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ABUSE OF AUTHORITY BY THE REGIONAL GOVERNMENT FOR THE CONSTRUCTION OF NATIONAL ROADS

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Abstract

Roads as one of the transportation infrastructure are important elements in building the life of the nation and state. The government has an important role in providing investment for road construction in accordance with its authority as regulated in Law Number 2 of 2022 on the Second Amendment to Law Number 38 of 2004 concerning Roads. However, there are district governments carrying out the construction of national roads which should be the authority of the central government. This writing uses a normative research method with a statutory approach and a conceptual approach related to regulations and regulatory concepts over the authority of local governments in the construction of national roads. Besides that, it uses a conceptual approach, namely the approach taken to the concept of regional government authority in road construction. The purpose of this study is to analyze the abuse of authority by the Regional Government for the construction of National Roads. The results of the study stated that the Regency/City Regional Government carried out the construction of national roads, the Regency/City Regional Government fulfilled the element of abusing authority which was categorized as exceeding authority. For this reason, the Central Government and Regional Governments can carry out road construction, but must be in accordance with their respective authorities. So there is no freedom in the authority of road construction, everything must be in accordance with the authority regulated by laws and regulations.

Keywords: Abuse of Authority, Local Government, Development, Roads, National.

INTRODUCTION

One of the government's main programs is infrastructure development, which has an important role to shorten the time in the process of national and regional development. Infrastructure development can grow the economy in a country through the sector public works and spatial planning one of which is the construction of roads. The road is a determinant of the smooth flow of traffic on land. If the road flow is smooth, it can increase economic development in an area, so that the development of good road infrastructure can facilitate and accelerate the flow of mobility of goods and services. (Margaretha, 2021). For this reason, road infrastructure is an important factor in supporting development. Development can be interpreted as part of realizing the prosperity of the people (Ahmad Munir, M. Najib Alif, 2023). So the government has an important role in providing investment

for infrastructure development. As is well known, roads are public infrastructure, so government involvement and intervention is needed so as to provide optimal results to encourage economic growth (Maimunah, 2010). The division of road construction activities is the authority of the Central Government and Regional Governments which can be carried out by the Regional Governments at the lower level and the village government in accordance with statutory regulations. This limitation of authority is so that there is no abuse of authority as in state administrative law.

Pursuant to Law Number 38 of 2004 concerning Roads as last amended by Law Number 2 of 2022 concerning the Second Amendment to the Law of the Republic of Indonesia Number 38 of 2004 concerning Roads (hereinafter abbreviated as Law No. 2 of 2022) states that in order to fulfill the role of the road as it should, the government has the rights and obligations to administer the road. Described in Article 13 paragraph (1) of Law No. 2 of 2022 that control over roads lies with the State. Control over roads by the State as referred to in Article 13 paragraph (2) of Law No. 2 Year 2022 added norms stating that The state gives authority to the Central Government, Regional Governments, and Village Governments to carry out road administration according to their authority by taking into account the continuity of road services in a unified road network system. Then referring to the authority referred to in Article 13 in the amendment to Law No. 2 of 2022 in Article 14 to Article 16 it is explained that the tasks and implementation have been distributed in order. Firstly, Article 14 explains the division of authority of the Central Government in road administration, in this Article the task of the Central Government in exercising its authority is to develop a national road network system , general road administration and national road administration. The authority for the administration of roads in general and the administration of national roads includes regulation, guidance, development and supervision.

Previous research regarding the obligations of the Regional Government as road administrators has the duty and responsibility to maintain roads in accordance with their authority. The results in this study convey that the implementation of policies in the Highways sector of the Public Works and Public Housing Office of Magelang Regency in road maintenance activities, there are several factors that are obstacles to implementation (Kristiawan , Dewi, & Suharso, 2020). In addition, in a study entitled "Authority for Road Operators by the Regency Government Based on Law of the Republic of Indonesia Number 38 of 2004 concerning Roads (Study in

the Sintang District Area)” that there are factors that hinder carry out the handling of damage to the road . Procurement of materials needed for the construction of Regency roads requires delegation or delegation of authority for handling road damage (Emanuel, 2021). Likewise in the study entitled “Implementation of Regional Government Authority for Damaged Roads” that the local government’s failure to carry out road maintenance on damaged roads cannot be categorized as an abuse of authority but is the negligence of the Regional Government because the Regional Government has allowed the road to be damaged until now (Sawelet, Nirahua, & Saija, 2022). In addition, infrastructure development is one sector where corruption often occurs. It has been proven that from 2020 to March 2021 there have been 36 cases of infrastructure corruption by public officials including regional heads (Fadli, 2021).

This study provides parameters of abuse of authority in the study of state administrative law. Apart from that, previous studies did not study government authority from the point of view of state administrative law regarding the construction of national roads which were not under its authority. This research was conducted in the Bojonegoro Regency which carried out the construction of a national road which should have been the authority of the Central Government. At this time, in 2023 the total Regional Revenue and Expenditure Budget (APBD) for Bojonegoro Regency ranks 2nd highest of all districts in Indonesia. The total Bojonegoro APBD in 2023 is Rp. 7.4 trillion (Santoso, 2023). The construction or widening of the national road was carried out due to the many damaged roads and the dense traffic flow which caused congestion, thus hampering community activities in Bojonegoro district (“Pemkab Bojonegoro Kebut Pelebaran Jalan Nasional Sepanjang 20 Kilometer,” 2023). For this reason, it is necessary to research whether the construction of national roads by the regional government is an abuse of authority. The purpose of this study is to analyze the abuse of authority by the Regional Government for the construction of National Roads.

RESEARCH METHODS

Legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues at hand (Peter Mahmud Marzuki, 2013). The method used in this research is normative research method. This method views law as synonymous with written norms made and promulgated by authorized institutions or officials. In addition, this research method uses an analysis of

statutory regulations as primary legal material. These primary legal materials are also supported by books, mass media, and newspapers as secondary legal materials. This study uses a statutory approach, namely an approach carried out by analyzing rules and regulations related to regulation of local government authority in the construction of national roads. Besides that, it uses a conceptual approach, namely the approach taken to the concept of regional government authority in road construction.

RESULTS, DISCUSSION, AND ANALYSIS

Regional Government Authority in Road Development

Aspects of the authority of an institutional position, or government unit in a legal perspective is very important (Alamsah, 2017). The authority of the government arises because of the goals of state life that must be achieved (Munir, Djatmiati, Aisyah, & ..., 2021). In this case, a legal action or legal action by an official, institution, or government unit must be based on the authority granted by law, especially statutory regulations, both in the sense of attribution, delegation, and mandate. (Kortmann, 2001). Actions carried out by these parties based on and in accordance with their authority are called legal actions (Kusumaatmadja, nd). The division of affairs or authority between government units is currently based on Law Number 23 of 2014 concerning Regional Government (hereinafter abbreviated as Law No. 23 of 2014). UU No. 23 of 2014 is a positive law that forms the basis for the administration of regional government related to the authority of government units, criteria for affairs, types of affairs, procedures for distributing functions, accountability mechanisms, and others. It is important to look at the authority of government units, namely the central government, provincial regional governments, regency regional governments, and municipal regional governments. Described in Article 1 paragraph (1) of Law No. 23 of 2014 that "the Central Government is the President of the Republic of Indonesia who holds the powers of the government of the Republic of Indonesia assisted by the Vice President and ministers as referred to in the Constitution The Republic of Indonesia Year 1945 (hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia)". Meanwhile, the definition of local government is explained in Article 1 paragraph (2) of Law No. 23 of 2014 as follows that "Regional Government is the implementation of government affairs by regional governments and regional people's representative councils according to the principle of autonomy and co-

administration with the principle of broadest autonomy within the system and principles of the Unitary State of the Republic of Indonesia as stipulated in the 1945 Constitution of the Republic of Indonesia". In addition to the notion of local government, the definition of regional government is also explained in Article 1 paragraph (3) of Law No. 23 of 2014 as follows: "Regional Government is the head of the region as an element of Regional Government administration who leads the implementation of government affairs which are the authority of the autonomous region".

In the Law on Regional Government in Article 5 it is emphasized that the holder of government power is the President. There are also those powers or affairs that are handed over to the regions, so that the regions can carry out certain authorities or affairs that are handed over. However, in essence the regional government can run regional government only in the context of implementing the authority granted by the President as the central government. Even though each region is given independence to manage and regulate and manage its area, it must still be in the status of an integral and integrated part of the state within the unitary state of the Republic of Indonesia (Amiludin, 2018). Then, in Article 9 of Law No. 23 of 2014 classifies government authorities or affairs into 3 (three) government affairs, namely absolute government affairs, concurrent government affairs, and general government affairs. The definition of absolute government affairs is government affairs which are fully under the authority of the Central Government; Concurrent government affairs are government affairs that are divided between the Central Government and provincial and district/city regions; while general government affairs are government affairs which are the authority of the President as the head of government. The description and distribution of absolute government affairs, concurrent government affairs, and general government affairs are further regulated in Article 10, Article 11, Article 12, Article 13, and Article 25 UU No. 23 of 2014. Article 10 paragraph (1) of Law No. 23 of 2014 confirms that government affairs are absolute as intended in Article 9 paragraph (2) includes: a. foreign policy; b. defense; c. security; d. justice; e. national monetary and fiscal; and f. religion. The six affairs are solely the authority of the central government, while the provincial, district and city governments have absolutely no authority in these matters. Meanwhile, Article 11 emphasizes that concurrent governmental affairs are divided into obligatory and optional affairs, whereas concurrent governmental affairs which are mandatory are divided into affairs that are basic services and non-basic services. Furthermore,

Article 12 of Law No. 23 of 2014 mentions enumeratively and limitatively mandatory and optional matters that can be carried out by government units according to their level. The division of functions seems very strict, rigid, and even detailed for each of these government units (Affandi, 2020). The government in carrying out an affair without an order from the law, it can be considered as carrying out affairs without authority or legally illegitimate actions (Affandi, 2020). Article 11 paragraph (2) of Law 23 of 2014 states that “Compulsory Government Affairs as referred to in paragraph (1) consists of Government Affairs related to Basic Services and Government Affairs that are not related to Basic Services”. Concurrent government affairs which are the authority of the regions can be shown in the following table :

No.	Mandatory government affairs relating to basic services	Choice of government affairs
1.	a. Education; b. Health c. Public works and spatial planning; d. Public housing and residential areas; e. Peace, public order, and community protection; And f. So damn	a. marine and fishery; b. tourist; c. agriculture; d. forestry; e. energy and Mineral Resources; f. trading; g. industry; And h. transmigration .

The table shows that public works and spatial planning are mandatory government affairs in terms of basic services that are the authority of the region. Furthermore, Article 15 paragraph (1) of Law No. 23 of 2014 determines the distribution of concurrent government affairs between the Central Government and provincial and district/city regions listed in the attachment which is an integral part of this Law Appendix to Law No. 23 of 2014, regarding the Division of Concurrent Government Affairs between the Central Government and Provincial and Regency/City Regions, number I concerning the Matrix of Distribution of Concurrent Government Affairs between the Central Government and Provincial and Regency/City Regions, as stated in Appendix C. The division of governmental affairs in the field of Public Works and Spatial Planning can be shown in the table as follows:

No.	Sub Affairs	Central government	Provincial government	Regency/City Government
1	2	3	4	5

9	Road	a. Development of a national road network system. b. Implementation of roads in general and the implementation of national roads.	provincial roads .	Administration of district/city roads.
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Based on the division of affairs or authority in Law No. 23 of 2014 it turns out that there are no specific regulations regarding roads, let alone those related to road management. In other words , Law No. 23 of 2014 does not explicitly mention the division of authority in the road sector either as a mandatory concurrent matter which is a basic service or which is not a basic service. In fact, roads are an important matter as a basic need to sustain people's lives, even roads are the lifeblood of modern society whose existence cannot be ignored.

Provisions related to authority in the road sector can only be seen in the matrix of division of functions as an attachment to Law No. 23 of 2014. In the attachment there are two government affairs as further elaborations of Article 10, Article 11, Article 12, Article 13 and Article 25 UU No. 23 of 2014. Road affairs can be seen in government affairs in the fields of Public Works and Spatial Planning (PUPR), and Transportation. As part of concurrent affairs, this shows the authority of each government unit in matters of public works and spatial planning and transportation. However, the division of concurrent functions needs to pay attention to which or what aspects are actually the affairs of each of these government units. Regional government units, whether provincial, district or city, for example, cannot carry out central government affairs in the road sector, even if the (national) road is located or is located in the territory of a province, district or city. Provincial, district or city regional governments can only carry out these affairs when the central government has assigned or delegated these affairs to them. Based on Law No. 23 of 2014, Appendix C No. 9, Regency/City regional governments have authority in administering Regency/City roads.

National Road Development Authority

Roads are public infrastructure, so government involvement and intervention is needed so as to provide optimal results to encourage economic growth. In connection with the implementation of roads in Indonesia, it is first necessary to look at the arrangement of authority in the provisions of the laws and regulations,

especially those that are still valid as positive law. Determining who or which party has authority in road administration needs to be traced to laws and regulations related to regulation of government unit authority. Arrangements for the administration of roads are contained in Law No. 2 of 2022 which regulates the scope of roads, road groupings, authority in road administration, and others.

Article 6 (1) Law No. 2 of 2022 states that "Roads according to their designation consist of Public Roads and Special Roads". The grouping of public roads is regulated in Article 9 paragraph (1) of Law No. 2 of 2022 which states as follows: "Public roads according to their status are grouped into national roads, provincial roads, district roads, city roads and village roads". Provisions regarding the grouping of roads are intended to create legal certainty for the implementation of roads in accordance with the authority of the Central Government and Regional Governments. Road management must guarantee the implementation of road functions conceptually and comprehensively (Ahmad, 2018).

Furthermore, in Article 57A (1) Law No. 2 of 2022 states that "Special roads are roads built and maintained by: a. state-owned enterprises or regionally-owned enterprises; b. legal entity or non-legal entity; c. individual; d. community groups; and/or e. Central Government agencies and/or Regional Governments other than Road Operators". Based on the grouping of public roads, national roads are included as public roads. It is also emphasized in Article 14 (1) letter c of Law No. 2 of 2022 that the implementation of national roads is the authority of the Central Government. The following is a table of road administration authorities summarized from Law no. 2 of 2022 as follows:

Material	Central government	Provincial Government	Regency/City Regional Government	Village government
Road maintenance	a. National Road Network System Development; b. Road administration in general; And	Administration of Provincial Roads.	Administration of district roads, regulation of village roads, and development of	Village Road

	c. Implementation of National Roads.		village roads.	
Criteria	regulation, guidance, construction and supervision of national roads.	regulation, guidance, construction and supervision of provincial roads.	regulation, guidance, development, and supervision of district/city Roads.	construction and supervision of village roads.
Takeover of Road construction authority	implementation of provincial Road Development affairs.	implementation of district/city Road development affairs.	implementation of Village Road Development affairs	Not owned

The coverage of national roads is regulated in Article 9 paragraph (6) of Law No. 2 of 2022 includes “a. arterial roads in the primary road network system connecting between national activity centers, between national activity centers and regional activity centers, and/or national activity centers and/or regional activity centers with collecting airports and main or collecting ports; b. Collector roads in the primary Road Network System that connect other national transportation systems which are primary collector roads 1; c. National strategic roads; and D. Toll road”.

The authority to administer national roads rests with the Central Government, which is carried out by the Ministry of Public Works and Public Housing, namely the Directorate General of Highways, which in carrying out the task of administering national roads, a National Road Implementation Center is formed in accordance with their respective work areas. Government authority in the construction of national roads which includes technical planning, construction implementation, and operation and maintenance can be carried out by the provincial government (Adi Assegaf, 2020).

National roads are arterial roads and collector roads in the primary road network system that connects inter-provincial capitals, and national strategic roads, as well as toll roads. The authority of the Central Government in administering it is regulated based on the provisions of Article 14 paragraph (1) and paragraph (2) of Law no. 2 of 2022 states that “The government's authority in administering roads includes the administration of roads in general and the administration of national roads as well as the authority to administer roads in general and the administration of national roads includes regulation, guidance, development and supervision”. Based on these provisions, the regulation, guidance, development and supervision of national roads is the authority of the Central Government. So in essence it determines that the authority to construct National Roads rests with the Central Government, it cannot be taken over by the Provisional Regional Government, Regency/City Regional Government, or Village Government.

Development of National Roads by Local Governments

Government administration is carried out by the Central Government, besides that it is also carried out by Regional Governments, both Provinces, Regencies and Cities through the principle of autonomy and co-administration. Based on the principle of autonomy, many matters or powers that were originally managed by the Central Government were then handed over to the regions. The principle of autonomy provides an opportunity for the regions to regulate and manage these affairs in accordance with their regional capabilities. With regional autonomy, a region will be more independent and provide the best service to the people in the region. The delegation of government affairs to provincial, district and city governments should be properly managed and implemented. One of these opportunities is related to road management, so that the regions should be serious about implementing it. The question that arises is whether the Regional Government can carry out the construction of national roads?.

Road construction is part of the authority of road administration. Article 3 of Law Number 2 of 2022 states that one of the objectives of regulating Road administration “is to realize Road administration that is capable of driving economic growth, accelerating logistics distribution, equitable development, and implementing Sustainable Road Development”. The road construction includes: technical planning, programming and budgeting, land acquisition, road construction implementation, road operation and maintenance activities. The government in this case has the duty to carry out road construction. Road construction activities are

divided over the authority of the Central Government, provincial government agencies, and Regency/City Regional Governments to prevent abuse of authority. The authority to administer national roads is the authority of the Central Government as stated in Article 14 paragraph (1) of Law Number 2 of 2022. Law Number 2 of 2022 in Article 15 explains the authority of the Provincial Government to cover the construction of provincial roads, in this case if the provincial Regional Government has not can carry out the authority to construct roads, then the central government will take over the implementation of provincial road construction affairs. And then Article 16 of Law Number 2 of 2022 relates to the authority of the Regency Regional Government covering the Implementation of Regency Roads, the regulation of Village Roads, and the construction of Village Roads, in this case if the Regency/City Regional Government has not been able to carry out the Authority for Road Development, then the Provincial Government and /or the Central Government takes over the implementation of district/city Road development affairs (“UU 2 Tahun 2022 Tentang Perubahan Kedua Atas UU 38 Tahun 2004 tentang Jalan,” 2022). It can be said that if the lowest level of government, namely the village, cannot carry out road construction authority, then this authority can be taken over by the level of government above it up to the central level.

The grouping of these functions shows that a certain government unit cannot automatically carry out an affair or authority if the law does not regulate it. The reason is that the distribution of functions in the Law is carried out strictly, so that without the authority granted by the Law a government unit is not authorized to carry out these affairs. This grouping of powers can be an indicator to prevent abuse of authority. According to Philipus M. Hadjon, abuse of authority in the concept of administrative law is equated with the concept abuse of power (Hadjon, 2000). Abuse of power derived from the word hijack and power, hijack is to deviate, to turn, to be indirect, to take a deviant path to reach the goal. Whereas Diversion is deviance, deflection, deviation, embezzlement. Power is ability, power according to law (Marzuki, 2012). Kranenburg-Vegting as quoted by Utrecht stated that “Abuse of power (abuse of authority) means that a state tool makes a decision but that state tool does not use its power in accordance with the objectives given by the rules that form the basis of its power” (Utrecht, 1988). It can also be declared as an abuse of authority if a state administration decision is taken by abusing the position or abusing the authority of the position (Susanto, 2019). The principle of abuse of authority can occur in the type of bound authority. The indicator or benchmark for

the abuse of authority in the type of bound authority is the principle of legality (a goal that has been set out in laws and regulations) (Yasser, 2019). For this reason, if there is a government unit that carries out an affair without an order from the law, the government unit can be considered as carrying out affairs without authority or actions that are not legal (Affandi, 2020). Abuse of authority is also interpreted in three (3) forms, namely “1. Abuse of authority to take actions that are contrary to the public interest or to benefit personal, group or group interests. 2. Abuse of authority in the sense that the official's actions are intended for the public interest, but deviate from the purpose for which the authority is granted by law or other regulations. 3. Abuse of authority in the sense of abusing procedures that should be used to achieve goals certain conditions, but has used other procedures in order to be carried out”. In this regard Amirudin explained “not all mistakes in the use of authority are abuse of authority, only abuse of authority that deviates from its purpose is abuse of authority (abuse of power)” (Amirudin, 2010). To find out whether there has been an abuse of authority in the actions or decisions of government officials, according to Nur Basuki Minarno that “abuse of authority occurs when the use of authority deviates from its purpose” (Minarno, 2009).

The parameters of government decisions and/or actions can fulfill elements of abuse of authority in Article 17 paragraph (2) of Law Number 30 of 2014 concerning Government Administration. Regency/City Regional Governments that carry out the construction of national roads are filled with elements of abuse of authority which are categorized as exceeding authority. This fulfills the element of exceeding the authority stated in Article 18 paragraph (1) letters b, and c of Law Number 30 of 2014 concerning Government Administration, namely, exceeding the boundaries of the area where the Authority applies; and/or contrary to the provisions of the laws and regulations. The authority of the Central Government in the administration of roads includes the administration of national roads. The enactment of the authority of the Regional Government in terms of road management includes the administration of regency roads, regulation of village roads, and development of village roads. Thus, if the Regency/City Regional Government carries out the construction of national roads as not within their authority, then the element of exceeding authority within the boundaries of the area where the authority applies is fulfilled. Apart from that, it contradicts Article 16 of Law Number 2 of 2022 and Appendix C number I of Law No. 23 of 2014. Thus the construction of national roads does not become the authority of the Regency/City Regional Government.

Therefore, district/city Regional Governments can be said to have abused their authority or exceeded their authority because there are no regulations governing Regency/City governments in carrying out national road construction. The procedures carried out cannot be deviated to achieve certain goals even though they are in the public interest. So there is no freedom in road construction, everything must be in accordance with the authority regulated by laws and regulations.

CONCLUSIONS

The authority for road construction is regulated in Law Number 2 of 2022 on the Second Amendment to Law number 38 of 2004 concerning Roads so that the Central and Regional Governments can carry out road construction in accordance with their respective authorities. If the district/city Regional Government carries out the construction of national roads, then the Regency/city Regional Government fulfills the element of abusing authority or exceeding authority because the authority for national roads lies with the Central Government. Apart from that, it also contradicts Article 16 of Law Number 2 of 2022 and Appendix C number I of Law No. 23 of 2014. This authority is an indicator that is used as a procedure so as not to be deviated from achieving certain goals. Thus there is no freedom in road construction, everything must be in accordance with the authority regulated by laws and regulations. If the Regional Government has a surplus in the APBD, it can carry out the fulfillment of other mandatory government affairs relating to basic services.

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