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POLITICAL SYSTEM OF LOCAL GOVERNMENT LAW AMENDMENT OF THE UUD OF 1945

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Abstract

Political Mahfud MD is legal according to the policy direction of law (legal policy) made officially by the state of the law will not be enacted or enforced to achieve the goal state. Political law simply consists of two things, namely making laws and implementing them. It is a legal political direction or the official line which forms the basis of departure and how to create and implement the law in order to achieve the goals of the nation and the state. Post Politics Regional Development Law Amendment of the Constitution of the Republic of Indonesia Year 1945 should be directed to the broad concept of regional autonomy, real and responsible. False perception, the implementation will lead to excesses that go beyond the corridors of autonomy within the framework of a unitary state.

Keyword: *Political Law, Local Government, Amendment, UUD of 1945.*

A. Preliminary

The Republic of Indonesia as a unitary state adheres to the principle of decentralization in governance, by providing the opportunity and freedom to the regions to organize regional autonomy[1]. Decentralization is the submission of all affairs, either the settings in the manufacture of legislation, or the implementation of government from central government to local governments to further the affairs of his own household. Governmental decentralization which is the implementation realized by granting autonomy to the regions, in improving the areas achieve efficiency and effectiveness of governance in the framework of public service and development. Thus, the region needs to be given the authority to conduct the affairs of government as its own household affairs, and simultaneously have local income[2].

The governmental concept of the State of Indonesia as in Article 18 of the Constitution of the Republic of Indonesia (UUD) Year 1945, the implementation of autonomy has democratic principles, broad autonomy and extensive powers, justice, power-sharing, setting authority, and respect for the original rights. So, it is one of the principles of governance that emphasizes the state administration by the state authority to the regions

[1] Deddy Supriady Bratakusumah and Dadang Solihin, *Otonomi Penyelenggaraan Pemerintahan Daerah* PT Gramedia Pustaka Utama, Jakarta, 2002, Pg.1

[2] Inu Kencana Syafei, *Sistem Pemerintahan Indonesia*, Rineka Cipta, Jakarta, 2002, Pg.85-86.

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to organize and manage the interests of local communities[3].

According to Jimly Asshiddiqie[4], the implementation of regional autonomy emphasizes to the importance of democratic principles, community participation, and the distributive justice by taking into account various aspects relating to the potential and diversity between the regions. In the sense that in the implementation of the regional autonomy policy, regarding the transfer of authority from the government to the society, which is expected to grow and develop power and independence in today's climate of democracy.

Democracy and decentralization are two different concepts, but they do not lose each other. Implementation of democratic life in local governance is defined as the aspiration of society, public participation in determining local policies to improve the welfare of local communities. While the decentralization of government authority for local communities in the role for the independence and freedom to remain on the system of the Republic of Indonesia. The Government handed over authority to local governments to regulate and manage their own household within a unitary state. Devolution of government power by the government to local governments based legislation. Thus, democracy is a facility of decentralization in achieving the goal of public welfare, people's participation, accountability and transparency[5].

Based on the description above, this scientific paper will be focused on the politics of law related to the local government system in Indonesia after the amendment of the UUD of 1945.

B. Identificitaion of Problem

The identification of problem in this paper is How the Law Political of Local Government System in Indonesia after the Amandment of the UUD of 1945 is.

C. Approach Method

Writing this scientific paper is by using descriptive analysis method, described holistically, comprehensively and integrally. Data analysis is deductive, based on theory or concept of a general nature in order to show the relationship between the data with other data. While the approach used is a socio-normative, since this study, using secondary data, with the intention to describe the political analysis of law development of local government in Indonesia after the amendment of the Act of 1945.

D. Discussion

1. Political Development of Law After the Amandment of UUD of 1945

Assessing the legal dimension of the protection of

[3] Ade Saptono, *Hukum dan Kearifan Lokal Revitalisasi Hukum Adat Nusantara*, PT.Grasindo, Jakarta, 2010, Pg 1.
[4] Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, Sinar Grafika, Jakarta, 2010, Pg. 224.
[5] I Nengah Suriata, *Fungsi, …Op.,Cit.* Pg. 3.

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human rights cannot be separated from the political study of law. Mahfud MD states that studying law only based on the articles and the release of a study about norms and terms that affected could cause a continuous disappointment. The study of how politic affects the law, and the law affects politic which later crystallized into a legal policy outlined by the state to be very important to learn for the sake of law itself[6].

Legal policy according to Mahfud MD is the policy of law direction made formally by the state about the law will be enforced or not enforced to achieve the objectives of the country[7]. Legal policy simply consists of two things, they are creating laws and implementing them. It is the direction or the official line that formed as the basis of creating and implementing law iin order to achieve the goals of the nation and the state[8].

The correlation between the political and legal can be described as proposed by Satjipto Raharjo[9], that is, a legal policy is a selecting activity and what ways to be used to achieve a social purpose and a specific law in society. As well as the law, it will face similar issues with politics, that is, the necessity to determine a choice of the purpose and methods to be used to achieve those goals. All of this is included in the field of legal policy studies. Furthermore, according to Satjipto Rahardjo[10], the law is not something that is entirely autonomous institution, but the law is at the latch-hook position with other sectors of life in society. One of the terms of that case, law has a dynamic aspect. Including legal policy which belongs to the one of the factors that causes such dynamics.

There are some fundamental questions that arise in the study of the legal policy, they are: (1) what objectives to be achieved with the existing legal system; (2) In what ways and in which, regarded as the best to be used to achieve those goals; (3) when the law needs to be changed and through what ways the change should be done; and (4) could it be formulated a standard and well-established pattern, which can help us to decide well election process of objectives and ways to achieve those goals[11].

Sunaryati Hartono[12], stated that to realize a desired national legal system, it must first know how the people whom aspired by the people of Indonesia. After it was known it can be searched how the legal system can bring towards people who aspired to a nation's political and legal how that can create the desired national legal system.

Sunaryati Hartono in her book "Politik Hukum Menuju Satu Sistem Hukum Nasional" actually has never

[6] Mahfud MD, *Perdebatan Hukum Tata Negara*, LP3ES, Jakarta, 2007, Pg. 48.
[7] *Ibid*, Pg. 48.
[8] Mahfudz MD, *Membangun Politik Hukum, Menegakkan Konstitusi*, LP3ES, Jakarta, 2006, Pg. 15.
[9] Satjipto Rahardjo, *Ilmu Hukum*, Citra Aditya Bakti, Bandung, 2000, Pg. 352.
[10] *Ibid.*
[11] *Ibid.*
[12] C.F.G. Sunaryati Hartono, *Politik Hukum Menuju Satu Sistem Hukum Nasional*, Alumni, Bandung, 1991, Pg 20.

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explained explicitly the definition of legal policy. But, it does not mean that she does not care to the political existency from the side of its practice. In this case, she regards that legal policy is a tool or media as well as step that can be used by the government to create a desired national law system where it will be realized by the Indonesian aspiration[13]. The statement of "creating a desired national law system" indicates the blueprint of legal policy according to Sunaryati Hartono is focused on the law dimensions that used on the future or known as *ius constituendum*.

According to Abdul Hakim Garuda Nusantara, the National Legal Policy could be defined literally as the legal policy that will be implemented nationally by the government of certain countries[14]. If it is observed, the definition of legal policy from Abdul Hakim Garuda Nusantara above is a definition of the most comprehensive legal policy among the definitions of legal policy have described before. It is because he explains clearly the legal political work areas including: *firstly*, the territory use of legal policy dan *secondly*, the process of reforming and law making, which leads to a critical attitude toward the legal dimension of *ius constitutum* and create legal dimension of *ius constituendum*. Moreover, he also emphasized to the sake of discernment and guidance function of law development, something that is not offended by the previous experts[15].

Related to the concept of legal policy, it is also found the strategy of law development. It defines as all the efforts made by social group within a community, with regard to the establishment of the law, legal conceptualization, implementation and institutionalization of law in a political process[16].

There are two models of law development strategy such as *orthodox* and *responsive* law development strategy. Orthodox law development strategy contains a characteristic of a dominant role of the institutions (government and parliament) in determining the legal law direction of a community. The law resulted from this strategy is *positive-instrumentalic*. Meanwhile, the responsive law development strategy contains a characteristic of the bigger role and broad participation of the justice institutions and social or individual groups in a community in determining the direction of law development. Such condition allows the resulting legal product which is responsive to the demands of various social groups or individual people[17].

In fact, modern law which formed today occurs at two levels, on

[13] *Ibid.*, Pg. 1.
[14] Imam Syaukani, et.al, *Dasar-Dasar Politik Hukum*, PT. Raja Grafindo Persada, Jakarta 2004, Pg. 30-31. Quoted from Abdul Hakim Garuda Nusantara, *Politik Hukum Nasional*, paper presented on Karya Latihan Bantuan Hukum (Kalabahu), held by Yayasan LBH Indonesia and LBH Surabaya, September 1985.
[15] *Ibid.*
[16] Abdul Hakim G. Nusantara, *Politik Hukum Indonesia*, YLBHI, Jakarta, 1985, Pg. 27.
[17] *Ibid.*

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the first level, the law is as rational and moral demands. Then in the second stage, when ratified by the state, the law applicable legally, means that the law is recognized here in the right sense. Therefore, the political laws of a particular country is in the hands of the government, should start from the cultural and economic situation of the people concerned. It also can be described that the actual legal political objective is to create a rule that is fair and prosperous society[18].

Relating to the above description, Philippe Nonet and Philip Selznick[19] distinguish between three types of law, namely repressive law, autonomous law, and responsive law. *First*, repressive law aimed at preserving the *status quo*. Purpose of the law is the basis of legitimacy and public security. The rules are detailed, but less binding regulators and often occur discretion. Law subject to political, disobedience is regarded as an aberration. *Second*, autonomous law aims to limit the abuse without question the social order and that the legality of a rigid, has the legal order as a resource to tame reference and oriented to "the Rule of Law". The main strategy is the legitimacy of the legal separation of politics which has two aspects, namely the political subject to the law, because the law instituting the principle of limitation of the power and court stressed the non-political function. *Third*, the law responsive and open to change society devoted to efforts to achieve social justice and emancipation. The law has become a means of response to the needs and social aspirations. To realize the goal, then the law responsive in a distinctive style, the dynamic development of the law increasing the authority of the goal, controlling the destination on compliance and reduce stiffness law legal aid represents a political dimension, the presence of planning in a more competent legal institutions. For more details of each type of character can be seen in the following table:

[18] Theo Huijbers, *Filsafat Hukum*, Kanisius, Yogyakarta, 1991, Pg. 109.
[19] Philipe Nonet dan Phili Selznick, *Hukum Responsif, Pilihan di Masa Transisi*, HuMa, Jakarta, 2003, Pg. 12-13.

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Table 1. Three Types of Law

LAW TYPE	REPRESSIVE LAW	AUTONOMOUS LAW	RESPONSIVE LAW
Legal Goals	Security	Legitimacy	Competency
Legitimacy	Social security and state objectives	Procedural Justice	Substantive Justice
Regulation	Strict and detail but weak againts the law maker(s)	Extensive and deatil; bounding the ruler and those who ruled	Sub-ordinat of the principals and policies
Consideration	Ad hoc: facilitate in achieving the goals and particularistic	susceptible to formalism and legalism	Purposive (goal oriented); expansion of competency, cognitive
Discretion	Very wide; opportynistic	Limited by rules; narrow delegation	Wide; in accordance with the goals
Force	Extensive; limited weakly	Controlled by law limitations	Positive serach for alternatives, such as insentive, the system which is able to hold its own obligations
Morality	Communal morality; legal moralism; "morality restriction"	Institutional Morality; full of law process integrity	Civil Morality; "cooperation morality"
Politic	Sub-ordinat Law towards power politic	"Independence" law of politic; power separation	Integration of legal aspiration and politic; power integrated
Obedience Expectation	unconditional; disobedience *per se* punished as a dissident	Deviations rules justified, for example, to test the validity of a law or command	disobedience seen from the aspects of substantive danger; seen as a lawsuit against the legitimacy
Partisipation	Pasive; critic seen as disloyalty	Access is restricted by a standard procedur; the emergence of critic on the law	Accsess enlarged with the integration of legal and social advocacy

Source : Philipe Nonet and Phili Selznick, *Responsive Law, the Option in the Transitional Period*

The research result of Moh. Mahfud MD[20] has concluded that a processand political configurationin a particular rezim will be a very significant influence towards a legal product that further borned. In a country that its political configuration is democratic, the legal product is responsive or populistic, meanwhile in the country whose authoritative political configuration, the legal

[20] Moh. Mahfud MD, *Perkembangan Politik Hukum, Studi tentang Pengaruh Konfigurasi Politik terhadap Produk Hukum di Indonesia* (Disertasi), : UGM, Yogyakart, 1993, Pg. 675 – 676.

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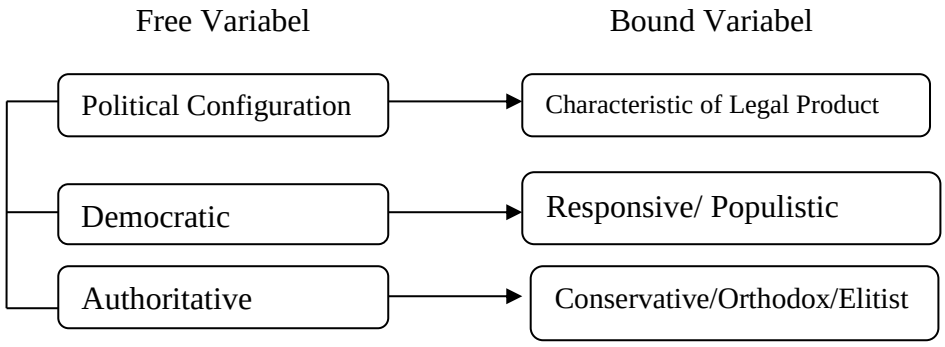
product is orthodox or conservative or elitist [21]. The statement could be presented on the following picture:



[21] More detail explanation about definition of democratic and authoritaritive political configuration also responsive or populistic and orthodox or conservative or elitist legal product, read Moh. Mahfud M.D., *Politik Hukum di Indonesia*, Cet. I, LP3ES, Jakarta,1998,.Pg. 15; Philippe Nonet and Philip Selznich, *Law and Society in Transition; To-ward Responsive Law,* , Harper & Row, New York, 1978, Pg. 14-16; A.A.G. Peters and Koesriani Siswosoebroto (ed.), *Hukum dan Perkembangan Sosial*, (Buku III), Sinar Harapan, Jakarta, 1990. Pg. 158-163.

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2. Local Government Law Politics after Amendment of the Constitution of the Republic of Indonesia Year 1945.

The structur of this country is a constitutional system applied in Indonesia base don the formulation contained in UUD of 1945 after Amandment. In the state system of Indonesia is the application of the system Trias Politica that aims to impose limits on the powers granted to a state institution. The state agency consists of the executive, legislature and judiciary.

The structure of the Indonesian state is such as contained in Article 18 paragraph (1) Amendments to the 1945 Constitution, namely: "the Republic of Indonesia is divided into provincial regions and these provincial regions shall be divided into regencies and municipalities, which each province, district, and the city has a local government, which is regulated by law ".

The conception of UUD 1945 after amendment has also changed the concept of checks and balances among all state institutions. Because after the authorities are particularly vulnerable to abuse of authority (abuse of powers) as Lord Action once said, "Power tends to corrupt, absolutely power corrupts absolutely."

Application of the principle of checks and balances between state institutions in Indonesia is based on the theory that dikembanagkan by James Madison, which is based on four key elements, including[22]:

1. Separation of powers;
2. Sovereignty is shared between the central and the state;
3. Human right; and
4. Members of Congress and the president is elected directly by the people.

As the consequense, the Amendment of the 1945 Constitution has brought changes to the shift of state power, including:

1. MPR no longer the highest state institutions that carry out the people's sovereignty, but has become a state institution on par with other state institutions (Article 1 verse 2).
2. The Assembly is composed of members of the DPR and DPD as representative of the interests of the people and the representation of regional interests (Article 2 verse 1).
3. The power of shaping legislation no longer in the President, but being a power Parliament (Article 20 verse 1).
4. The process of impeachment of the President or Vice President is no longer the full authority of the Assembly, but it must be through the "Constitutional Court" beforehand (Article 7B verse 1).
5. Implementation of presidential government

[22] Abdul Rosyid Thalib, *op. cit.*, Pg. 3

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system as a manifestation of the concept of separation of power by the legislature (Article 4 verse 1) jo. Article 17 verse 2).

6. The President and Vice President are no longer elected by the Assembly, but elected directly by the people through political parties in elections (Article 6A verse 1 and 2).
7. Judicial Power is no longer carried out only by the Supreme Court, but also by the Court as an institution guard the purity of the constitution (the *quardian* of the constitution or *waakhond van de grondwet*), so that the authority of this Court is to resolve the violation of constitutional rights. The Court has authority to examine Testing laws against the 1945 Constitution, Decides dissolution of political parties, dispute the authority of state institutions, disputes concerning the results of the election and the obligation to give a decision on the opinion of Parliament on alleged violations by the President and / or Vice President (Article 24 paragraph 2 jo. Article 24C verse 1 and 2)
8. Formed institution authorized Law Commission proposes the appointment of justices and other authorities in order to preserve and uphold the honor, dignity, and the behavior of judges (Article 24B verse 1).

1945 amendment also gave birth to the concept of local autonomy through the implementation of the principle of decentralization of state power to the regions (Article 18 verse 2 of the UUD of 1945). There is some notion of local autonomy, namely [23] :

a. Condition or characteristics of the child is not controlled by other parties or other forces;
b. Self-government, namely the right to rule or self-determination;
c. Self-government are respected, recognized and guaranteed the absence of control by others against refugees regional (local internal affairs) or against minorities of a region;
d. Local government has sufficient revenues to self-determination, meet the welfare and achieving life goals (self-determination, self sufficiency, self relience);
e. Autonomous government has supremacy or dominance rule or law is fully implemented by the authority.

Definition of decentralization in some literatures, there are several forms, they are [24] :

a. Deconsentration, that is the redistribution of administrative responsibilities in the hierarchy

[23] Edi Santoso et. al., *Otonomi Daerah : Cappacity Building dan Penguatan Demokrasi Local*, (Semarang : Puskodak Undip, 2003),Pgl. 104

[24] *Ibid*, Pg. 134

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of the central government through transfer of workloads from the central government to its own officials in the area.

b. Delegation at the parastatal organizations, namely the delegation of decision-making and management for special interest under the responsibility of the central government.
c. Devolution, ie the ability of local government units are self-contained, independent and autonomous, where the central government to release certain functions and supervision.
d. Transfer of function, that is as a continuation of devolution, the government and transfer the functions and duties to the public and other non-governmental agencies.

Therefore, the policy of power relations between the center and regions in the form of regional autonomy implemented in Indonesia is included decentralization in the form of devolution.

In the application of the concept of local autonomy based on UU No. 22 of 1999 there has been right, there has still not right yet, and there is not right. It all as a logical consequence of an understanding of the basic concepts that have not been round because there is a setting that invites multiple interpretations, and the socialization is not yet widespread and deep. Besides, it is also because the instruments to implement it are not available fully. The instrument was in form of UU, government regulations, presidential decrees, ministerial decrees, regulations, and decisions of regional heads. Guidelines, standards whose numbers certainly many, equal to the number of matters handled by the region. Besides, there are other factors that influence such as globalization, transparation, democratization, human rights, environment, and others. The principle of broad, real, and responsibility autonomy that should be implemented by the community, so far in the implementation of government and parliament is dominated by the often forgotten aspects of the philosophy of the implementation of regional autonomy. So that there is only a shift in place of centralization, which was originally located in the central institutions, shifted to local agencies.

The issuance of UU No. 32 of 2004 about Regional Government and the explanation as the change of UU No. 22 of 1999 and UU No. 33 of 2004 about Financial Balance between the Central Government and Local Government and explanation, is expected to be dismissed all the problems and obstacles in the implementation of regional autonomy, particularly in improving the quality of public services, improve welfare, and various attempts to filter out separatist.

There are some important things that need to be considered in the implementation of the Local Government Law Politics after Amendment of UUD of 1945, among others;

1. There is still limited availability of human resources is good and professional.

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2. The still limited availability of sources of adequate funding, both from the ability of the region itself (internal), as well as funding sources from outside the area (external).
3. Not to drafting an effective institutional, yet the establishment of systems and regulations are clear and unequivocal. Lack of creativity and public participation in critical and nationally.
4. Not optimal process of decentralization and regional autonomy, among others because of the unclear authority between central and local government which resulted in overlapping national and regional policies.
5. The low inter-regional cooperation in the provision of public services, and the increasing desire to form new autonomous regions are not fit for purpose.

Addressing diverse problems and obstacles encountered in the construction area, associated with the implementation of the Conception of Tannas, demands ;

1. The similarity of thinking, being and acting of the entire leadership of the central and local governments, comprehensively integral, systemic, synergistic and objective.
2. Completeness of Law No. 32 on Local Government, either in the form of government regulations, presidential regulations and other provisions which can eliminating the problems and obstacles in regional development.
3. The ability of the regions in determining the order of priority of regional development, both in determining the commodity as well as in various aspects of the relatively potentially harmful identity, integrity, survival of the nation and the state.
4. The ability of the region in elaborating strategies of RPJMN into policy areas, either in the form of legislation, Renstrat and regional development programs.
5. The ability of the region in view, analyze and solve problems in a comprehensive regional integration, and the ability to set goals, as well as the direction of the policy of development programs in accordance with the policy direction.
6. The ability of the area in anticipation of a wide variety of TAHG, both from within and from

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outside, either directly or indirectly so as coaching Tannas in the area will be more focused, better coaching bottom up or top down.

7. Commitment to implement Regional Development (level 1) as an integral part of national development. Similarly, the Regional Development Level 2 is an integral part of the Regional Development level 1.

To implement the concept of regional autonomy, the unitary state of Indonesia is divided into several autonomous regions, the area of the Province and District and City. In the autonomous region has a system of government, which only consists of the executive body (Regional Head) and the legislature (DPRD). While the judiciary remains centralized under the authority of the central government. This is in accordance with the provisions in Article 10 verse 3 of UU No. 32 Year 2004 about Regional Government, that on some areas only authorized governmental affairs not including central government affairs. Among the matters under the authority of the central government is foreign policy, defense, security, justice, monetary and national fiscal, and religion.

Based on the foregoing, there are six government affairs under the authority of the central government, including the judicial or judicial affairs. So that the local government is only implementing government affairs in the executive and legislative field in the region

Under the terms of the Regional Government Law, the provincial government not only implements the principle of political decentralization or devolution, but also fulfilling deconcentration. While the county or city government only implements the principle of decentralization.

Broad concept of regional autonomy, real and responsible under UU No. 22 of 1999 about its implementation rests on the side of autonomy over a wide area and a real course with diverse perceptions. False perceptions, in practice lead to excesses that go beyond the corridors of autonomy within the framework of a unitary state. Because of broad autonomy, appeared assumption that areas with more flexibility in the implementation of the Regional Government, can make arrangements at will, without any concern for the higher provision. While aspects of responsible regional autonomy, tend to be less serious attention from the area. Responsible autonomy is still abandoned in the implementation which should be realized in the form of improved services to improve the welfare of society, which looks exactly the declining quality and quantity of service to the community. The reduced service provided to the community is characterized among other things by the decline in education and health services, and the provision of public facilities, as well as less than optimal maintenance of public facilities that already exist

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E. Conclusion

Legal policy according to Mahfud MD is the policy direction of the law made formally by the state of the law will be enforced or not enforced to achieve the objectives of the country[25]. Law politics simply consists of two things, they are, making laws and implementing them. Legal policy is the landing or the official line that formed the basis of departure and how to create and implement the law in order to achieve the goals of the nation and the state.

Post Politics Regional Development Law after Amendment of the Constitution of the Republic of Indonesia Year 1945 should be directed to the broad concept of regional, real and responsible autonomy. False perception, in its implementation will lead to excesses that go beyond the corridors of autonomy within the framework of a unitary state. Because of broad autonomy, appeared assumption that areas with more flexibility in the implementation of the Regional Government, can make arrangements at will, without any concern for the higher provision. While aspects of responsible regional autonomy, tend to be less serious attention from the area. Responsible autonomy is still abandoned in the implementation which should be realized in the form of improved services to improve the welfare of society, which looks exactly the declining quality and quantity of service to the community.

[25] *Ibid*, Hal. 48.

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