POLICY DIRECTIONS AND AUTHORITIES OF REGENCY/CITY GOVERNMENTS IN THE MARINE AND FISHERIES SECTOR WITH THE EFFECT OF LAW NUMBER 23 OF 2014

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Abstract: Since the enactment of Law Number 23 of 2014 concerning Regional Government, there have been very significant different provisions in determining policies in each region, especially in the maritime and fisheries sector. In the previous regional government regulations, namely Law Number 32 of 2004, regional governments were given the broadest authority to manage resources in marine areas, but since the latest regulations, the maritime and fisheries section is included in concurrent government affairs which must be coordinated between the central government. , provincial government and district/city government. Therefore, it is necessary to further examine the limitations and direction of policy and authority that can be exercised by district/city regional governments in the maritime and fisheries sectors since the enactment of Law Number 23 of 2014 concerning Regional Government. The aim of this research is to discover the legal relationship between the central government and regional governments in the marine and fisheries sector, to discover concurrent government affairs between the central government and provincial and district/city regions in the marine and fisheries sector, and to discover the position of district/city governments in Law Number 23 of 2014 in determining policy direction in the marine and fisheries sector. This type of research is normative juridical, while the nature of this research is prescriptive. The data source used is secondary data by processing data from primary legal materials, secondary legal materials and tertiary legal materials. Document study data collection techniques, as well as using qualitative analysis. Based on the research results, it is known that the legal relationship between the central government and regional governments in the maritime and fisheries sector is part of concurrent government affairs, apart from that, concurrent government affairs are not mandatory government affairs but rather optional government affairs. Then it is understood that concurrent government affairs between the central government and provincial and district/city areas in the marine and fisheries sector as a whole are the authority and responsibility of the central government to make policies in the management of marine and national strategic space, as well as provincial regional governments being given the authority to manage natural resources in the sea in the region. Meanwhile, district/city governments are limited to supervising and empowering small fishermen and fish cultivation in district/city areas. Finally, it is known that the position of district/city governments in Law Number 23 of 2014 in determining policy direction in the marine and fisheries sector is limited to the empowerment of small fishermen and empowerment of fish cultivation businesses.

Keywords*: Policy, Authority, Regional Government, Maritime Affairs and Fisheries.*

Introduction

The district/city regional government is the regional head (Regent or Mayor) as the organizing element of the Regional Government who leads the implementation of government affairs with autonomous regional authority, specifically within the district/city scope. Regional government is implemented based on the principle of the widest possible autonomy within the system and principles of the Unitary State of the Republic of Indonesia as intended in the 1945 Constitution of the Republic of Indonesia. So it is clear that district/city governments from the perspective of the 1945 Constitution have the authority to regulate their own policies for regulate their respective regions. Of course, when forming policies in the form of district/city regional regulations, they must remain in accordance with existing legal mechanisms or statutory regulations (Law on the Establishment of Legislative Regulations).

It is understood that statutory law is written law which is formed in certain ways by authorized officials and stated in written form. It is called statutory law because it is made or formed and implemented by a body that carries out statutory functions (legislator). All forms of written law, whether they are laws in the formal sense or laws in the material sense, are covered by the term statutory provisions. This coverage term includes both written legal products at the national level and written legal products stipulated by regional governments.

As autonomous regions, provincial, district and city governments have the authority to make regional regulations and regional head regulations, in order to carry out regional autonomy affairs and assistance tasks. Regional regulations (Perda) are stipulated by the regional head, after obtaining joint approval from the Regional People's Representative Council (DPRD). The substance or material content of a Regional Regulation is the elaboration of higher level statutory regulations, taking into account the unique characteristics of each region, and the material substance must not conflict with the public interest and/or higher statutory regulations (Sunarno, 2016).

The policy direction and authority of the district/city regional government can not only be seen from existing provisions such as in Law Number 23 of 2014 and the 1945 Constitution, but can also be seen from the Regional Regulations formed by the district/city regional government. According to Article 1 number 8 of Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations, which states: "Regency/City Regional Regulations are Legislative Regulations formed by the Regional People's Representative Council Regency/City with mutual agreement with the Regent/Mayor." This is in line with what is described above, that the regional government, in this case the district/city together with the district/city DPRD, can form special regional regulations through regional regulations.

Discussion of the policy direction and authority of district/city regional governments cannot be separated from regional autonomy which is recognized by Article 18 paragraph (2) of the 1945 Constitution, which states: "Provincial, district and city regional governments regulate and manage government affairs themselves according to the principle of autonomy and assistance duties". Regional autonomy itself according to Article 1 point 6 of Law Number 23 of 2014, namely: "the rights, authority and obligations of autonomous regions to regulate and manage their own Government Affairs and the interests of local communities in the system of the Unitary State of the Republic of Indonesia".

On this basis, regions can and are allowed to regulate and manage (including making policy directions) everything that is considered important for their region, as long as it does not include matters that have been regulated and managed by the central government or regional governments at a higher level. In this case, regions may regulate and manage everything that is considered important for their region, as long as it does not include matters that have been

regulated and managed by the central government or regional governments at a higher level (Kaho, 1998). Likewise, in the maritime and fisheries sector, district/city governments must not run away from existing legal norms. So in other words, even though there are regional autonomy provisions recognized by the State, district/city regional policies must not conflict with regional policies above them, namely the province or central government policies.

Indonesia as an archipelagic country has a sea area that is wider than land. Indonesia has 17,504 islands with a coastline of more than 95,161 km and its waters consist of territorial seas, archipelagic waters and inland waters covering an area of 5.9 million km2 or 70% of Indonesia's territory. Indonesia is an archipelagic country that has been recognized internationally through the third UN Convention on the Law of the Sea, the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982), which was then ratified by Indonesia through Law Number 17 of 1985.

Apart from being recognized as an archipelagic country, Indonesia is also a legal country which is mentioned in Article 1 paragraph (3) of the 1945 Constitution which states that Indonesia is based on the rule of law (Rechtsstaat) and not based on mere power (Machtsstaat). The general characteristics of a rule of law state can be found in the 1945 Constitution of the Republic of Indonesia. First, recognition of the rights and obligations of citizens. Second, there is a division of power. Third, every government act or action must be based on law and statute. Fourth, the existence of independent judicial power (Syahuri & Sitompul, 2020).

The division of power which is characteristic is divided into central government and regional government. The division of authority between the Center and the Regions is regulated in law taking into account regional specificities and diversity. Apart from that, the division of powers is also stated in Article 2 paragraph (1) of Law Number 23 of 2014 concerning Regional Government which states that the Republic of Indonesia is divided into Provincial Regions, and Provincial Regions are divided into Regency/City Regions. This is also in line with the provisions of Article 2 paragraph (1) of Government Regulation Number 38 of 2007 concerning the Division of Government Affairs between the Government, Provincial Regional Governments and Regency/City Regional Governments.

Prior to the existence of Law Number 23 of 2014, with regard to the policy direction and authority of regional governments, especially districts/cities, it was based on the provisions of Law Number 32 of 2004. This law in principle gave the broadest possible authority to regions to regulate and administer The government affairs themselves take care of the principle of autonomy and assistance tasks, except for government affairs which are the affairs of the central government.

Likewise, in the marine and fisheries sector, districts/cities are given the authority to manage resources in marine areas. However, after the enactment of Law Number 23 of 2014, government affairs in the maritime and fisheries sector became more specific and their authority was limited between governments, be it the central government, provincial or district/city governments. Although it does not close the scope for district/city governments to determine policy direction and authority in the marine and fisheries sector, not all sectors can be covered by district/city governments. Regional regulations that determine the direction of policy in district/city regional governments must remain in accordance with the norms that exist above them.

As mentioned above, Indonesia is a country of law and not a country of power. So that policies in each region must continue to be based on applicable legal provisions (such as the Law on the Establishment of Legislative Regulations). In this concept, it is understood that a democratic state based on law (democratic legal state) contains the meaning that power is limited by law and at the same time states that law is supreme compared to all existing tools of

power. In other words, the State places law as the basis of its power and the exercise of this power in all its forms is carried out under legal authority (Sihombing, 2018).

Based on this concept, the direction of regional government policy and authority, although based on the principle of regional autonomy as in Article 14 of Law 13 of 2022 and Article 18 of the 1945 Constitution, however, because regional regulations are hierarchically subordinate to statutory norms, in determining The policy direction applied in the form of regional regulations must specifically be in accordance with the values and rules contained in Law Number 23 of 2014.

Based on the entire series of backgrounds above, it is known that there is an identification of problems or issues that will be examined in this research, namely relating to the legal relationship between the central government and regional governments, provinces and especially districts/cities in handling or forming a policy in the maritime sector or field. fishery. Apart from that, Law Number 23 of 2014 concerning Regional Government considers that the previous regulations, namely Law Number 32 of 2004, are no longer in accordance with developments in the situation, state administration and demands for the implementation of regional government so that they need to be replaced, therefore all forms of policy and The authority regarding the administration of regional government refers to the latest regulations, namely Law Number 23 of 2014, which cannot be separated from the direction of policy and authority in the maritime sector. This regulation describes concurrent government affairs between the central government, provincial regions and city districts, so it is necessary to examine the maritime and fisheries sector and concurrent government affairs from the perspective of existing policies and authorities.

Finally, the most crucial issue is related to the position of the district/city government itself in forming a policy and authority to deal with matters in the maritime and fisheries sector referring to Law Number 23 of 2014, even though it is in Article 18 of the 1945 Constitution acknowledges regional autonomy, but of course from the perspective of the latest Regional Government, legal aspects must be looked at which can be used to determine the direction of policy and authority of district/city regional governments, especially in the maritime and fisheries sector in district/city areas... In other words , this research does not aim to answer these questions, so in the end the researcher raised the research title: "Policy Direction and Authority of Regency/City Regional Governments in the Maritime and Fisheries Sector with the Enactment of Law Number 23 of 2014*"*.

Literature Review

1. Maritime and Fisheries Sector

One of the economic sectors, namely the Maritime Affairs and Fisheries Sector, plays a very big role in development in Indonesia, considering that the area of water is larger than the land area with a very large and varied fisheries potential. This huge potential must be utilized as optimally as possible by implementing development programs aimed at improving community welfare and contributing to retribution for future regional progress.

Large production values can be used to provide maximum contribution to Regional Original Income. Therefore, it is necessary to "Develop the Maritime and Fisheries Sector in Karimun Regency to Increase Original Regional Income". Law Number 32 of 2014 concerning Maritime Affairs has clarified what sectors are involved in the marine sector, namely the fisheries sector, energy and mineral resources, natural resources. coast and small islands, non-conventional resources, marine industry, marine tourism, sea transportation and marine buildings (Article 14).

Method

A study cannot be said to be research if it does not have a research method (Koto, 2021). The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively (Koto, 2020). The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Koto, 2022). In qualitative research, the process of obtaining data is in accordance with the research objectives or problems, studied in depth and with a holistic approach (Rahimah & Koto, 2022).

Result and Discussion

1. Legal Relations between the Central Government and Regional Governments in the Maritime and Fisheries Sector

The legal relationship between the central government and regional governments here is part of the decentralization policy because one of the factors is geographical considerations in Indonesia. A country with a large territory like Indonesia will find it difficult to regulate the country from the center or the national capital. It is very necessary to have a government unit at the local level or at a lower level to carry out government affairs at the local level far from the government capital. Judging from these conditions, it is necessary to disband state power. This spread of state power then gave birth to decentralization policies (Muhayat & Haslita, 2021).

The division of state power referred to here is executive power, not including legislative or judicial power, taking the theory of separation of powers according to the theory developed by Montesqieu. Government power is the power to take care of those who are born and take care of those who die. However, in a country that adheres to a totalitarian system, it is possible that the executive, legislative and even judicial powers are dominated by the ruling elite. Meanwhile, in countries that adopt a plural democratic system, there is a separation between executive, legislative and judicial powers as adopted by Indonesia after reform. Although Indonesia tends to adhere to the division of powers rather than the separation of powers. It can be seen that there is legislative power that is also owned by the President, where the President can propose the right of initiative in drafting laws, but after reform through amendments to the 1945 Constitution, the DPR's initiative is prioritized in cases where both institutions submit draft laws.

Decentralization is a policy of delegating authority to lower government units. So conceptually, decentralization is the division of authority territorially. The implication of this concept is the extent to which power and authority are distributed to government institutions according to a country's geographic hierarchy. This decentralization policy must of course still be based on existing legal norms in Indonesia, this is because Indonesia is a legal country, so all forms of state policy must remain based on existing norms. This norm is also needed to avoid conflicts of interest between regions in Indonesia which are diverse both in terms of geography and the habits of the people within them.

Various relationships between individuals in society as a result of diversity of interests always exist in social life. Therefore, in order to avoid chaos in society, especially regarding relationships, regulations are needed that are able to guarantee the stability of members of society. This means that legal rules are needed that arise on the basis and awareness of each individual in society.

The realization of stability in every relationship in society can be achieved by the existence of regulatory legal regulations (regelen/anvullen recht) and legal rules that compel (dwingen recht) every member of society to obey and comply with the law. Every social relationship must not conflict with the provisions of existing legal regulations that apply in society. Legal consequences in the form of punishment will be imposed on any violators of existing legal regulations as a reaction to the unlawful actions they commit. The result is that existing legal regulations must be in accordance with the principles of justice in society, to ensure that legal regulations can continue and be accepted by all members of society (Sudarsono, 2007).

In this regard, to look at the legal relationship between the central government and provincial and district/city governments, there are already legal norms established by the government, namely Law Number 23 of 2014 concerning Regional Government. Law Number 23 of 2014 was formed to replace Law Number 32 of 2004. Therefore, juridically looking at this legal relationship must be guided by the provisions of Number 23 of 2014.

The relationship between the Central Government and the Regions can be traced from the third and fourth paragraphs of the Preamble to the 1945 Constitution of the Republic of Indonesia. The third paragraph contains a statement of the independence of the Indonesian nation. Meanwhile, the fourth paragraph contains a statement that after declaring independence, the first thing to be formed was the Indonesian State Government, namely the National Government which was responsible for regulating and administering the Indonesian nation. It is further stated that the duty of the Indonesian State Government is to protect the entire nation and the blood of Indonesia, promote general welfare and make the life of the nation intelligent and participate in maintaining world order based on independence, eternal peace and social justice.

Furthermore, Article 1 of the 1945 Constitution of the Republic of Indonesia states that the State of Indonesia is a unitary state in the form of a republic. The logical consequence of being a unitary state is that the Indonesian government was formed as a national government for the first time and then the national government then formed regions in accordance with the provisions of statutory regulations. Then Article 18 paragraph (2) and paragraph (5) of the 1945 Constitution of the Republic of Indonesia states that Regional Governments have the authority to regulate and manage Government Affairs themselves according to the Principles of Autonomy and Assistance Duties and are given the widest possible autonomy.

Providing the widest possible autonomy to regions is directed at accelerating the realization of community welfare through improving services, empowerment and community participation. In addition, through broad autonomy, in the strategic environment of globalization, regions are expected to be able to increase their competitiveness by paying attention to the principles of democracy, equality, justice, privileges and specialties as well as the potential and diversity of regions in the system of the Unitary State of the Republic of Indonesia.

The granting of the widest possible autonomy to regions is carried out based on the principle of a unitary state. In a unitary state, sovereignty only exists in the state government or national government and there is no sovereignty in the regions. Therefore, whatever extent of autonomy is granted to the Regions, the final responsibility for administering Regional Government will remain in the hands of the Central Government. For this reason, Regional Government in a unitary state is one unit with the National Government. In line with this, policies made and implemented by regions are an integral part of national policy. The difference lies in how to utilize regional wisdom, potential, innovation, competitiveness and creativity to achieve national goals at the local level which in turn will support the achievement of overall national goals.

Adhering to the above principle, it is specifically known that the relationship in the maritime and fisheries sector between the central government and district/city regional governments must be seen from the forms of government affairs that apply. Article 9 paragraph (1) of Law Number 23 of 2014 states: "Government affairs consist of absolute government affairs, concurrent government affairs and general government affairs." So on this basis it is understood that the legal relationship that can link between the central government and regional governments is related to concurrent government affairs, this is in accordance with the provisions in Article 9 paragraph (3) which explains that concurrent government affairs are government affairs that are shared between the Central and Regional Governments. provinces and districts/cities.

Still in the aspect of legal relations between the central and regional governments, it is known as Article 11 paragraph (1) of Law Number 23 of 2014 that concurrent government affairs are divided into mandatory government affairs and optional government affairs. It turns out that after reviewing the relationship between the central government and provincial and district/city governments which is based on concurrent government affairs, it is part of optional government affairs and not mandatory government affairs, this is in accordance with the provisions of Article 12 paragraph (3) of the Regional Government Law which states:

Elective Government Affairs as intended in Article 11 paragraph (1) include:

a. maritime affairs and fisheries;
b. tourist;
c. agriculture;
d. forestry;
e. energy and Mineral Resources;
f. trading;
g. industry; And
h. transmigration.

It can be seen in the provisions of Article 12 paragraph (3) letter a of Law Number 23 of 2014 that the maritime and fisheries sector is part of optional government affairs. Meanwhile, mandatory government affairs are not included in the maritime and fisheries sector. This is also in line with the description in the provisions of Article 4 letter cc and Article 7 paragraph (4) letter a of Government Regulation Number 38 of 2007 concerning the Division of Government Affairs between the Government, Provincial Regional Governments and Regency/City Regional Governments. Thus, it confirms that the legal relationship established between the central government and provincial and district/city governments in the maritime and fisheries sector is not a mandatory government matter but rather an optional government matter.

The legal relationship between the central and regional governments relating to the maritime and fisheries sectors is also clarified in the provisions of Article 14 paragraph (1) which states: "The administration of government affairs in the fields of forestry, maritime affairs, as well as energy and mineral resources is shared between the central government and the provincial regions." So it is clear that the legal relationship formed by the central government and regional provincial and district governments regarding the maritime and fisheries sector is part of concurrent government affairs and part of elective government affairs. So the legal relationship depends on each region to determine whether or not they choose to manage the marine and fisheries sector.

2. Concurrent Government Affairs Between the Central Government and Provincial and Regency/City Governments in the Maritime and Fisheries Sector

Provincial and district/city governments are state institutions that exist to help improve the welfare of the country and help maximize the success of national strategic policies. State

institutions basically have a strategic function in efforts to realize State goals. State Government institutions have strategic functions in efforts to realize State goals. In the context of the Republic of Indonesia, the government consists of State institutions which are fully regulated by the 1945 Constitution of the Republic of Indonesia and other statutory regulations. According to the 1945 Constitution of the Republic of Indonesia, the Indonesian constitutional system from the supremacy of the MPR changed to a system of people's equality which was regulated through the 1945 Constitution of the Republic of Indonesia.

The Constitution is the main basis and reference for exercising popular sovereignty. The rules in Constitution 145 regulate and divide the implementation of popular sovereignty through various State institutions which implement parts of popular sovereignty according to their authority, duties and functions. The position of each State institution depends on the authority, duties and functions granted by the 1945 Constitution (Ismatullah & Saebani, 2018).

The Constitution is the highest source of law which serves as guidelines and legal norms which are used as a source of law for the legislation below it. To maintain the understanding of constitutionalism, a Constitutional Court was formed which was given the task of protecting the Constitution. The Constitutional Court, one of whose duties is to review laws against the Constitution, is intended to ensure that there are no laws that conflict with the 1945 Constitution, so that this confirms that the constitution as the highest source of law is the culmination of all statutory regulations.

One of the provisions confirmed in the 1945 Constitution is related to the authority given by the State to regional governments at both provincial and district/city levels. So it is true that through Article 18 of the 1945 Constitution, the government established Law No. 23 of 2014 to clarify the authority of each government, be it the central government, provincial government or regional government, so that in all aspects, interests can be accommodated and accommodated.

Previously it was explained that in the maritime and fisheries sector, the relationship between the central and regional governments is based on concurrent government affairs. There are concurrent government affairs between the central and regional governments considering that Indonesia is an archipelago country surrounded by oceans, so there is great economic potential in the maritime and fisheries sectors to improve people's welfare.

Making the sea a driver of the national economy means greater exploitation of the resources it contains. This increase in exploitation certainly poses a serious threat to the sustainability of the marine environment and its resources, because the potential for damage to the marine environment is increasing. Therefore, if increased exploitation is not accompanied by more intensive management, the sustainability of resources in the sea will not be guaranteed (Imron, 2011). It is also on this basis that there is a division of concurrent government affairs between the central government and provincial and district/city regions in the marine and fisheries sector.

Previously, in Law Number 32 of 2004, which was a revision of Law Number 22 of 1999, provisions regarding the management of marine areas by Provinces and Regencies/Cities were reaffirmed in chapter III Article 18 Paragraph 4. In Article 18 paragraph (3) The law also states that the management authority owned by regions, which includes: (a) Exploration, exploitation, conservation and management of marine resources, (b) Spatial planning arrangements, (c) Administrative arrangements, (d) Law enforcement of regulations issued by the region or delegated authority by the center, (e) Participate in maintaining security, and (f) Participate in the defense of state sovereignty.

Based on Law Number 32 of 2004, regions (provinces and districts/cities) have been given the authority to manage marine areas and their resources, but the form of management must be carried out by the regions, both in Law Number 22 of 1999 and in the Law Number 32

of 2004 has not been regulated at all. Government Regulation Number 25 of 2000 only regulates the authority of the Center and Provinces as autonomous regions in managing maritime areas, but does not regulate how this authority is exercised. The absence of regulations that follow up on the implementation of Law Number 22 of 1999 or Law Number 32 of 2004, especially those related to marine management, certainly makes it difficult for local governments to manage their marine areas. Therefore, to resolve problems in the maritime and fisheries sector which cannot be accommodated by Law Number 32 of 2004, due to legal developments and State needs, Law Number 23 of 2014 was created. Law Number 23 of 2014 divides the specifically for concurrent government affairs, including the central government, provincial regional governments and district/city regional governments in their respective authorities. So that existing regional policies must not conflict and overlap with government policies above them.

In this context, Article 15 paragraph (1) of Law Number 23 of 2014 explains that: "The division of concurrent government affairs between the Central Government and provincial and district/city regions is listed in the Appendix which is an inseparable part of this Law" . So it is clear that concurrent government affairs must not deviate from the path specified in the attachment contained in Law Number 23 of 2014, including the maritime and fisheries sector.

In general, concurrent government affairs, including the central government, provincial and district/city governments, are stated in Article 20 of the Regional Government Law which explains as follows:

1. Concurrent government affairs which fall under the authority of the provincial region are carried out:
   a. itself by the provincial region;
   b. by assigning districts/cities based on the principle of Assistance Tasks; or
   c. by assigning Villages.
2. Assignments by provincial regions to district/city regions based on the principle of Assistance Assignment as intended in paragraph (1) letter b and to Villages as intended in paragraph (1) letter c are determined by governor's regulations in accordance with the provisions of statutory regulations.
3. Concurrent government affairs which are the authority of the regency/city region are carried out by the regency/city region itself or some of its implementation can be assigned to the Village.
4. Assignments by regency/city regions to villages as intended in paragraph (3) are determined by regent/mayor regulations in accordance with the provisions of statutory regulations.

The above covers in general what is part of concurrent government affairs at each level of government. In general, concurrent government affairs in the maritime and fisheries sector, as outlined above, can be seen in the attachment contained in Law Number 23 of 2014. For this reason, the central government's concurrent affairs in the maritime and fisheries sector are as follows:

1. Maritime, Coastal and Small Island Affairs Sub-Affairs, can carry out:
   a. Management of marine space above 12 miles and national strategic.
   b. Issuance of national marine space utilization permits.
   c. Issuance of permits for the use of types and genetics (germplasm) of fish between countries.
   d. Determining the types of fish that are protected and whose trade is regulated internationally.

e. Determination of conservation areas.
f. Coastal and small islands database.

2. Capture Fisheries Sub-Affairs, can carry out:
   a. Fishing management in sea areas above 12 miles.
   b. Estimated national fish stocks and permitted fish catch (JTB).
   c. Issuance of capture fisheries business permits.
   d. Determination of development locations and management of national and international fishing ports.
   e. Issuance of permits to procure fishing vessels and fish transport vessels with sizes above 30 GT.
   f. Registration of fishing vessels over 30 GT.

Apart from the sub-affairs described above, there are various other sub-affairs that can be implemented by the central government, including aquaculture sub-affairs, marine and fisheries resource supervision sub-affairs, processing and marketing sub-affairs, fish quarantine sub-affairs, quality control and safety. fisheries products and sub-affairs for developing human resources for marine and fisheries communities.

Concurrent government affairs carried out by the central government in the maritime and fisheries sector as described above are the authority of the central government which cannot be taken over by provincial and district/city governments. Furthermore, regarding concurrent affairs of provincial regional governments in the marine and fisheries sector, they can refer to the provisions of Article 27 of Law Number 23 of 2014, which states:

1. Provincial regions are given the authority to manage marine natural resources in their territory.
2. The provincial authority to manage natural resources in the sea as referred to in paragraph (1) includes:
   a. exploration, exploitation, conservation and management of marine resources outside of oil and gas;
   b. administrative arrangements;
   c. spatial arrangement;
   d. participate in maintaining security at sea; And
   e. participate in defending state sovereignty.
3. The provincial authority to manage natural resources in the sea as referred to in paragraph (1) is a maximum of 12 (twelve) nautical miles measured from the coastline towards the open sea and/or towards archipelagic waters.
4. If the sea area between two provincial regions is less than 24 (twenty four) miles, the authority to manage natural resources in the sea is divided equally over the distance or measured according to the principle of the center line of the area between the two provincial regions.
5. The provisions as intended in paragraph (3) and paragraph (4) do not apply to fishing by small fishermen.

All concurrent affairs in the maritime and fisheries sectors mentioned above are the business of the provincial regional government and not the district/municipal government's business. However, this is an exception for small fishermen, the provincial government may not restrict small fishermen from searching for or fishing throughout Indonesia. Small fishermen themselves are fishermen from traditional Indonesian communities who use traditional fishing materials and tools, and are not subject to business permits and are free from

taxes, and are free to catch fish in all fisheries management within the territory of the Republic of Indonesia.

Based on the entire description above, referring to the provisions of Law Number 23 of 2014, concurrent government affairs in the maritime and fisheries sector between the central government, provincial regional governments and district/city regional governments have been divided into their respective authorities, so that although The principle of regional autonomy applies, but the policy direction formed by each region must not conflict or overlap with the authority that has been established at each level of government. If it conflicts, the policy can be cancelled.

3. The position of the Regency/City Government in Law Number 23 of 2014 in Determining Policy Direction in the Maritime and Fisheries Sector

The position of the district/city government is of course closely related to the legal norms that apply to it, so that there are definite benchmarks for assessing its position. It is understood that law functions as the protection of human interests. In order for human interests to be protected, the law must be implemented. Implementation of the law can take place normally, peacefully, but it can also occur because of violations of the law. In this case the law that has been violated must be enforced. It is through law enforcement that this law becomes a reality. In enforcing the law, there are three elements that must always be considered, namely: legal certainty (rechtssicherheit), expediency (zweckmassigkeit) and justice (gerechtigkeit) (Mertokusumo, 2017).

One of the important things that must be considered in the formation of laws is the absorption of aspirations from a community, so that in the future it can avoid legal disobedience from the community towards the laws that have been formed. This also refers to legal culture which is part of the legal system which should be an important part to pay attention to so that the laws formed are effective.

In this regard, the region as a legal community unit that has autonomy has the authority to regulate and manage its region in accordance with the aspirations and interests of its people as long as it does not conflict with the national legal order and public interests. In order to provide wider space for the Regions to regulate and manage the lives of their citizens, the Central Government in forming policies must pay attention to local wisdom and vice versa. The Regions when forming Regional policies, whether in the form of Regional Regulations or other policies, should also pay attention to national interests. In this way, a balance will be created between synergistic national interests and still paying attention to conditions, characteristics and local wisdom in overall government administration.

In essence, Regional Autonomy is given to the people as a legal community unit which is given the authority to regulate and manage its own Government Affairs given by the Central Government to the Regions and in its implementation it is carried out by regional heads and DPRD with assistance from Regional Apparatus. Government affairs handed over to the Regions come from the government power in the hands of the President. The consequence of a unitary state is that the final responsibility for government is in the hands of the President. In order for the implementation of Government Affairs handed over to the Regions to run in accordance with national policy, the President is obliged to provide guidance and supervision over the implementation of Regional Government.

Implementation of the authority of Provincial Regions at sea as stated in Article 27 paragraph (1) of Law Number 23 of 2014 where Provincial Regions are given the authority to manage natural resources at sea in their territory. Law Number 23 of 2014 only regulates the management area which is the authority of the Provincial Region as stated in Article 27

paragraph (3) where the marine management authority of the Provincial Region is regulated at a maximum distance of 12 nautical miles measured from the coastline to the open sea and/or towards archipelagic waters. With the enactment of Law Number 23 of 2014, there was a change in the provincial marine management authority from 4-12 miles, now to 0-12 miles, water management previously carried out by the Regency/City Government was taken over by the Provincial Government, one of which is the marine zoning authority. what used to be 4-12 miles, is now 0-12 miles. Previously, the 0-4 mile sea zone was under the authority of the Regency/City Government (Khairi, 2020).

Regarding the division of affairs between the Central Government, Provincial Governments and District/City Regions, especially in the maritime and fisheries sector which is regulated by Law, there is no granting of management authority to Regency/City Regions which are taken over by the Central and Provincial Governments. In terms of marine and fisheries management, there are reasons why regions must remain involved in their management, this is because regions do not only accept to implement provincial and central policies because the place/area for management is the Regency/City Government. This approach to withdrawing all power/authority is partial recentralization or micro-centralization which in reality distances the community from regional authorities (bureaucracy) which should handle regional problems. This paradox of distance will lead to inefficiencies and obstacles to public participation and government oversight.

Selain dari sisi jarak ini, terdapat persoalan lain khususnya terhadap penentuan arah kebijakan dan kewenangan dari pemerintah daerah kabupaten/kota yang terlalu dibatasi dalam Undang-Undang Nomor 23 Tahun 2014 yang hanya menyangkut pada pemberdayaan nelayan kecil dan pembudidayaan ikan di daerah kabupaten/kota. Sehingga untuk meningkatkan kesejahteraan daerahnya pada sektor kelautan dan perikanan menjadi tidak maksimal bagi pemerintah daerah kabupaten/kota. Sedangkan ketentuan Pasal 27 Undang-Undang Pemerintahan Daerah yang menyangkut urusan sektor kelautan dan perikanan hampir keseluruhan kewenangannya diberikan kepada pemerintah daerah provinsi kecuali berkaitan dengan nelayan kecil.

Atas dasar itu pemerintah daerah kabupaten/kota harus dapat memaksimalkan dalam pembentukan kebijakan dalam hal pembentukan peraturan daerah walaupun dengan batasan yang ada. Sesungguhnya kedudukan pemerintah kabupaten/kota pada Undang-Undang Nomor 23 Tahun 2014 dalam menentukan arah kebijakan pada sektor kelautan dan perikanan tetap dimungkinkan hal ini mengingat uraian dalam Pasal 15 ayat (2) yang menjelaskan: "Urusan pemerintahan konkuren yang tidak tercantum dalam Lampiran Undang-Undang ini menjadi kewenangan tiap tingkatan penentuannya atau susunan pemerintahan yang menggunakan prinsip dan kriteria pembagian urusan pemerintahan konkuren sebagaimana dimaksud dalam Pasal 13". Artinya pemerintah daerah kabupaten/kota diperbolehkan untuk menentukan arah kebijakannya sendiri termasuk pada sektor kelautan dan periknan, namun tetap berlandaskan pada prinsip akuntabilitas, efisiensi, dan eksternalitas, serta kepentingan strategis nasional, yang terkandung dalam Pasal 13 ayat (1).

Selain daripada itu kedudukan pemerintah daerah kabupaten/kota untuk menentukan arah kebijakannya sendiri termasuk pada sektor kelautan dan perikanan, dapat merujuk pada ketentuan Pasal 17 Undang-Undang Nomro 23 Tahun 2014, yang menjelaskan:

1. Daerah berhak menetapkan kebijakan Daerah untuk menyelenggarakan Urusan Pemerintahan yang menjadi kewenangan Daerah.
2. Daerah dalam menetapkan kebijakan Daerah sebagaimana dimaksud pada ayat (1), wajib berpedoman pada norma, standar, prosedur, dan kriteria yang telah ditetapkan oleh Pemerintah Pusat.

3. Dalam hal kebijakan Daerah yang dibuat dalam rangka penyelenggaraan Urusan Pemerintahan yang menjadi kewenangan Daerah tidak mempedomani norma, standar, prosedur, dan kriteria sebagaimana dimaksud pada ayat (2), Pemerintah Pusat membatalkan kebijakan Daerah sebagaimana dimaksud pada ayat (1).
4. Apabila dalam jangka waktu 2 (dua) tahun sebagaimana dimaksud dalam Pasal 16 ayat (5) Pemerintah Pusat belum menetapkan norma, standar, prosedur, dan kriteria, penyelenggara Pemerintahan Daerah melaksanakan Urusan Pemerintahan yang menjadi kewenangan Daerah.

Pasal 22 ayat (1) dan (2) Undang-Undang Pemerintahan Daerah juga menjelaskan hal yang serupa, yakni:

1. Daerah berhak menetapkan kebijakan Daerah dalam melaksanakan Tugas Pembantuan.
2. Kebijakan Daerah sebagaimana dimaksud pada ayat (1) hanya terkait dengan pengaturan mengenai pelaksanaan Tugas Pembantuan di Daerahnya.

Sehingga dengan begitu memang secara prinsip otonomi daerah, pemerintah daerah kabupaten/kota mempunyai landasan atau kedudukan untuk menentukan arah kebijakan dan kewenangan melalui pembentukan peraturan daerah kabupaten/kota, termasuk pada sektor kelautan dan perikanan. Namun harus diingat pembentukan perda sesuai arah kebijakan yang diinginkan hanya pada tentang kewenangan daerah yang diberikan dalam Undang-Undang Nomor 23 Tahun 2014, tentu pada konteks kelautan dan perikanan hanya berkaitan dengan pemberdayaan nelayan kecil dan pembudidayaan ikan di daerah kabupaten /kota.

Pembentukan peraturan daerah itu juga harus sesuai dengan prinsip akuntabilitas, efisiensi, dan eksternalitas, serta kepentingan strategis nasional berpedoman pada norma, standar, prosedur, dan kriteria yang telah ditetapkan oleh Pemerintah Pusat. Dengan kata lain arah kebijakan yang diambil tidak boleh tumpang tindih dengan kebijakan pemerintah pusat. Perlu diingat pula arah kebijakan yang diaplikasikan dalam bentuk peraturan daerah tersebut juga tidak boleh bertentangan dengan norma-norma hukum yang ada di atasnya, hal ini sesuai dengan asas pembentukan peraturan perundang-undangan yang tersiratkan dalam Pasal 7 Undang-Undang Nomor 13 Tahun 2022 tentang Perubahan Kedua Atas Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.

Apart from this distance, there are other problems, especially regarding determining the policy direction and authority of district/city regional governments which are too limited in Law Number 23 of 2014 which only concerns the empowerment of small fishermen and fish cultivation in district/city areas. So that improving regional welfare in the marine and fisheries sector is not optimal for district/city regional governments. Meanwhile, the provisions of Article 27 of the Regional Government Law which concerns matters of the maritime and fisheries sector, almost all authority is given to the provincial regional government except in relation to small fishermen.

On this basis, district/city regional governments must be able to maximize policy formation in terms of forming regional regulations even with existing limitations. In fact, the position of district/city governments in Law Number 23 of 2014 in determining policy direction in the marine and fisheries sector remains possible, considering the description in Article 15 paragraph (2) which explains: "Concurrent government affairs which are not listed in the Attachment to the Law "This law is the authority of each level to determine or structure government using the principles and criteria for the division of concurrent government affairs as intended in Article 13." This means that district/city regional governments are allowed to determine their own policy direction, including in the maritime and fisheries sectors, but are

still based on the principles of accountability, efficiency and externalities, as well as national strategic interests, contained in Article 13 paragraph (1).

Apart from that, the position of district/city regional governments to determine the direction of their own policies, including in the marine and fisheries sector, can refer to the provisions of Article 17 of Law Number 23 of 2014, which explains:

1. Regions have the right to determine Regional policies to carry out Government Affairs which fall under the authority of the Region.
2. Regions in determining Regional policies as intended in paragraph (1), must be guided by the norms, standards, procedures and criteria that have been determined by the Central Government.
3. In the event that the Regional policy made in the context of administering Government Affairs which is the authority of the Region does not guide the norms, standards, procedures and criteria as intended in paragraph (2), the Central Government cancels the Regional policy as intended in paragraph (1).
4. If within the 2 (two) year period as intended in Article 16 paragraph (5) the Central Government has not established norms, standards, procedures and criteria, Regional Government administrators carry out Government Affairs which fall under the authority of the Region.

Article 22 paragraphs (1) and (2) of the Regional Government Law also explains something similar, namely:

1. Regions have the right to determine Regional policies in carrying out Assistance Duties.
2. The Regional Policy as intended in paragraph (1) is only related to regulations regarding the implementation of Assistance Duties in the Region.

So, in principle, regional autonomy means that district/city regional governments have the basis or position to determine policy direction and authority through the formation of district/city regional regulations, including in the maritime and fisheries sectors. However, it must be remembered that the formation of regional regulations in accordance with the desired policy direction only concerns regional authority given in Law Number 23 of 2014, of course in the maritime and fisheries context it is only related to the empowerment of small fishermen and fish cultivation in district/city areas.

The formation of regional regulations must also be in accordance with the principles of accountability, efficiency and externalities, as well as national strategic interests guided by the norms, standards, procedures and criteria set by the Central Government. In other words, the policy direction taken must not overlap with central government policy. It is also important to remember that the direction of the policy applied in the form of regional regulations must not conflict with the legal norms that exist above it, this is in accordance with the principles of forming statutory regulations as implied in Article 7 of Law Number 13 of 2022 concerning Amendments Second, on Law Number 12 of 2011 concerning the Formation of Legislative Regulations.

The need for district/city regional governments to maximize opportunities to raise the level of welfare of their people through the formation of policies towards interests that favor small fishermen and empowering fish cultivation businesses in district/city areas. Based on its authority, to determine a more effective policy direction, the district/city government in its

implementation can collaborate or coordinate with village governments in the district/city area in question.

Conclusion

It is known that the legal relationship between the central government and regional governments in the maritime and fisheries sector is included in the concurrent government affairs section because government affairs itself consists of absolute, concurrent and general government affairs. Specifically in relation to the relationship between the central government and provincial and district/city regional governments in the maritime and fisheries sector, it is included in concurrent government affairs as stipulated in Article 9 paragraph (1) and paragraph (3) of Law Number 23 of 2014 concerning Regional Government. This is also in line with the provisions of Article 2 paragraph (1) of Government Regulation Number 38 of 2007 concerning the Division of Government Affairs Between the Government, Provincial Regional Governments, and Regency/City Regional Governments, which outlines the existence of government affairs that can be shared between levels and/or government structure. Apart from that, specifically in the maritime and fisheries sector, relations between the central government and provincial and district/city governments are part of optional government affairs and are not mandatory government affairs. So in other words, there is no obligation for each region to carry out government affairs in the maritime and fisheries sector, only regions that choose to manage the maritime and fisheries sector in their region can enter into legal relations with the central government. However, it is also necessary to convey that the regional government that can make direct contact with the government regarding concurrent government affairs in the form of choices in the marine and fisheries sector is the provincial regional government and not the district/city government's business.

Concurrent government affairs between the central government and provincial and district/city areas in the marine and fisheries sector are actually managed jointly or in mutual coordination between the central, provincial and district/city governments according to their respective authorities. In fact, full authority in the maritime and fisheries sector remains in the hands of the central government, which among other things has authority over maritime, coastal and small island sub-affairs, namely managing marine space above 12 miles and national strategic areas, issuing permits for marine space utilization. national, issuing permits for the use of types and genetics (germplasm) of fish between countries, determining fish species that are protected and whose trade is regulated internationally and establishing conservation areas. Meanwhile, the capture fisheries sub-affairs can manage fishing in sea areas above 12 miles, issue capture fisheries business permits, determine development locations and manage national and international fisheries ports and other overall authority over the marine and fisheries sector..

References

Imron, M. (2011). “Otonomi Daerah Dan Permasalahannya Dalam Pengelolaan Kelautan”. *Jurnal Masyarakat & Budaya*, Volume 13, Nomor 1.

Ismatullah, D dan Beni Ahmad Saebani. (2018). *Hukum Tata Negara: Refleksi Kehidupan Ketatanegaraan di Negara Republik Indonesia*. Bandung: CV. Pustaka Setia.

Kaho, J. R. (1998). *Prospek Otonomi Daerah di Negara Republik Indonesia*. (Jakarta : CV. Rajawali.

Koto, I. (2021). Perlindungan Hukum Terhadap Korban Tindak Pidana Terorisme, *Proceding Seminar Nasional Kewirausahaan*, 2 (1).

Koto. I. (2020). "Review Of Criminal Law On The Consumption Of Food And Drug Containing Narcotics And Psychotropics (Analysis Of Decision NO. 17 K/MIL/2016), *International Proceeding Of Law & Economics.*

Koto, I. (2022). Kebijakan Hukum Terhadap Perbuatan Penggunan Merek Yang Sama Pada Pokoknya, *SANKSI: Seminar Nasional Hukum, Sosial dan Ekonomi*.

Mawardi Khairi. (2020). "Kewenangan Pemerintah Daerah Provinsi Dalam Pemberian Izin Pengelolaan Perairan Di Wilayah Pesisir Dan Pulau Pulau Kecil". *urnal Jatiswara*, Volume 35, Nomor 3.

Mertokusumo, S dan A. Pitlo. (2017). *Bab-bab Tentang Penemuan Hukum*. (Bandung: PT. Citra Aditya Bakti.

Muhayat dan Rina Haslita. (2021). "Implementasi Desentralisasi Dalam Pengelolaan Perikanan". *Jurnal JAPS*, Volume 2, Nomor 2.

Rahimah & Koto, I. (2022). Implications of Parenting Patterns in the Development of Early Childhood Social Attitudes. *IJRS: International Journal Reglement & Society*, 3 (2).

Sihombing, Eka N.A.M.. (2018). *Pembentukan Peraturan Daerah Partisipatif*. (Malang: Inteligensia Media.

Sudarsono. (2007). *Pengantar Ilmu Hukum*. Jakarta: PT. Rineka Cipta.

Sunarno, S. (2016). *Hukum Pemerintahan Daerah Di Indonesia*. Jakarta: Sinar Grafika.

Syahuri, T dan Euodia Oc tavia Sitompul. (2020). "Analisis Yuridis Pengelolaan Batas Wilayah Laut dan Pesisir Berdasarkan Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah". *Jurnal Esensi Hukum*, Volume 2, Nomor 2.