

RECONSTRUCTION OF THE ROLE OF THE GOVERNMENT OF THE DISTRICT OF CITY IN HANDLING OF PROVINCIAL ROAD LAYING PROGRESSIVE LEGAL

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Abstract

The success of development in a country, strongly influenced by the role of transportation. Development of transportation is very important to support and drive the dynamics of development, because its function as a catalyst in supporting economic growth and regional development. The current condition of Indonesia's transport infrastructure has greatly declined. Damage occurs, especially in provincial roads, so it is necessary to develop transportation infrastructure by the district/city government.

Keyword : Government, Provincial Road, and Progressive Law

A. INTRODUCTION

Free trade is both a challenge and an opportunity both in national and regional economic development. Both central and local governments need to anticipate Indonesia's inclusion in global trade closely. The central government is concerned because of its implications for macroeconomic conditions, including in terms of trade balance and investment growth. "Local governments will be affected by economic globalization in the provision of employment opportunities and opportunities for exports and imports".¹

In terms of economic globalization, infrastructure and transportation services must be seen as part of the global distribution system for passengers and goods. The efficiency of the transportation system becomes an investment attraction as well as a determinant in the competitive pricing of commodity prices for domestic products, both for domestic consumption and exports.

The success of development in a country, strongly influenced by the role of transportation as the lifeblood of political, economic, socio-cultural, and defense of security. Transportation network system can be seen in terms of effectiveness, in

the sense of safety, high accessibility, integrated, sufficient capacity, regular, smooth and fast, easy to achieve, timely, convenient, affordable, orderly, safe and low pollution. Development of transportation is very important to support and drive the dynamics of development, because its function as a catalyst in supporting economic growth and regional development.

Transportation also has a strategic function in glueing the integrity of the region, when viewed from the aspect of public interest, transportation system covering land, sea and air carrying out the function of public service in domestic and international scale. Transportation development should be based on sustainability, which is to look ahead, based on a comprehensive long-term and environmentally sound planning. The long-term plan should be used as a benchmark for short-term planning, in order not to be planning unloading. Including the National Mid-Term Building Plan as well as in the region or province.

In the field of land transportation, road damage will lead to huge economic and social costs. During this economic crisis, the condition of the national road network can be said to be in a critical condition. In addition to the lack of budget through the state budget, also due to the guidance, implementation and supervision of the implementation of road construction that has not qualified. Meanwhile, a combination of inefficient management, lack of quality oversight

¹ The Indonesian Transportation Society and the Infrastructure Development Acceleration Policy Committee, 2004, Materials Seminar on Challenges and Issues in Transportation Development Intermoda In Indonesia Intermoda Transportation System Economy, on April 7, 2004, Jakarta, page 2.

and execution, and overloading have shrunk the lifespan of road services, meaningfully.

The condition of the Central Java provincial roads located in the district or municipal government area is damaged by the tons of vehicles passing on the road exceeding the maximum limit determined by law. The responsibility for the provincial road lies with the provincial government. This is based on Article 6 paragraph (3) of Law Number 22 Year 2009 on Traffic and Road Transportation², Article 15 paragraph (1) and paragraph (2) of Law Number 38 Year 2004 concerning the Road stating that the authority of the provincial government in the operation of roads covers the operation of provincial roads. These powers include provincial road arrangements, guidance, development, and oversight. Subsequently, it is also regulated in Article 14 paragraph (2) of Regulation of the Minister of Public Works No. 13 / PRT / M / 2011 concerning Procedures for Maintenance and Road Ownership.³

Based on Article 6 paragraph (4) of Law Number 22 Year 2009 on Traffic and Road Transport. District / city governments in conducting traffic and road transport are responsible only for regency / city roads. The facts show that it is often found that provincial roads are damaged in urban areas, the repairs solely rely on the responsibility of the provincial government so that sluggish handling ignores the safety of road users. Although the provincial road is the responsibility of the provincial government, the district / city government also needs to be responsible for the provincial road. In addition to these facts, the main thing in transportation management is the lack of coordination among

agencies related to transportation. So What is the implementation of the role of district / city government in dealing with the destruction of provincial roads at present. And then how are the weaknesses of the district / city government's role in dealing with the current destruction of provincial roads. So how does the reconstruction of the district / city government role in dealing with progressive provincial-based road damage.

B. DISCUSSION

1. Implementation of the role of district / municipal governments in dealing with damage to provincial roads at present;

Transportation or transportation is an area of activity that is very important in the life of Indonesian society. The importance of transportation for the people of Indonesia is caused by several factors, among others, the geographical condition of Indonesia consisting of thousands of small and large islands, waters comprising most of the seas, rivers and lakes that allow transport by land, water and air to - reach the entire territory of Indonesia.⁴

In general, transportation plays an important role in two things, namely economic development and non-economic development. Economic objectives such as raising national income, developing national industries and creating and maintaining employment opportunities for the community. In line with these economic objectives, there are non-economic goals, namely to enhance the integrity of the nation, and to increase national defense and security.⁵

The highway as part of the national transportation system has an important role especially in supporting the economic, social and cultural and environmental sectors and is developed through regional development approaches to achieve equilibrium and equitable development among regions, forming and strengthening

² The provincial government's affairs in conducting traffic and road transportation include:

- a. Determination of the target and direction of policy of traffic system and transportation of provincial and regency / municipal roads whose networks extend beyond district / city boundaries;
- b. Provision of guidance, training, certification, and permission to public transport companies in the province; and
- c. Supervision over the implementation of provincial road traffic and transport.

³ The financing of road maintenance activities as referred to in Article 6, Article 7, Article 9, and Article 10 for the status of provincial roads shall be borne by the Provincial Regional Budget (APBD / P).

⁴ Abdulkadir Muhammad, 1998, Commercial Transport Law, Citra Aditya Bakti, Bandung, page 7

⁵ Abbas Salim, 2006, Transportation Management, Raja Grafindo, Jakarta, page 2.

national unity to establish defense and national security, as well as forming a spatial structure in order to realize the goals of national development.

Provincial roads are collector roads in primary road network systems connecting provincial capitals with regency / municipal capitals or between regency / municipal capitals and provincial strategic roads. The responsibility for the road with the status of the provincial road lies with the provincial government. Basically, the implementation of traffic and road transport in the direct service activities to the community is done by the government, regional government, legal entity, and / or the community. In this case the implementation of traffic and road transport, not only the dominance of government affairs but also the affairs of each element so that requires more participation from the community. Implementation of traffic and road transport by the government as in Article 9 of Law 22 of 2009 on Traffic and Road Transport implemented in accordance with the main duties and functions of each agency.

In the implementation of roads, both central government and local governments can work together with the private sector (public private ownership). This partnership involves a large / capital-intensive investment in which the private sector finances, builds, and manages facilities and infrastructure. However, the public sector still handles service regulatory issues, as the owner of assets, and controls the executor of cooperation. Especially for toll roads, the operation is used using Build-Operate-Transfer (BOT) mechanism. In its operation, the private sector is entrusted by the local government to develop, finance, build and operate a facility for a certain concession period. In its operation, the private sector may collect own income or levies by way of tolling in accordance with government regulations. The construction of road operations is the responsibility of the central government

and local government. Therefore, both the central government and the local government have the obligation to organize, build, build, and supervise roads and bridges. In an effort to build roads and bridges in general, the government and local governments undertake programming and budgeting activities, technical planning, construction implementation, and operation and maintenance of roads, including bridges as outlined in the APBN / APBD as set forth in the Law on Revenue State expenditure, the Law on Fiscal Balance between the Central Government and Local Governments, as well as the Government Regulation on Balanced Funds. To assist local governments in the framework of building, upgrading and maintaining roads and bridges, the central government provides financing assistance provided through the Special Allocation Fund (DAK) for infrastructure or the Special Allocation Fund for Non Reforestation Fund for Infra-structural Sector.

Based on an interview with Bambang Nugroho as Head of Bina Marga Office of Central Java Province⁶, the length of the Central Java provincial road in which the authority is 2,404,741 km. This is based on Decree of Governor of Central Java Number: 620/2 / Year 2016 and Article 58 paragraph (2) of Government Regulation Number 34 Year 2006 stating that the implementation of road is an activity covering arrangement, guidance, development, and road supervision. Provincial road maintenance by the regional government as referred to in Article 57 paragraph (3) shall be implemented by the governor or appointed official. Under this regulation, the Highways Office of Central Java Province is responsible for provincial roads that cross the district / city including in terms of development and maintenance. The budget proposal

⁶ The interviews were conducted freely, on April 10, 2016 at the Office of Highways Central Java Province.

procedure for the construction of provincial roads across the district / municipality is a proposal from the Bina Marga Office discussed with the Provincial BAPPEDA, the Bangda Bureau, and the Finance Bureau through the regional development consultative meeting, then discussed the budget allocation with the Provincial DPRD and determined governor after obtaining approval from the Provincial DPRD. After the budget has been set in the Central Java Provincial APBD, then the road construction and maintenance work is auctioned through the POKJA Team of DGH and the Central Java Provincial Procurement Services Unit Team. The condition of the rapidly damaged provincial road can be caused by the quality control element during the execution of work, the drai-nase system elements in the road environment and the load elements received by the road from the load carried by the vehicle.

Based on an interview with Haron Bagas Prakosa, as the Regional Secretary of Tegal Regency⁷, the secondary collector road is the responsibility of the Government of Tegal regency approximately 111.19 km while the provincial road through the region of Tegal regency along 54.63 km. Then, if there is damage to the existing provincial road in Tegal regency, Tegal regency government can not handle it because it is the authority of the Provincial Government even though the road conditions have been badly damaged. The steps taken by the Government of Tegal Regency are to send letters to the Central Government, Provincial Government and Provincial SKPD in areas related to damage to state roads and provincial roads as well as the need for immediate handling.

In practice, however, it takes about 3 (three) months from sending a letter to the Central Java Provincial Office of Highways until the realization of road

repair works so that when provincial roads are handled too late, it will hamper the region's economy. There are even provincial roads located in Pemalang Regency that have to wait for their improvements to be budgeted within the next budget year.⁸

Implementation of the role of district / municipal governments in handling damage to provincial roads at present, ie district / municipal governments, is limited to reporting damage to provincial roads to related agencies, ie Provincial Highways and Regency / City Governments have no fixing authority and only can wait for improvement because Article 15 paragraph (1) of Law Number 38 Year 2004 on Road stipulates that the provincial road is the responsibility of the local provincial government. Therefore, sooner or later the realization of repair of damaged provincial roads depends on the Provincial Highways Office so that the institutional relationship between the kabupaten / kota and provincial governments is not optimal.

2. The weaknesses of the district / municipality government's role in dealing with the current destruction of provincial roads;

Various efforts made by the government in order to maintain road performance in order to remain able to serve the transportation needs of the increasingly increasing population of the day. These efforts can take the form of improvements to the road network system as well as improvements in traffic management and transport systems and movement. Some weaknesses of the district / city government's role in dealing with the destruction of provincial roads. These weaknesses, when associated with Friedman's argument that the legal system is actually built by three components, namely legal substance,

⁷ The interview was conducted in a free-running way, on April 17, 2016 in the Sekda Room of Tegal Regency.

⁸ Interview with Sudaryono, as Head of DPU Kab. Pemalang, on June 6, 2016 in Pemalang.

legal structure, and legal culture, the weaknesses are as follows:

a. From the substance of the law;

The substance of the law, namely Article 15 paragraph (1) of Law Number 38 Year 2004 which regulates the authority of the provincial government in the implementation of provincial roads in fact hampers the district / city government in improving the provincial road, because with the provision, the district / city government not authorized to improve to the extent that road users are harmed. In addition, the kabu-paten / municipality government only has the authority to report pro-vocational road damage to the Provincial Bina Marga Office, so that sooner or later the realization of repair of damaged provincial roads depends on the Provincial Highways Office and in practice, the provincial road repair takes time old ie 3 (three) months.

b. From the legal structure;

The legal structure in the form of legal institutions (institutions) related to the implementation of provincial roads already exist such as the Ministry of Transportation, Provincial Highways Department under the auspices of the Ministry of Public Works and Public Works in the kabu-paten / kota government. In practice, however, these institutions are less successful in performing their duties. This is because:

- 1) Officials within the Ministry of Transportation, unaware of the tasks they undertake is only part of the overall task of running the road because the implementation of the road is a system consisting of various interrelated institutions;
- 2) Officials within the Provincial Bina Marga Office often view their own duties as the most important tasks compared to other tasks;

3) Existence of division of labor or excessive specialization in the organization;

4) lack of clarification of task or function formulation, authority and responsibility of each official or organizational unit;

5) The existence of procedures and procedures that are less clear and uncertain and not known by all parties concerned in the business cooperation;

6) Lack of leadership ability to execute coordination caused by lack of skill, authority and authority;

7) Lack of communication forum among Ministry of Public Works officials with Ministry of Transportation which can be done by exchanging information and mutual understanding for the smooth implementation of cooperation;

8) Good governance in the implementation of roads has not been fulfilled.

c. From legal culture.

Legal culture neglected in the use of provincial roads, such as the number of built-up heavy vehicles used by employers to transport goods with dimensions of vehicles outside the standard set by law, for example tonnage or overloading of heavy vehicles by the entrepreneurs. Weighing vehicles that exceed the limit, certainly has a serious contribution to road damage. In addition, in various locations weigh bridges vehicles, instead used as a means of illegal levies. Therefore, the apparatus of the Ministry of Transportation should be able to act decisively by prohibiting vehicles that weigh more than the capacity of road passes.

3. Reconstruction of the role of district / city governments in dealing with progressive provincial-based road damage.

According to Bambang Nugroho as Head of Central Java Provincial Office of Highways (Bina Marga) in an interview which has been done by the writer that the authority of Central Java Provincial Government in Public Works of Bina Marga is as the technical executor of public works field, namely the implementation of provincial road covering: arrangement, guidance, development and supervision provincial road".⁹

The Public Works Department of Central Java Province is responsible to the governor while the District / Municipal Public Works Office is responsible to the regent / mayor. The agency has the main duty of implementing regional autonomy authority in the context of implementing decentralization tasks in the field of public works. Furthermore, the exercise of authority in the field of public works carried out by the provincial government of Central Java and the district / city government is implemented based on the distribution of government affairs mandated in Law No. 23 of 2014.

According to Haron Bagas Prakosa as the Regional Secretary of Tegal District, the division of authority in the field of public works of bina marga is clearly regulated in the law, furthermore in the development of provincial strategic areas within the districts / municipalities from the point of view of the importance of economic growth, natural resources and the function and carrying capacity of the living environment require the support of the improvement of facilities and infrastructure from the Provincial Highways Office of Central Java Province. "¹⁰

Reconstruction is the return of something to its original place, the

compilation or redistribution of the existing materials and reconstituted as they are or the original event.¹¹ Reconstruction of values shifts from the delegation of some of the provincial governments' authority in the provision of provincial roads to district / city governments, especially in the case of road repairs.

Reconstruction of value is the role of district / municipality governments in dealing with damage to provincial roads in proportion to national and regional interests in order for the welfare of the community to materialize. The balance can be realized if there is a shift of value from the authority of provincial government in repairing and maintaining provincial road as regulated in Article 32 letter b of Law Number 38 Year 2004 become the authority of regency / city government. While the central government's authority still includes: (1) technical planning, programming and budgeting, land acquisition and national road construction, (2) national road operation and maintenance, and (3) development and management of road management systems national. This is in line with the current nature of regional autonomy that there is a division of authority, duties and responsibilities governing and administering governmental affairs between the central and regional governments, in the hope of improved service and improved public welfare, the development of democratic life, justice and equity and maintenance of harmonious relationship between central and regional, and between regions in order to maintain the integrity of the Republic of Indonesia.¹²

On the basis of this, the authors will reconstruct Article 15 paragraph (2) of Law Number 38 Year 2004 in order to have the balance of authority between

⁹ The interviews were conducted freely, on April 10, 2016 at the Office of Highways Central Java Province.

¹⁰ Interview was conducted in a free-running way, on April 17, 2016 in the Sekda Room of Tegal Regency.

¹¹ B.N. Marbun, Political Dictionary, Pustaka Sinar Harapan, Jakarta, 1996, page 469.

¹² Ni'matul Huda, Regional Autonomy Philosophy, History of Development and Problematic, Second Print, Pustaka Pelajar, Yogyakarta, 2009, page 81-82.

the central government, provincial government and district / city government.

The reconstruction will be the authors describe in the following table:

The contents of Article 15 paragraph (2) UU No. 38 of 2004 Before Reconstruction		Weaknesses	Article After Reconstruction
Article 15 paragraph (2)	The authority of the provision of provincial roads as meant in paragraph (1) covers the regulation, guidance, development and supervision of provincial roads.	<ul style="list-style-type: none"> a. In the case of a provincial road problem, the kabupaten / kota government is not authorized to improve so that road users are escorted; b. The district / city government only defines the destruction of provincial roads to the Provincial Highways Office; c. The process of repairing the provincial road takes three months; d. Officials are often unaware of their agility and view their own duties as the most important task compared to other tasks; e. Existence of division of labor or excessive specialization f. The lack of clarity of the task or function, the authority and responsibility of individual personnel or organizational units. g. The existence of procedures and procedures that are not clear and stirred; h. Lack of ability from the leadership to run the choir; i. Lack of communication forums amongst the concerned officials. 	<ul style="list-style-type: none"> a. The authority of the provincial road operator as meant in paragraph (1) covers the regulation, guidance, construction, and supervision of provincial roads; b. For the improvement of provincial roads dilak sanakan by the government of regency / municipality that angrily bersum-ber from the APBD province.

C. CONCLUSION

Implementation of the role of district / municipal governments in handling the damage of provincial roads at present, ie district / municipal governments, is limited to reporting damage to provincial roads to Provincial Highways and district / municipal governments not having the authority to improve and can only wait for improvement due to Article 15 paragraph (1) of Law Number 38 Year 2004 stipulating that the provincial road is the responsibility of the local provincial government. Therefore, sooner or later the realization of the repair of damaged

provincial roads depends on the Provincial Highways Office;

The weaknesses of the district / city government's role in dealing with the damages of provincial roads include: (1) provincial road improvement process by Provincial Highways takes three months, (2) officials are often unaware of their duties and view their own duties as (4) lack of clarity of the formulation of duties or functions, authority and responsibilities of each official or organizational unit, (5) the existence of procedures and poorly defined and unclear working procedures, (6) lack of leadership ability to

undertake coordination, (7) lack of communication forums among the officials concerned.

Reconstruction of the role of district / municipal governments in handling progressive provincial-based road damages is through the delegation of provincial road improvement authority implemented by district / municipality governments with an improvement budget from the Provincial Revenue and Expenditure Budget (APBD). The recommended reconstruction is to amend the provisions in Article 15 paragraph (2) of Law Number 38 Year 2004, so that its provisions will state as follows: Article 15 paragraph (2) before reconstruction: "The authority of the provincial road operator as referred to in paragraph (1) covers the regulation, guidance, development and supervision of provincial roads ". Article 15 paragraph (2) after reconstruction becomes: a) The authority for the operation of provincial roads as referred to in paragraph (1) covers the regulation, guidance, development and supervision of provincial roads; b) For the improvement of

provincial roads implemented by district / city governments whose budgets are sourced from provincial APBD.

The government needs to immediately delegate provincial road repair authority to the district / city government with regional tools, financing, and the necessary facilities or infrastructure based on Government Regulation in Lieu of Law or other legislation; A communication forum should be established among the officials of the Ministry of Public Works (Dinas Bina Marga of Central Java Province) with the Public Works Department within the district / city government and with the Ministry of Relations which can be done by coordinating and exchanging information for the smooth implementation of the work -same; The Government and the People's Legislative Assembly to immediately revise Article 15 paragraph (2) of Law Number 38 Year 2004, so that the district / city government is authorized to improve the provincial road and its budget.

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