means having to venture out of the mainstream of legal absolutism, then putting the law in a relative position. The law must be placed in the whole humanity matter. Working on a mind-set whose legal determinant is necessary, but it is not an absolute necessity when lawyers are confronted with a problem which, if using modern legal logic, would harm humanitarian and truth positions (Rahardjo, 2006: 9).

Reconstruction is the return of something to its original place, the compilation or redistribution of existing materials and reconstituted as they were or the original event (Marbun 1996: 469). James P. Chaplin (1997: 421) argues that reconstruction is an interpretation of psycho-analytical data in such a way as to explain the personal development that has taken place, along with its present material meaning for the individual concerned.

The role of District / City Government in handling the damages of provincial roads is balanced with national and regional interests. The balance can be realized if there is a shift in value from the authority of Provincial Government in repairing and maintaining provincial road as regulated in article 32 letter b of Law of the Republic of Indonesia Number 38 Year 2004 about Road becomes the authority of District / City Government. Central government authorities include: (1) technical planning, programming and budgeting, land acquisition, and implementation of national road construction; (2) operation and maintenance of national roads; and (3) development and management of national road management systems. On the basis of this, the authors propose to reconstruct article 15 paragraph (2) of Law of the Republic of Indonesia No. 38 of 2004 about Roads, in order to have a balance of authority between the Central Government, Provincial Government and District / City Government.

Reconstruction of article 15 paragraph (2) is intended that for the construction of provincial roads shall be carried out by the Provincial Government. As for the improvement of provincial roads implemented by the District / City Government with a budget improvement of the Provincial Revenue and Expenditure (APBD) so that expected repairs to damaged provincial roads can be handled immediately and does not cause harm to road users. This can be done by the delegation of some of the Provincial Government's authority to the Regional Government with the assistance task as regulated in Article 59 paragraph (3) of Government Regulation Number 34 Year 2004 about Roads and District / City Government as well as article 1 paragraph (11) Of Law of the Republic of Indonesia Number 23 Year 2014 about Regional Government.

Co-administered tasks are central or local government authorities at a higher level. This authority is a self-administered (zelfuit voering) task over the last charge and responsibilities at the relevant boss level (Munir, 2013: 108). The local government has the right to regulate and ransom its own household and may also be given co-administration tasks. The task of co-administration is to participate in the affairs of the central government or local government that is entitled to regulate and manage the superior level of the superior. Therefore, in the Co-Administration's duty the local authority only regulates and administers confined to its operation.

**5. Conclusion**

Based on the above description it can be concluded that the regulation of the authority of grouping and management of roads is regulated in Law of the Republic of Indonesia Number 38 Year 2004 about Road. Roads are grouped into national roads, provincial roads, district / city roads, and village roads. The national road becomes the authority of the central government. Provincial road is the authority of the provincial government, District roads and village roads become the authority of the district / city government. The provisions are so many kelemahan need to be reconstructed. Many shortcomings and weaknesses in the implementation of these provisions. Provincial roads should be between provincial and district / municipal governments alike.

Because if the role only becomes the authority of the provincial government raises many problems related to the maintenance and repair of damage. The provincial government should have its authority on regulation, guidance, development, and supervision. As for the improvement of provincial roads implemented by the District / City Government of the Provincial Government budget.

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