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# Besturent Concept, the Government Is Not Only Bound By Regulated Authorities, but the Government Has Free Authority to Act

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**Abstract:** It is necessary to understand how the relationship of authority between the central government and local governments in the State of Timor-Leste based on the RDTL Constitution, especially articles 5 and 72, clearly discusses the terms regional authority or delegation of authority or decentralization based on democratic values and reflects justice and harmony between governments. Central and local government in Timor-Leste.

The authority given to regional leaders is currently not fully, administratively the regional leadership is based on the existing law led by the Regent (the highest regional leader), this is regulated by government regulation No.53 / 2020 regarding the first amendment to government regulation No. 11/2019 dated June 14 regarding the Organization of the Ministry of Home Affairs, in particular articles 28.28 and article 33 C-E clearly discusses the issue of regional government development by means of the authority obtained to carry out its duties and functions in accordance with existing authorities.

Administratively, the regional government has the authority to administer the territory according to the existing law, but does not yet fully have the authority to manage and develop the area, due to certain matters of regional leadership having to wait from the central government, such as regarding regional development funds. Therefore, local governments are not free to regulate and develop areas.

When viewed from the concept of besturen or delegation, it is a bit contradicting to the current situation in Timor-Leste, especially regarding the issue of transferring authority to regional governments. The delegation of authority by administrative law is a policy that can be used to facilitate the work performed by the regional government wheels, but in practice in Timor-Leste, there has not been a complete delegation of authority to regional government leaders to carry out their duties and functions freely, it still depends on the decision. from the central government.

**Keywords:** The delegation of authority is more likely to make work more effective if it is handled by local governments or local agencies and can improve the quality and performance of work more effectively.

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## I. Introduction

One of the important aspects in a democratic law country is the principle of legality, which implies that every government action must be based on the prevailing laws and regulations or based on the authority granted by applicable regulations, namely the ability to carry out certain legal actions.

Therefore, theoretically and practically, especially in a modern state, it is almost impossible to formulate the functions and authorities of government in detail by determining the laws and regulations, this is because the functions and authorities of government are closely related to services to the society which are

always developing, therefore there is a space of freedom or application of policies, as a relaxation (rigidity and limitations) of written regulations.

So that the concept of *besturen* emerged as an effort to delegate part of the authority from the central government to local governments or departments under leadership to carry out their duties and functions without having to be based on decisions of the central government or existing laws, but those concerned could take certain policies or decisions to carry out their functions and duties properly and can be accounted for legally.

The concept of *besturen* can also be interpreted as the principle of decentralization because part of the authority of the central government is carried out by lower departmental leaders or leaders in certain areas but without neglecting legal responsibilities to the central leadership.

The concept of *besturen*, in theory, comes from the concept of personnel administration which in Latin *administrare* which in Dutch means the same as *besturen* which means government function. So according to R.D.H. Kusumaatmadja in Ragawino (2006: 18) says that administration in everyday life consists of two meanings: In a narrow sense: administration is an activity of writing, taking notes in every activity or administration. In a broad sense: administration is an activity to achieve predetermined goals.<sup>1</sup>

The concept of *besturen* is a best practice in a government system because government activities are not centered on the central government, but there is a delegation of some of the authority from the central government to local governments or local officials to carry out their daily functions and tasks and the government is not only bound by the regulated authority, but the government also has free authority to act.

Basically, the concept of *besturen* or delegation of authority is a definition derived from the law of governmental organizations, which can be explained as the overall rules relating to the acquisition and use of governmental authority by public law subjects in public legal relations, authority in this connection is connotated as the ability to carry out positive law.

The authority itself contains rights and obligations which are essentially the ability to carry out certain legal actions, namely actions that are intended to give rise to legal consequences, and include the arising and disappearance of legal consequences.

If examined legally, in Timor-Leste the issue of delegation of authority is also regulated in the RDTL Constitution<sup>2</sup>, especially in article 5 paragraphs 1 & 2<sup>3</sup> and article 72 paragraph 1 & 2<sup>4</sup> regarding

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<sup>1</sup>"10 BAB II LANDASAN TEORI 2.1.KonsepAdministrasi ...." [http://repository.uin-suska.ac.id/14032/7/7.%20BAB%20II\\_2018569ADN.pdf](http://repository.uin-suska.ac.id/14032/7/7.%20BAB%20II_2018569ADN.pdf). Diakses pada 31 Mar. 2021.

<sup>2</sup>"Timor-Leste's Constitution of 2002 - Constitute Project." 19 Feb. 2021, [https://www.constituteproject.org/constitution/East\\_Timor\\_2002.pdf?lang=en](https://www.constituteproject.org/constitution/East_Timor_2002.pdf?lang=en). Diakses pada 31 Mar. 2021.

<sup>3</sup>"Timor-Leste's Constitution of 2002 - Constitute Project." 19 Feb. 2021, [https://www.constituteproject.org/constitution/East\\_Timor\\_2002.pdf?lang=en](https://www.constituteproject.org/constitution/East_Timor_2002.pdf?lang=en). Diakses pada 31 Mar. 2021  
Article 5: Decentralization

1. The State respects, on matters of territorial organization, the principle of the decentralization of public administration.
2. The law determines and establishes and the characteristics of the different territorial levels and the administrative competences of the respective organs.
3. Oecussi Ambeno and Atauro enjoy special administrative and economic treatment

<sup>4</sup>"Timor-Leste's Constitution of 2002 - Constitute Project." 19 Feb. 2021, [https://www.constituteproject.org/constitution/East\\_Timor\\_2002.pdf?lang=en](https://www.constituteproject.org/constitution/East_Timor_2002.pdf?lang=en). Diakses pada 31 Mar. 2021.  
Article 72: Local Government

1. Local government is constituted by corporate bodies endowed with representative organs, with the objective of organizing the participation by citizens in solving the problems of their own community and promoting local development without prejudice to the participation by the State.

territorial authority also regulated by government regulation No. 53/2020 dated 28 October the first amendment to government regulation No. 11/2019, June 14 regarding the organization of the Estatal Administration ministry and government regulation No. 54/2020 dated 28 October the second amendment to government regulation No. 3/2016, 16 March regarding the legalization of regional administration (district) and techniques of interdepartmental groups through decentralization.

The concept of besturen or delegation of authority here clearly talks about the efforts of regional governments or government executives from each department in carrying out their daily duties and functions, not always depending on existing laws and regulations (not dependent on legality principles).

## **II. Results and analysis**

Based on the explanation in the introduction, the writer determines the problems in the results and analysis of the author, namely the provisions regarding the concept of besturen or the delegation of authority based on the theory and rules of State administrative law and the Principle of Legality?

The concept of besturen or delegation is one of the efforts of the central government by giving authority or delegation of part of the authority from the central government to regional governments or regional officials to carry out tasks and functions for the regions or departments they lead, without neglecting their responsibilities.

The concept of besturen can be interpreted as decentralization, which means that the delegation of part of the authority from the central government to regional governments, but without neglecting responsibility to the central government based on the principle of accountability. The concept of besturen gives authority to the leadership of each department or regional leader to make certain decisions and conditions for the smooth performance of the department led, even though it slightly ignores legal rules, but these decisions are in the public interest and the success of the work team from the department and region they lead.

The concept of besturen or delegation is the same as decentralization, which means restructuring or reorganization of authority (the restructuring of reorganization of authority), which means a system that puts forward joint responsibility (system of co-responsibility) and the principle of the subsidiary (the principle of subsidiary). The delegation or besturen concept is a separate effort from regional regional leaders to take a stand in decision making even though the policies or decisions taken are not stated in government regulations or government regulations, but the decisions taken are useful and are not for the interests of individuals or groups, but the existing authority it contains rights and obligations and is the ability to carry out certain legal actions, namely actions intended to give rise to legal consequences, and include the arising and disappearance of legal consequences.

The concept of besturen or delegation is more likely to make work more effective if it is handled by local governments or regional agents according to the 1999 UNDP report, apart from that this concept can also improve quality and performance more effectively, because department leaders or regional regional leaders are not always dependent on decisions from the central government, but has the capacity to make decisions in order to achieve more efficient work results for the sake of the public interest.

The concept of besturen or delegation is an authority or a power that only describes the right to do or not to act or the right to act or not to act, therefore more clearly. According to BagirManan, authority in legal language is not the same as power (macht). Power only describes the right to act or not to act. In law, authority also means rights and obligations (rechten en plichten). In the study of administrative law, knowing the source and method of obtaining the authority of government organs is important, because it relates to legal accountability (rechtelijke verantwoording) in the use of authority, in line with one of the principles in a constitutional state "no authority without accountability" (geenbevoegdheidzonderverantwoording -woordelijkheid or there is no authority without responsibility).

Talking about the concept of besturen or delegation means talking about authority or authority. The term "authority" or "authority" can be found in both the concept of public law and private law. Therefore,

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2. The organization, competence, functioning and composition of the organs of local government shall be defined by law.

according to MochtarKusumaatmadja, someone who has formal authority automatically has the power to carry out certain actions in accordance with the legal provisions governing the granting of that authority.

Basically, juridically, the concept of authority is always related to power based on law, both how to obtain it and how to use it. The power obtained and exercised based on such law in the literature is commonly referred to as "legal power" or "rechtsmacht". The term "power" in this case means: "an ability on the part of a person to produce a change in a given legal relation by doing or not doing a given act" (Black, 1970: 1169).

In the study of administrative law, knowing the sources and ways of obtaining the authority of government organs is important, because it is related to legal accountability (rechtelijkeverantwoording) in the use of authority, in line with one of the principles in a rule of law "there is no authority without accountability. This means that in every granting of authority to certain government officials, the accountability of the officials concerned is implied.

Not everyone gets the delegation of authority, someone will get the authority to do something must have legal legitimacy, namely the authority granted by law. There are three (3) sources of authority, namely:

- Attribution authority is the granting of governmental authority by legislators to government organs based on law.
- Authority of delegation, namely the delegation of governmental authority from one organ of government to another organ of government. Based on the Government Administration Law, Delegation is the delegation of authority from higher government agencies and / or officials to lower government agencies and / or officials with responsibility and accountability fully transferred to the delegation recipient.
- Authority to mandate occurs when the organ of government allows its authority to be exercised by other organs on its behalf. Based on the Government Administration Law, mandate is the delegation of authority from higher government agencies and / or officials to lower government agencies and / or officials with responsibility and accountability remaining with the mandate. The juridical consequences of an official's authority will be different. if the authority comes from the delegation of authority (delegation) or assignment (mandate).

### **III. Conclusion**

The development of regional areas is currently not running in accordance with the national development plan, one of the inhibiting factors is that regional regional leaders have not obtained the authority or there has been no delegation of full authority from the central government to manage regional areas, apart from that regional development is not running due to dependence on the budget development of the central government, in terms of the RDTL Constituency article 5 and article 72 and government regulation No.53 / 2020 regarding the first amendment to government regulation No. 11/2019 dated June 14 regarding the Organization of the Department of Home Affairs, in particular articles 28.29 and articles 33 C-E clearly discuss the problem of regional government development by means of the authority obtained to carry out its duties and functions in accordance with the principles of decentralization.

### **IV. Closing**

Based on the abstraction, introduction and results and analysis, it is hoped that in the future the State of Timor-Leste, legally and politically, will take a positive attitude through the state and government deposits, in order to give authority or delegation of authority or to grant authority in the form of the concept of decentralization to regional government leaders or departments under the leadership of the central government, to manage their duties and functions independently, while still not neglecting legal responsibilities to the central government, so that development is not only focused on certain areas but development reaches remote areas in Timor-Leste.

### **Reference or bibliography**

- [1.] RDTL Constitution, 22 March 2002
- [2.] Government Regulation No. 53/2020 regarding the first amendments to government regulation No. 11/2019 dated June 14 regarding the Organization of the Department of Home Affairs
- [3.] State Administrative Law Theory and Constitutional Law