

# The Decentralization Implementation Program in Special Administrative Region of Oe-Cusse Ambeno

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**ABSTRACT:** Timor-Leste is a country based on law, democracy, and also a unitary state as stated in article 1 paragraph 1, the Constitution of the Democratic Republic of Timor-leste. It is said to be unity because Timor-Leste has several islands, which have various ethnic groups, languages and different customs. The government system adopted by Timor-Leste is a mixed system, which includes the semi-presidential system of government and the parliamentary system of government. Oe-cusse is a district that is separated from other districts, which is known as an enclave. Oecusse District is the first area to gain status as Regiaun Administrativa Espesial Oecusse Ambeno (RAEOA) and the Merkado Social Economic Special Zone (ZEESM). Decentralization is a specific government policy in the administrative administration program of a country in the concept of a welfare state, which is based on article 5 and also article 71, the Constitution of the Democratic Republic of Timor-Leste, to achieve a harmonious and just economic development, for the welfare of the people, nation and state, based on article 6 of the Constitution of the Democratic Republic of Timor-Leste, concerning the objectives of the unitary state of the Democratic Republic of Timor-leste. To implement decentralization and regional administrative administration, Law no. 3 of 2014 concerning the establishment of the Special Administrative Region of Oecusse Ambeno (RAEOA) and the Merkado Social Economic Special Zone (ZEESM) in Oecusse and Atauro. Government policy has decided that Oecusse District as the main target for implementing a pilot project (Projeto Piloto) on regional desntralization, with a new paradigm called; Region Administrative Special Oecusse Ambeno (RAEOA) and Special Zone Economy Social Market (ZEESM).

**Keywords:** Government Policy, Implementing of Government Programs, Decentralization Implementation RAEOA-ZEESM.

## 1. Background of the Problem

Timor-Leste is a country based on law, democracy, and also a unitary state as stated in article 1 paragraph 1, the Constitution of the Democratic Republic of Timor-leste. It is said to be unity because Timor-Leste has several islands, which have various ethnic groups, languages and different customs.

The government system adopted by Timor-Leste is a mixed system, which includes the semi-presidential system of government and the parliamentary system of government. When viewed from its organizational structure, the country of Timor-Leste is categorized as adopting a semi-presidential system, because the prime minister is the prime minister and the head of government who carries out executive duties, while the president is only the head of state, also as a symbol or symbol of the state. When viewed from its character, the state of Timor-Leste adheres to a Parliamentary system of government, because all state decisions are almost dominated by the Legislature, namely the Parliament.

Oecusse is a district that is separated from other districts, which is known as an enclave. Oecusse District is the first area to gain status as Regiaun Administrativa Espesial Oecusse Ambeno (RAEOA) and the Market Social Economic Special Zone (ZEESM). As citizens and especially for the children of Enclave Oecusse, they are proud of this status, because of the freedom to determine economic development by fulfilling a good standard of living for the sake of a prosperous and prosperous society.

Decentralization is a specific government policy in the administrative administration program of a country in the concept of a welfare state, which is based on article 5 and also article 71, the Constitution of the Democratic Republic of Timor-Leste, to achieve a harmonious and just economic development, for the welfare of the people, nation and state, based on article 6 of the Constitution of the Democratic Republic of Timor-Leste, concerning the objectives of the unitary state of the Democratic Republic of Timor-lest. To implement decentralization and regional administrative administration, Law no. 3 year 2014 concerning the establishment of the Special Administrative Region of Oecusse Ambeno (RAEOA) and the Merkado Social Economic Special Zone (ZEESM) in Oecusse and Atauro.

Government policy has decided that Oecusse District as the main target for implementing a pilot project (Projeto Piloto) on regional decentralization, with a new paradigm called; Rejiaun Administrativa Espesial Oecusse Ambeno (RAEOA).

## **2. Problem Formulation**

1. Did the Central Government delegate authority to the RAEOA and ZEESM governments regarding government programs in implementing Decentralization Implementation ?
2. How does the authority relationship between the central government and the RAEOA and ZEESM governments, if it is related to the government's discretionary power or with the term Freies Ermessen ?

### **3. Purpose and Benefits**

#### 1. Purpose

- 1.) To find out whether the Central Government granted delegation of authority to the RAEOA and ZEESM governments regarding government programs in the implementation of Decentralization Implementation.
- 2.) To find out how the authority relationship between the central government and the government of RAEOA and ZEESM, if it is related to the government's discretionary power or by the term *Freies Ermessen*.

#### 2. Benefits

- 1.) To be of benefit to students and all those who are interested in this research.
- 2.) To become a reference for students and all groups who will continue this kind of research.

### **4. Theory Basis**

#### **I. Definition of Policy**

Before we discuss further about the concept of public policy, we need to first examine the concept of policy or in English it is often heard with the term policy. In the large Indonesian dictionary, policy is defined as a series of concepts and principles that form the basis of plans for the implementation of a job, leadership, and how to act (regarding government, organizations, etc.); statement of goals, objectives, principles, and guidelines for management in achieving goals.

Carl J. Frederick as quoted by Leo Agustino (2008; 7) defines policy as a series of actions or activities proposed by a person, group, or government in a certain environment where there are obstacles (difficulties) and opportunities for implementing policy proposals. in order to achieve certain goals.

This opinion also shows that policy ideas involving behavior that have goals and objectives are an important part of policy definition, because after all policies must show what is actually being done rather than what is proposed in some activities on a problem.

Solichin Abdul Wahab argues that the term policy itself is still a matter of debate and is an arena for debate by experts, so to understand the term policy, Solichin Abdul Wahab (2008; 40-50) provides several guidelines as follows;

- a. Policies must be distinguished from decisions; b. Actual policy is not necessarily distinguishable from administration; c. Policies cover behavior and expectations; d. Policy includes neither action nor action; e. Policies usually have an end result to be achieved; f. Every policy has specific goals or objectives, either explicit or implicit; g. Policy arises from a process that takes place over time; h. Policies include inter-organizational and intra-organizational relationships; i. Public policy, although not exclusive, concerns the key roles of government institutions; and J. The policy is formulated or defined subjectively.

After we understand some of the policy concepts according to the experts above, now we will begin to discuss more deeply about public policy.

## **II. Definition of public policy**

The scope of a public policy is very broad because it covers various fields and sectors such as economy, politics, social, culture, law, and so on. Besides that, seen from the hierarchy, public policies can be national, regional or local in nature such as government regulations, presidential regulations, ministerial regulations, regional or provincial government regulations, governor decrees, regency or city regional regulations, and decrees of regents or mayors. In terminology, the definition of public policy (public policy) turns out to be a lot depending on which point we interpret it.

Easton defines public policy as the authoritative allocation of values for the whole society or as the allocation of values forcibly to all members of society. Laswell and Kaplan also define public policy as a projected program of goals, values, and practice or a program of achieving goals, values in directed practices. Pressman and Widavsky as quoted by Budi Winarno (2002: 17) define public policy as a hypothesis that contains initial conditions and predictable consequences.

## **III. Definition of Decentralization**

Decentralization in general includes the following matters, namely the distribution of authority from the center to the regions and devolution of authority from the central government to regional governments. The distribution of authority includes deconcentration and delegation of authority. Deconcentration is the granting of authority to central government organs in the regions, while delegation of authority is the delegation of authority from the central government to local organs. On the other hand, devolution of authority means a transfer of authority from the central government to the regions accompanied by reallocation of sources of revenue and financing.

Decentralization is also defined as a system in the field of government which is the opposite of centralization. In a centralized system, government authority, both at the central and regional levels, is centralized in the hands of the central government. Regional officials only carry out the will of the central government. In a decentralized system, part of the central government authority is delegated to other parties to be implemented. The transfer of government authority to other parties to be implemented is called decentralization.

According to Smith, "Decentralization means both reversing the concentration of administration at a single center and conferring powers of local government. In the study of politics decentralizations refers to the territorial distribution of power. So, it means that decentralization is the opposite of concentrating power in one hand and handing over that power to the regions (local government), and in political studies that decentralization refers to the territorial distribution of power.

Meanwhile, in substance, Andrew Parker, noted three focuses of decentralization, namely the formation / expansion of democratic institutions, distribution of financial resources, and involvement of actors / institutions outside the government in relation to public service affairs from a legal perspective. In particular, Mawhood defines decentralization as any formal action by the central government to give administrative political power to the parties and institutions in the regions. The conventional concept of decentralization from the perspective of western public administration leads to the relationship between levels of government or political decentralization, namely the granting of power and responsibility to regional governments as the implementer of democratically elected local autonomy.

#### **IV. Ermessens Freies Concept**

The existence of policy regulations cannot be separated from the free authority (*vrije bevoegdheid*) of the government which is often referred to as *Freies Ermessen*. Therefore, before explaining the policy regulations, we must first mention this *ermessen* of *freies*.

In the language of *freies ermessen* comes from the word *frei* which means free, unbound and independent. Meanwhile, *Ermessen* means to consider, assess, suspect, and estimate. *Freies Ermessen* means a person who has the freedom to judge, suspect and consider things. This term is then typically used in the field of government, so that *Freies Ermessen* (*discretionary power*) is defined as a means of providing mobile space for state administrative officials or agencies to take action without being fully bound by the law. Another similar definition is given by Nana Saputra, namely a freedom given to administrative tools, namely freedom which in principle introduces state administrative tools prioritizing the effectiveness of achieving a goal (*doelmatigheid*) rather than sticking to legal provisions, or legitimate authority to intervening in social activities in order to carry out tasks carrying out public interests. Bachsan Mustafa said that *freies ermessen* were given to the government considering the function of the government or state administration, namely organizing public welfare which is different from the judicial function to resolve disputes between residents. Government decisions prioritize the achievement of goals or objectives (*doelmatigheid*) than in accordance with applicable law (*rechtmatigheid*).

Although the granting of *freies ermessen* to the government or state administration is a logical consequence of the conception of the Welfare state, but within the framework of a legal state, these *freies ermessen* cannot be used indefinitely. On this basis, Sjachran Basah suggests the *freies ermessen* elements in a constitutional state, namely as follows: a. Intended for performing public service duties; b. Is an active act of state administration; c. This attitude of action is made possible by law; d. The attitude of the action was taken on his own initiative; e. This attitude of action is intended to resolve important problems that arise suddenly; f. That attitude of action can be accounted for both morally to God Almighty and legally.

*Ermessen's freies* emerged as an alternative to fill the shortcomings and weaknesses in the application of the legality principle (*wetmatigheid van bestuur*). For a country that is a welfare state, the principle of legality alone is not sufficient to be able to play a maximum role in serving the interests of the community, which is developing rapidly in line with the development of science and technology. According to Laica Marzuki, *freies ermessen* is a freedom that is given to state administration in the context of governance, in line with the increasing demands for public services that state administration must provide for the increasingly complex socio-economic life of citizens.

Freies Ermessen departed from the government's obligations in the welfare state, where the main task of the government is to provide public services or seek welfare for citizens, in addition to providing protection for citizens. When compared to Timor-Leste, Freies Ermessen appeared at the same time as giving the government the task of realizing the country's goals as stated in the Constitution of the Democratic Republic of Timor-Leste Article 71 paragraph 1. Therefore, the main task of the government in the conception of the welfare state is to provide services to citizens, the principle appears that "the government must not refuse to provide services to the community on the grounds that there are no laws and regulations that regulate it or not or there are no statutory regulations that exist. used as the basis for the authority to take legal actions.

Even though the government is given free authority or freies ermessen, in a legal country the use of ermessen freies must be within the limits allowed by applicable law. The use of freies ermessen must not conflict with applicable law, both written law and unwritten law. According to Muchsan, the restrictions on the use of ermessen freies are as follows: a. The use of freies ermessen must not conflict with the applicable legal system (positive law rules). b. The use of ermessen freies is only intended for the public interest.

Sjachran Basah argues that the implementation of the ermessen freies must be accountable, "morally to God Almighty, upholding human dignity and values of truth and justice, prioritizing unity and integrity, for the common interest. Furthermore, Sjachran Basah said that legally there are two boundaries; upper limit and lower limit. The upper limit is intended to comply with the principle of statutory provisions based on the principle of obedience, that is, regulations with a lower degree must not conflict with regulations of a higher degree. Meanwhile, the lower limit is the regulations made or the actions of the state administration (both active and passive), not to violate the rights and human obligations of citizens. It can be added that ermessen's freies should not conflict with the public interest.

In the science of state administrative law, freies ermessen is given only to the government or state administration both to carry out ordinary actions and legal actions, and when this ermessen freies is manifested in a written juridical instrument, it becomes a policy rule. As something that was born from Freies Ermessen and which was only given to the government or state administration, the authority to make policy regulations was inherently in the government (inherent aan het bestuur).

## **V. DISCUSSION**

1. The Central Government delegates authority to the RAEOA and ZEESM governments regarding government programs in the implementation of Decentralization

Government policy has decided that Oecusse District as the main target to implement a pilot project (Projeto Piloto) on Regional Decentralization, with a new paradigm called; Rejiaun Administrativa Espesial Oecusse Ambeno (RAEOA) and the Special Zone for Economic Social de Mercado (ZEESM), based on law no. 3 of 2014, concerning (Cria a Região Administrativa Espesial de Oe-cusse Ambeno, the day of the Special Zone of the Social Economy of de Mercado, in Oe-cusse).

To implement or administer the Decentralization program in RAEOA, the President of the Democratic Republic of Timor-Leste took a decision on June 25, 2014, by issuing Presidential Decree No. 22 of 2014, regarding the appointment of the President of Autoridade RAEOA and ZEESM Timor-Leste, by appointing the former Prime Minister of the Democratic Republic of Timor-Leste, His Excellency Dr. Mari Bin Amudi Alkatiri, as the highest government leader (Prezidente Autoridade RAEOA no ZEESM) in the Oecusse Enclave. So with that, the authority and responsibility have been handed over to the President of Autoridade RAEOA and ZEESM.

After the government (RAEOA and ZEESM) has a leader and is responsible for implementing the Territorial Decentralization, then to execute the program must be based on a law again to become a guide in running the implementation program. Law no. 5 of 2015 which was passed on 22 January 2015, concerning (Estatuto da Região Administrativa Especial de Oe-cusse Ambeno, Zona Especial de Economia Social de Mercado de Oe-cusse Ambeno e Atauro).

2. Authority relations between the central government and the RAEOA and ZEESM governments, when linked to the government's discretionary power or in terms of Freies Ermessen.

Based on the principle of legality, that the delegation of authority granted by the central government to the RAEOA and ZEESM governments is lawful, but this cannot be separated from the concept of the Democratic Republic of Timor-Leste, namely unity (Unitariu) that the relationship of authority between the central government and the RAEOA and ZEESM governments is still balanced or still bound by certain rights that still depend on the central government.

In state administrative law, there are 2 powers, namely: bound authority and free authority. Bound authority is official in nature and is not interpreted differently, or authority is based on the applicable law. Meanwhile, free authority or discretionary power, namely: authority that is not based on law, but in making a decision or action, it should not be contrary to the applicable law or statute.

So with this, the use of government discretionary powers in RAEOA no ZEESM has its limits or prerequisites for using government discretionary power, because there can be abuse of authority by government officials.

Prerequisites or limits for the use of government discretionary powers include: 1. In accordance with the objectives to be achieved. 2. Does not conflict with statutory provisions. 3. Fulfill the general principles of good government. 4. Based on objective reasons. 5. Does not create a conflict of interest, and 6. Conducted in good faith.

## VI. CONCLUSION

Large delegation of tasks or delegation of powers to the RAEOA and ZEESM governments, through government policies in implementing the regional decentralization program in the Enclave Oecusse, which is based on laws and regulations no. 3 of 2014, concerning the implementation of territorial decentralization with a new paradigm (Cria a Região Administrativa Especial de Oe-cusse Ambeno, Social Economic Zone Special Zone Day de Mercado iha Oe-cusse no Atauro) followed by presidential decree no. 22 of 2014, regarding the appointment of the President of Autoridade RAEOA and ZEESM Timor-Leste, by appointing the former Prime Minister of the Democratic Republic of Timor-Leste, His Excellency Dr. Mari Bin Amudi Alkatiri, as the highest government leader (Prezidente Autoridade RAEOA no ZEESM) in the Oecusse Enclave. And so on, to execute the program, it must be based on a law again to become a guide in carrying out the implementation program. Law no. 5 of 2015 which was passed on 22 January 2015, concerning (Estatuto da Região Administrativa Especial de Oe-cusse Ambeno, Zona Especial de Economia Social de Mercado de Oe-cusse Ambeno e Atauro.

Various designs of decentralization described by various scholars and world official institutions have in fact become references in various developing countries or with the concept of a welfare state for improving governance. However, the results of its implementation do not necessarily make a positive contribution to improving the welfare of society equally in all regions. In fact, what happened in the implementation of territorial decentralization in RAEOA and ZEESM. There are variations in the results, where some regions or several sub-regions enjoy the implications of decentralization for accelerated development and changes in the social life of local communities for the better. On the other hand, there are also some sub-regions that still show difficult social conditions with the complexity of the problems they face.

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