

The Arrangement of Essence Regional Expansion and the Effectiveness against of Human Services in the Regional Government Management in Southeast Sulawesi Province

Suhardin

Doctorate Program of law Science, Faculty of Law Hasanuddin University, Makassar, South Sulawesi of Indonesia

ABSTRACT: *Granting broad autonomy to the region geared to accelerate the realization of public welfare through service improvement, empowerment and community participation. In addition, through extensive autonomy, the region is expected to increase competitiveness by taking into account the principles of democracy, equality, justice, privilege and specificity as well potential and diversity of the region within the framework of Unitary Republic of Indonesia (NKRI) based on the constitution of 1945. With the implementation of regional autonomy has opened opportunity to each the region to develop the regions and autonomous rights, including holding regional expansion. This study aims to explain the arrangement of the essence of regional expansion in the region good governance, and the effectiveness of regional expansion in the provision of public services to communities. Furthermore, the purpose of this study to identify the factors that hinder the effectiveness of public service to the community because of the new regional autonomy in the Southeast Sulawesi. This special issue focuses on research to test whether a rule (postulate) normative can or cannot be used to break a legal issue in the fact (in concerto). The method used in this study is normative law and qualitative. This type of research is the socio legal research, the research aims that focused on regulation and application of law in the context of reality in the community. Therefore, this research examines the on law aspect of the law in books or to aspects law in action. The conclusion to get of this research are: (1) The arrangement of essence Regional Expansion is action of state law (legislative and executive) as the governing as an instrument to regulate regional expansion procedure so as to create legal basis a definite in an effort of regional expansion achieve the goal of regional expansion; (2) The effectiveness of regional expansion in the public service to the community, showing not optimal, whereas along with the regional expansion of region decentralization is expected to be a container or instrument in order to build public services an effective, and (3) the factors that hamper the effectiveness of a new autonomous region resulting from the division in the provision of public services: cultural law factors; apparatus; and financial factors.*

KEYWORDS : *Effectiveness Public Services; Organizers Government; Autonomy*

I. INTRODUCTION

Authority to regulate and manage all forms of public interests own initiative based on the aspirations of the community are significant autonomy to management government region. Because autonomy according by Bagir Manan (1994) is the independence to regulate and manage the affairs (household) own. Florencio Abad, autonomy can be implemented or accomplished if a country applies the principle of decentralization, if the central government had to give up some of its affairs to the regions to be implemented by the region as household affairs, and regions has expressed ability and ability to run the affairs of the it. District declared as an autonomous region is an area that is willing to carry out maintenance of government in the region of an independent be responsible to not create a burden for the center (Suprin, 2004).The regional administration to carry out regional autonomy as an implementation of principle of decentralization has been accepted as something that is universal and implemented by almost all countries in the world. This is due to the fact that not all matters government can be held in a centralized considering the geographical conditions, the complexity of the development of society, diversity social and cultural structures local as well as the demands of democratization in government organization Through the implementation of the principle of decentralization is expected to increase both the effectiveness and efficiency of government organization and development as well people's participation of government implementation and development ((ASSD) GTZ-CIDA-Bappenas (National Development Planning Agency, 2009).Regional autonomy aimed at improving public services improved so that the service can be performed more effectively and efficiently With regional autonomy means the central government has moved most of its authority to autonomous regions,

so that the government of autonomous regions can be faster in responding to the demands of the area communities in accordance with the capabilities, owned, and it is expected that the development will be able to run faster and higher quality. Therefore, the spirit of regional autonomy through the Law No. 32 of 2004 more open the opportunity to regional governments to be able to get closer government to the community. Therefore Rachael Syafrudin (1985) argued, that the essence of regional autonomy is the right, authority and obligation to regulate regional and manage their own household in accordance with the legislation and regulations. Grant of broad autonomy to region aimed to accelerate the realization of public welfare through the improvement of the service, empowerment and community participation. In addition to broad autonomy, region is expected to improve the competitiveness of the principles of democracy, equality, justice, privilege and specificity and the potential and diversity of regional within the framework of NKRI.

The implementation of regional autonomy had a positive effect on regional, not only be independent but also effective and efficient in management of governance in the area when properly supervised and developed in the corridors of creativity. Because of the presence of freedom for the region in the set and explore the potential of the region. In this regard Satya Arinanto argued, that the primary purpose of local autonomy actual core of two (2) terms, Namely, first, to create well-being, and second, to support democracy at the local level (Edie Hendratno, 2009). The fact which then emerged after the regional autonomy policy in Indonesia is the phenomenon of regional expansion. Expansion of regional became one of the themes that characterize understanding as part of the implementation regional autonomy. With the implementation of regional autonomy has opened opportunities for the region to develop the regions obtain autonomous rights, including hold a regional expansion. Normatively, Regional division since the reforms stipulated in Law No. 22 of 1999 and Government Regulation No. 129 of 2000 about the Requirements Establishment and Criteria Division, Removal, and Mergers District (Laws and Regulations No. 129 of 2000) which was later replaced by Law No. 32 of 2004 and Government Regulation No. 78 Year 2007 on Procedures for Establishment, Abolition, and Mergers District (Regulation No. 78 of 2007). The results of the evaluation conducted in 2011 against 205 new autonomous regions, which contain up to 1999, the provincial and district/city government through the interior ministry rate, 80% of the autonomous regions resulting from the division fails (Thomas Suwarta, 2009). The results of this evaluation indicate the purpose of the expansion regional still has many obstacles to make it happen. Hope residents and stakeholders to have a better fate through regional expansion seem to still require effort harder.

Evaluations are conducted by the Government through Interior Ministry under Government Regulation No. 6 of 2008 on Guidelines for Evaluation of Regional Government (Government Regulation No. 6 of 2008) was performed by measuring four (4) factors, namely social welfare, public services, regional competitiveness, and good governance (Directorate General Autonomy, 2011). It should be noted the results of the evaluation of government against DOB proportionally related to the impact of regional expansion that has taken place, including in Southeast Sulawesi. The desire to know is critical to the effectiveness of public service issues, especially in the autonomous regions (autonomy regions). *This study aims to explain the arrangement of the essence of regional expansion in the region good governance, and the effectiveness of regional expansion in the provision of public services to communities.* Furthermore, the purpose of this study to identify the factors that hinder the effectiveness of public service to the community because of the new regional autonomy in the Southeast Sulawesi. This special issue focuses on research to test whether a rule (postulate) normative can or cannot be used to break a legal issue in the fact (in concerto). Based on the phenomenon and theoretical studies described above, then becoming the problem of this research can be summarized as follows:

- 1) What is the nature of the arrangement of regional expansion in local governance?
- 2) What is the effectiveness of regional expansion in the provision of public services to communities?
- 3) What are the factors that hamper the effectiveness of a new autonomous region resulting from the division in the provision of public services to communities in Southeast Sulawesi?

II. LITERATURE REVIEW

State Theory of Law as one of the foundations of this research, because the concept of laws state (*rechtsstaat*) has given emphasis on legality in all forms. In the sense that the state government in carrying out its duties should be based upon legislation. In addition, the concept of the rule of law is also known as the supremacy of the rule of law (the absolute supremacy or predominance of regular law). Another argument is that a more normative as provisions in the Indonesian constitution, that is Indonesian country a state laws (Pasal 1, ayat 3 UUD 1945), which can be given a meaning that all actions of state government must be based on laws. It can say that state law referred to is the country's stand on the law to ensure justice to the nationals (Lubis and Harmaily Ibrahim 1988). Provisions normative constitutional line with the opinion (Gde Pantja Astawa, 2000) that: ".....Indonesian Country based on law (*rechtsstaat*), not based on power (*machtsstaat*).

Government based upon constitutional system (basic law), non-absolutism system. System Constitution departs from the assumption that there are certain basic values in individuals and communities should not be encroached upon by the hands of power. Thus the main function of the constitution is as limiting power. Restrictions on government power in the constitution, so it is often called the government based on the constitution (constitutional government) although not all countries have a constitution inspired by the spirit of individualism; passion to protect the interests of the individual through the constitution is considered the most likely, regardless of the philosophy of the country concerned. In other words, the essence from the century In other words, the essence of the state constitution is the protection of human rights. According to Sri Soemantri, there is not a single country in the world that does not have a constitution or basic law. Countries and constitution of the two agencies cannot be separated from one another (Sri Soemantri, 2006).

When traced from the thoughts of the state laws (*rechtsstaat, the rule of law*), the idea or the idea of a constitutional state has actually been coveted since Plato wrote his scientific work entitled *Nomoi* (the law), Immanuel Kant argued the principles of formal law, which also known as the philosophy of Kant "have idea of legal independent and pure (*zuivere rechtsstaat*)" by Ateng Syafrudin (1993). In *Nomoi*, Plato argued that good government management is based on the arrangement the law is good (Marbun et al., 2004). Plato's notion of the rule of law, the firm when it is supported by Aristotle who wrote in book *Political*. Aristotle has sown the idea law states that who reigned in the state is not human, but a fair mind. That is, the justice who reigned in the life of the state. To be human is to be fair it can be manifested in the life of the state, so people have to be educated as a good citizen and have good morals. Although the idea of a state of law has been sown since two thousand years ago, but the process of growth and development is ideally not always have the effect that deviates from the substance of justice and a means to pursue and maintain power.

The Rule of Law Theory : According to Albert Venn Dicey in his book entitled *Introduction to the study of the law of the constitution*, that the rule of law is formed by three basic principles that should be embodied in the constitution, which is as follows:

- [1] Supremacy of the rules of law (the absolute supremacy or predominance of regular law);
- [2] Position that were same in law (equality before the law, or the equal subjection of all classes to the ordinary law of the lands administered by the ordinary law courts);
- [3] The guarantee of human rights (a formula expressing the fact that with us the law of the constitution, the rules roommates in foreign countries naturally form part of a constitutional code, are not the source but the consequence of the rights of individuals as defined and enforced by the courts) by Bagir Manan (1994).

Hereinafter, Wade and Godfrey Phillips mentions three concepts related to the rule of law that are: (1) the rule of law is the law precedence of the order of the anarchy in society, in this view of the rule of law is a philosophical outlook on society, which is in the western tradition with regard to the concept of democracy; (2) the rule of law represents a legal doctrine that government must be conducted in accordance with the law; (3) the rule of law represents a political framework which must be specified in the rules the law, both substantive law and procedural law (Achmad Ruslan, 2013). Based on the two views on the rule of law it can be concluded that the mind A.V. Dicey is a pure mind which is based on English common law practice, while the concept Wade is a mixture of concept that have been affected by the mindset and circumstances in Europe in general. The Mind Wade has brought English to the thoughts *rechtsstaat* in Europe and on the thoughts that English can participate in the association and the law of life and the nations of Continental Europe.

The elements of the concept of the rule of law according to the International Commission of Jurists in Bangkok congress in 1965, namely: (1) the existence of constitutional Protection; (2) the existence court is independent and impartial; (3) the existence of free election; (4) the existence of freedom for give the opinion and association; (5) the existence of opposition task; (6) the presence of civic education (Sri Soemantri, 1992). Looking at the above description, according by Padmo Wahyono in Muhammad Tahir Azhary that the marked difference between the concept *rechtsstaat* and the rule of law is the concept of judicial administration of the country which is the a very important tool and at the same time is also a prominent feature in *rechtsstaat*. In contrast to the rule of law, administration of justice is not applied, because, public confidence that so great to the public courts, the law of equitable and proper (just law). Because all people have the same position before the law, the ordinary court considered sufficient to prosecute all cases, including misconduct by the government. From the background and of the legal system that sustain them there is a difference between the concept *rechtsstaat* and the rule of law although in adult development not have problems again the difference between the two because basically two concepts that orients itself on the main objectives, namely ensuring the recognition and protection of human rights Although the target the same but both are going according to their respective legal systems.

The Concept of Socialist Legality : Socialist legality is a concept shared in communist countries / socialist who seems to want to keep pace with the concept of the rule of law that was pioneered by the Anglo-Saxon countries. Muhammad Tahir Azhary stated that there is political background in relations with the international community, among others, the implementation of Collegium Warsaw in 1958, which was attended by scholars from the socialist Countries (Achmad Ruslan, 2013). The substance of the law the state socialist legality is different from the concept rechtsstaat state the law and the rule of law State the law socialist legality puts the law under socialism, viewing the law as a means to achieve socialism or in their words, it is the victory of socialism over the law. According Jarosinski, that individual rights may be dispensed from the principles of socialism, although these rights deserve protection. Muhammad Tahir Azhary explained that in socialist legality is no constitutional guarantee of anti-religious propaganda is a character from communist / socialist colored by the communist doctrine that religion is the opium of the people. It is known that communism to teach anti god attitude.

Therefore, according to Muhammad Tahir Azhary, that the concept of socialist legality is difficult to be considered as a concept of state the laws that are universal. But the concept is viewed from the perspective of the communist countries / a socialist is that they view the concept according to the doctrine of communism / socialism. Thus the concept of socialist legality is based on economic policy and social Law is an instrument (instrument) wisdom in the economic field or social (instrument of economic and social policy) While the concept of state rechtsstaat the law and the rule of law is seen as a reflection of society and government capitalistic, bourgeois, imperialist and exploitive by Bagir Manan (1995).

The State of Law Pancasila : Rechtsstaat concept or the concept of the rule of law has a different background to the NKRI (country of nationality Republic Indonesia) t his affects the content of the concept of state laws that do not simply divert rechtsstaat concept or the concept of the rule of law is the concept of state the law in Indonesia despite the influence of the presence of a concept or concepts rechtsstaat the rule of law in Indonesia. In law of constitution 1945 before the change, not found an explicit provision in the trunk governing body or formulate the Indonesia as a country the law. The term state the law only found on the explanation the law of institution 1945 particularly the General Explanation of the System State Government. However, since 2001 years Changes in three terms state the law has expressly provided for in (Pasal 1, ayat 3) that mention that "Indonesia is a country of law. State of law Indonesia has characteristics typical of Indonesia. Because Pancasila should be appointed as the principal base and sources of law, then the state of Indonesian law can also be called the State Law Pancasila by Bagir Manan (1995). States objective formulated by the founding fathers were at the height of abstraction most likely reflects the commonalities of interest among members of the community who in fact have to live in the midst of pluralism or diversity. Therefore, in a society to ensure unity within the framework of national life required the formulation of goals or ideals together commonly also referred to as the philosophy of state or staatsidee (ideal state) that serves as philosophic grounds among citizens in the context of constitutional life (Mahkamah Konstitusi, 2004).

The existence of Pancasila as the state philosophy or ideal state, because the Pancasila as a buffer constitution. The existence of Pancasila as the basic philosophical contained in the Preamble constitution the Republic of Indonesia in 1945 which is the first deal buffer constitutionalism (Mahkamah Konstitusi, 2004). To the above, in accordance with the definition of Pancasila as the state as set forth in the Preamble constitution the Republic of Indonesia in 1945: ".....then drafted Indonesia's national independence in a Constitution of the Republic of Indonesia, which is formed in an arrangement of the Republic of Indonesia based on the Belief in God Almighty, humanity that s just and civilized, the unity of Indonesia democracy guided by the wisdom of representative deliberation, social justice for all Indonesia".

The NKRI is a state based on Pancasila is a fact known by every citizen. Pancasila as the state contained in the preamble of the Constitution NRI 1945 that it contains values that become the reference for all Government agencies in to manage the organization state and become a common reference that guarantees obligations of a constitutional balanced manner among all citizens in their dealings with the state. Pancasila as the state, this means that every action of the state apparatus and the people shall be in accordance with a predefined Pancasila as the basis of the country, and the people must be in accordance with a predefined Pancasila as the basis of the country. It is given that Pancasila was dug from Indonesian culture itself, so Pancasila has the function and role of more widespread in social life, nation and state. In the legal establishment, implementation, and execution cannot be separated from the values of Pancasila. The main feature in the State of Law Pancasila is the guarantee of religious freedom. Thus freedom of religion at the State Law Pancasila always in a positive connotation, meaning that there is no place for anti-religion or atheism in the land of Indonesia. This is very different than in the United States who understands the concept of freedom of religion either in terms of positive or in a negative sense. Muhammad Tahir Azhary, the Pancasila state law should not be separation between religion and the state, both in absolute and relative basis, because it would be contrary to Pancasila and UUD (law of the institutional) 1945.

Religion and the state are in a harmonious relationship. Pancasila is the basic state becomes referral source and the main base in the administration of the country which is reflected in, among others, the vision, mission, policies, programs, and regulations (Jimly Asshiddiqie, 2008). Because it was Pancasila is not static, meaning that in the constitutional system of the Indonesian state apparatus and political elites in carrying out its duties and obligations for the future Indonesia aspired, meaning of Pancasila can be a adhesives and direct the power of diversity of the nation to achieve great goals in the interest of the entire nation of Indonesia. Formation of Indonesian government is not solely due to the belief that every nation has the right to liberty and freedom from colonization. Formation of the Indonesian state government intended to achieve a common goal so-called independence as a golden bridge to achieve a national objective as stated in the Preamble UUD (law of the institutional) 1945 that the establishment of the Indonesian state government is to protect all the people of Indonesia and the country of Indonesia, promote the general welfare, educating the nation, and participate in the establishment of a world order based on freedom, lasting peace, and social justice.

Research Conceptual Framework and Propositions : The principle of the presumption of law is based on research that good country is a country that is governed by the constitution and the rule of law. Therefore the proposition put forward in the study refers to the three elements of constitutional government, namely: *firstly*, the government carried out in the public interest. *Second*, the implementation of the rule of law and the provisions of the general, not the laws made arbitrarily in violation of the constitutional and convention. *Third*, constitutional government means the government implemented the will of the people, not in the form of coercion-coercion implemented despotic rule. In relation to the constitution, Aristotle said that the constitution is the preparation of the office in a state and determine what is meant by government agencies and what the end of every society. In addition, the constitution is the rules and rulers should rule the country according to the rules. The idea of the state of the law is still vague and immersed in a very long time, then came back more explicitly in the 19th century, with the emergence of the concept of rechtsstaat Friedrich Julius Stahl in his scientific work entitled Philosophies des Recites are working to improve the concept of a liberal constitutional state of Immanuel Kant, and Albert Venn Dicey proposed the concept of the rule of law. He explained that all activities of state and government should be based on the law. It can also be said that in a constitutional state, state power is limited and determined by the laws, as well as the means of the equipment (including the government) should be sourced and rooted in law.

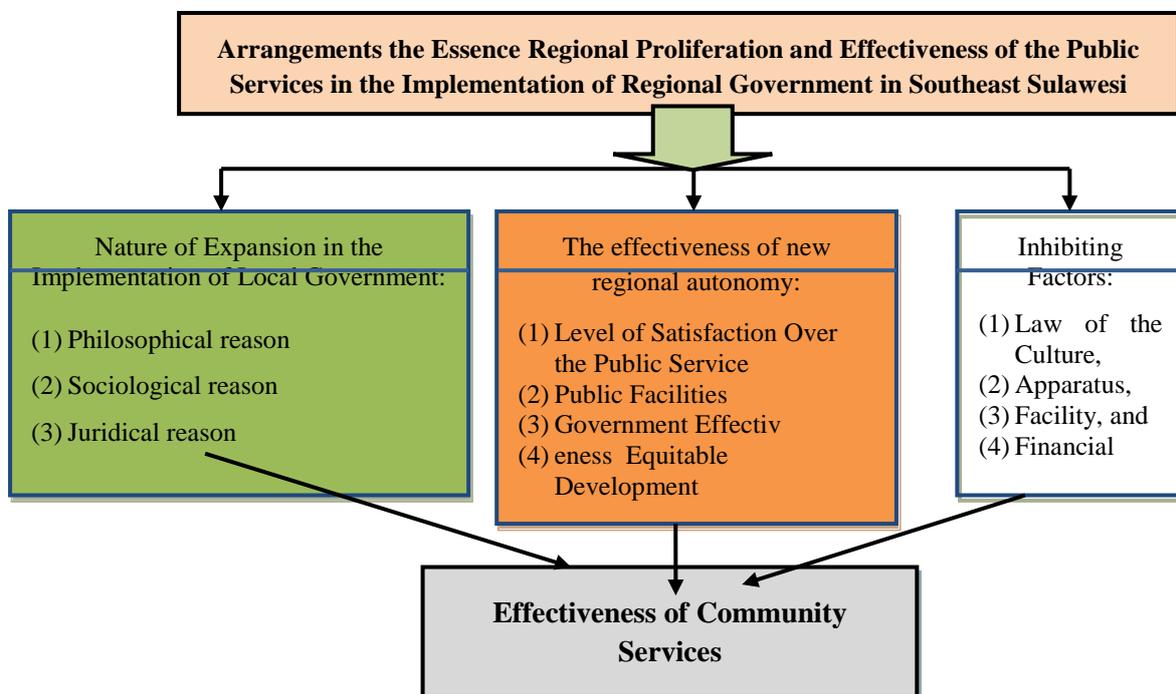


Figure 1: Conceptual Framework of Research

III. RESEARCH METHODS

Research conducted is normative legal research and empirical. This type of research is often referred to as socio-juridical research (socio legal research), that is a research that focused on the legal regulation and the application of law in the context of reality in the community In other words, this research examines both the

legal aspects of the law in the idea, and aspects of the law in books and law in action aspect. The research of the main objective type of socio-legal research to test whether a rule (postulate) normative can or cannot be used to break a legal issue in the fact (in concerto) by Bambang Sunggono, 1997. Location of research was conducted in the region of Southeast Sulawesi Province by placing the sample in five DOBHP (New Autonomous Region Results Redistricting) covering is: South Konawa Regency, Bombana regency, North Kolaka regency, North Buton Regency, East Kolaka Regency. Enactment of Southeast Sulawesi Province as study sites based on the consideration, which since formed 22 September 1964 pursuant to Law No. 13 of 1964 Southeast Sulawesi consists of four counties, but after the end of the New Order regime has increased the intensity of the progress of the addition DOBHP up until 2013 has totaled 13 districts/cities.

The research method of qualitative data collection (human) is the main instrument. Methods of data collection in this study were: (1) observation, this technique is performed to find the data where respondents' phenomenal destination unknown to the observed object. This technique is done in some places or situations, either planned or unplanned, but always in accordance with the needs of the data relevant to the purpose of the research, (2) respondent interviews conducted freely and deeply, and not scalable. They interviewed a sample is selected as regional leaders division (regent) and community leaders, and (3) study the documentation is done by taking photographs of the activities of the respondents. In addition, documentation was also made to collect notes, and text associated with the research. Collecting data in this study will be carried out in 3 stages: First, the data collected by observing and interviewing some of the elements of a new autonomous regional leader and the people who made key informants who know a lot about the law and the rules of regional management division. Secondly, in-depth interviews conducted to the respondents who considered a source that has more knowledge and a deep understanding of the information needed. This stage also made further observations, by collecting a variety of relevant text. Third, focus group discussions carried out to confirm the results of observations, interviews, and interpretation of the information that has been achieved, before final conclusions are made. The strategy of collecting data and information that is used facilitate data collection or acquisition of accurate information. Measures used are as follows: First, the informant walked in the place and the most fun time (spare time). Second, find the correct address of the respondent. Third, to visit each respondent multiple times if the information is still required as part of the triangulation. Finally, data is data obtained through the study of documents or official archives collected by the government agencies (executive) DPR (Regional Representative Council) and DPRD (Legislative Council Regional) relating to the research material.

IV. RESEARCH RESULTS AND DISCUSSION

4.1 Arrangements Nature of Regional Expansion in of Regional Government Management

1. The Philosophical of Reason

Philosophical basis is the basic philosophy or view of life on which the ideals of when performing arrangements of regional expansion. Basic idiolegis and philosophical nation of Indonesia is Pancasila, so in principle is not valid in the setting of regional expansion, if contrary to Pancasila. According to Jazim Hamidi et al., 2008 say that:

“..... Philosophical foundational description containing a description about deepest thought that should be contained in the legislation role and outlook on life that lead to the creation of legislation deepest thoughts and way of life that should be reflected in the legislation is the values of the Proclamation and Pancasila”.

As a philosophical basis, Pancasila formulation contained in the preamble of the Constitution the Republic of Indonesia 1945 as the basis state philosophy. Mahfud MD said:

“ From a legal standpoint, preamble Republic Of Indonesia Constitution of 1945 which contains the basis of Pancasila state philosophy which spawned legal ideals (rechtside) and the basis of its own legal system in accordance with the spirit of the Indonesian nation. Pancasila as the state is the source of all sources of law that gave legal guidance and overcome all legislation including the Basic Law (Mahfud MD, 2007)”.

Arrangements regional expansion in Law No. 32 of 2004 embodies the mandate basic of law republic of Indonesia (UUD, 1945) sourced from legal ideals born of Pancasila. Arrangements should be in line with the regional expansion principles of local government set out in basic of law republic of Indonesia 1945 and Law No. 32 of 2004.

2. The Reasons of Sociological

Sociological reasons referring to the reality of the condition of society is what is needed or appropriate to the needs of society. The reality conditions must be recorded and subsequently implemented by forming the legislation so as to obtain justification in accordance with the legal values that live in the community. The Arrangements expansion area should be appropriate or consistent with the general belief or legal awareness of society in general in an era reformism. When the current democracy voiced by the Indonesian people, the region expansion also experienced with the current process of democratization. After the reform, the expansion and the proposed expansion area experiencing significant growth as the implementation of regional autonomy in the

spirit of the Law No. 22, 1999 which was later replaced by Law No. 32 of 2004, through the regional autonomy that gives broad authority to local governments to manage their own household. Authorities to regulate and manage all forms of public interests own initiative based on the aspirations of the people is a form of autonomy in local governance.

In the discussion of the Draft Law on the Amendment of Law No. 22 of 1999, the Government's explanation submitted by Hari Sabarno as Minister of the Interior at the time, that:

“Ideally, the establishment of autonomous regions is in order to accelerate the improvement of people's welfare through service improvement, empowerment, initiatives, community participation, equity, fairness, efficiency, accountability and democratic development, defense and security and regional competitiveness in the system of the Republic of Indonesia. Factors that are used to form an autonomous region covering economic capacity, financial capacity, potential areas, human resources, socio-cultural, socio-political, population, area, defense and security. Such factors as a basis that can be measured in assessing the feasibility of a region into an autonomous region.Arrangements intended to affirm the basic considerations, requirements, and criteria for the establishment of the area in order to confirm that the formation of the region to achieve the purpose of the implementation of regional autonomy” (Minutes of Meeting committee bill, 2003-2004).

The above explanation shows the setting of regional expansion efforts as a means to reinforce the requirements that must be met in the expansion. Regions so they new autonomous result of the expansion can be held goal of regional autonomy. Arrangements is not to close the regional expansion opportunities, but set the requirements that must be met in order to determine appropriate or not appropriate, a region divided according to public awareness in the area in general who want most of the area to be expanded into a new autonomous region. Therefore, arrangements should be in line with the regional expansion or general belief in general public awareness that the laws are made in accordance with the reality of life.

Reasons Juridical : Legitimate reasons hinted that each formation of legislation that has basic validity. As a state law, all aspects of life in the areas of social, national, and state include the government should be based on the law in accordance with the national legal system. National legal system is the applicable laws in Indonesia with all its elements mutually support one another in order to anticipate and overcome problems arising in the social, civic, and state based on Pancasila and the Constitution of the Republic of Indonesia 1945. The basic of law republic of Indonesia at 1945, provide a strong constitutional basis of regional expansion and regional autonomy in Indonesia. In this connection, Francois Venter writes, that the basic characteristics of a modern constitutional state is the existence of a written constitution that has a high legal value (Quarter Tutik, 2010). Opinions above shows how important the constitution in the build of state government, including the implementation of regional autonomy. Expansion of the area as a manifestation of the spirit of regional autonomy in Indonesia has been established as a unit of territorial administration of smaller or commonly called the provincial government, local government district, and the local government of the city. Therefore, in relation to a legal ground in the setting of regional expansion, there are at least four fundamental principles in the regulation of regional expansion, namely:

- a. **Rule of law**, the rule of law lay the basis that any legal action or official agencies of state / government should be done according to the law, both the written law and unwritten. As such, any act of setting regional expansion must be done according to law. Arrangements made with the establishment of regional expansion legislation. The legislation is made based on the laws in force in the country of Indonesia. Law No. 32 of 2004 and Government Regulation (PP) No. 78 of 2007 established pursuant to the provisions of applicable law. Formation of Law 32, 2004 due to a change UUD 1945 so the earlier law is law 22, 1999 are considered no longer suitable to the development of the constitutional state, and demands implementation of regional autonomy that need to be replaced. Similarly PP 78 of 2007 established as Government Regulation No. 129 of 2000 as the implementing regulations of Law No. 32 of 1999 is no longer compatible with the constitutional development and implementation of regional autonomy demands that need to be replaced in accordance with the provisions of Article 8 of Law No. 32 of 2004. Thus the setting of regional expansion through legislation made pursuant to the law as a juridical foundation.
- b. **The principle of constitutionality**, it is the principle of the supremacy of the constitution which suggests that any formation of legislation following its cargo material must not conflict with the constitution or the constitution. Formally, this principle is guaranteed by the testing agency regulations. In Pasal 18 ayat (1) UUD RI (the basic of law of the republic Indonesia) 1945 asserted, "The unitary Republic Indonesia is divided into provincial regions and areas of the province is divided into districts and municipalities, which each province, district, and the city has a local government, which is regulated by law. Furthermore, in ayat 7 shall be that, "the composition and procedures of governance are set out in legislation. To implement the

constitutional provision was later established law governing the regional administration including regional expansion. Thus the establishment of Law No. 32 of 2004 is in the framework of the regional administration in which covering the arrangements of regional expansion in accordance with the mandate UUD RI (the basic of law of the republic of Indonesia) 1945.

- c. **The principle of democracy and the protection of the rights of the people**, as one of the juridical basis for arrangement of regional expansion require the participation of the people and openness. The participation of the people can be effected through the supervision (control) against any formation of legislation. Supervision of the people can be done directly or through representative institutions as representative people. Formation of Law 32 of 2004 through mutual discussions between the government and DPR (Regional Representative Council) as the representative institution of the people is a manifestation of people's participation in the formation of legislation. Legislations are formed based on the principle of democracy is legislation that puts the protection of the rights of the people. Satjipto Rahardjo suggests, that:

"Democracy requires citizen participation that board in all acts of state, as well as in a democratic system does not allow for discrimination against a class contained in the community (Satjipto Rahardjo, 1980) ".

From the description above, showed that the juridical formation of legislation governing regional expansion with the starting point of the rule of law, constitutionality, and the principles of democracy and the protection of people's rights as an instrument to regulate the procedure of regional expansion. In Law No. 32 of 2004 and Government Regulation No. 78 In 2007 the division of the area into two areas or more based on the three (3) requirements, namely administrative, technical, regional physical. With the mentioned requirements expected that the newly expanded area can grow, developed and able to organize regional autonomy in order to improve public services in order to accelerate the realization of optimal social welfare and in strengthening the unity of the Republic of Indonesia.

The provisions are the requirements that must be met in the process of expansion of an area. This means that the area is given the discretion to conduct regional expansion initiative throughout complying with the requirements specified. People in the area are given the freedom to express their aspirations in regional expansion. Aspiration is then followed up by recommending local governments to the central government and then submitted to the DPR. From the above, it can be concluded that the expansion of the area should be a manifestation of the willingness of the government and the people through their representatives in the DPR in the interests and needs of the people who legitimized by law. The laws Became instrument governing since laws have the power to force behavior. In this connection, Asshiddiqie in his writings argued that:

"Rule of law or the rules of law are upon us peace interpersonal life in peace or peaceful state there is always a "rust en orde". Order concerning public order and safety, while the rust with regard to peace and tranquility. Order related to the physical dimension while the rust concerns the inner dimension. Peaceful state that the final destination of legal norms lies in the balance between rust and order it, between outward and inward dimensions that produce a balance between order and peace, the security and peace (Asshiddiqie, 2011)".

The Republic of Indonesia as a country of law implies that law to guide the government in running the state government. Further Ahmad Ruslan argues, that:

"The role of legislation in the context of state law that is to be the foundation for the implementation of state and as a guide to govern well in the center in the form of laws and regulations in areas such as regions, as well as to solve social problems (Ahmad Ruslan, 2013).

This is in line with the opinion of Satjipto Rahardjo, that the law can still be used as an instrument which is used consciously to achieve certain goals (Satjipto Rahardjo, 2006). With regard to regional expansion, the arrangement in writing, the law here is to act as an instrument to regulate the regional expansion. Normatively, everything that relates to countries listed a requirement and the rule of law which is binding as a legal basis to be implemented by anyone, especially related to regional expansion that is more urgent. Implementation of state government is not in a vacuum. On social factors, political, economic and cultural influence in the administration of state government, so that it requires a set of arrangements more measurable and concrete. According to Muhammad Djafar Saidi, that the rule of written law very much in important role in the current legal nexus now and into the future, because it takes a legal certainty that comes from the rule of written law (Djafar Mohammed Saidi, 2013). Based on the above so according to write the nature of arrangement of regional expansion in Law No. 32 of 2004 and Government Regulation (PP) No. 78 years 2007 was an act of state law (in this case the legislative and executive) as the governing instrument of regional expansion procedure so as to create a definite legal basis in an effort to achieve the goal of regional expansion of regional expansion.

4.2 Effectiveness of Regional Expansion In Providing Public Service to Society in Southeast Sulawesi

1. Level of Satisfaction Over the Public Service

Pasal 2, ayat 3 UU No. 32 of 2004 expressly provides that local governments in carrying out broad autonomy with the aim of improving public welfare, public services and regional competitiveness. Therefore, it is in order to achieve local autonomy must empower communities and improve the quality of public services. Improvement of public services in the realm of regional governance is part of community empowerment. If the public is increasingly empowered, the confidence in the local government will bear the higher the public support to local governments in the implementation of governmental functions. Therefore, local governments must carry out a public service to the community in accordance with the provisions of the legislation in force. Because the public service as it will create a happy attitude and satisfied for the community, which means it has given rise to an effective public service.

Author has conducted research on several new autonomous region of the division (DOBHP) in Southeast Sulawesi Province relating to public servants conducted in several fields, namely, the field of licensing, maintenance of family card, service identity card (KTP). This is to find out how the effectiveness of the services that have been performed by the new autonomous region of the division in the province of South East Sulawesi. The author examines the public service by the local governments relating to the period of maintenance, procedures, costs, and satisfaction with the services provided. The results of research on the time period indicate the maintenance, the total number of respondents when averaged over less satisfied dominant over a period of community service by local governments DOBHP. The reason given by the respondents that although the services provided by the local government but is still considered the lack of clarity of the officers who serve on the certainty of the time limit to get a permit, people have to commute to the office asking who provide services, which serve also sometimes officers are not disciplined in the office at when the people concerned and brought the public documents, making it difficult to get information, officers sometimes present but did not immediately provide the service

Regarding the maintenance procedures, the total number of respondents when averaged the more dominant less satisfied with the maintenance procedures are carried out. The reason given by the respondents that even though the service provided has been determined in accordance with the legislation, but the facts show that the procedure is applied to the apparatus which serves assessed convoluted and discriminatory against society. Because of the persistence of differences in applying the maintenance procedures of service to the community. While the related to cost the maintenance, the total number of respondents when averaged over less dominant satisfied at the expense of maintenance incurred to obtain services. The reason given by the respondents that the facts showed people still have to pay extra in a certain amount requested by the authorities with a view to facilitate the maintenance process. In licensing, for example, even though the cost to be paid a specified amount, but still there are unscrupulous officials who exploit the situation by asking for some money to the people who will take care of licensing for reasons to be developed in order to quickly get services.

Based on the above will affect level of satisfaction community in assessing the services that have been provided by the government, especially local government DOBHP. Based on the opinion of a number of respondents surveyed indicated that when averaged over less dominant satisfied with the services performed by government DOBHP the reason given by the respondents that the ministry convoluted, no extra costs a certain amount, and discrimination in services. From the description above, the conclusion is still not optimal effectiveness of public services provided by local governments. In fact, In fact, along with the expansion of the area under decentralization is expected to be a medium or instrument in order to build an effective public service.

2. Public Facilities

Public facilities referred to in this paper is the means provided by the government in this case the local government in the form of physical facilities that are accessible to the general public in its use. Physical facilities may include facilities for education, health, roads, and so forth. A public facility is one of the means that can be said for the fulfillment of the public interest. Due to this facility relating to the interests of any person who requires the availability of such facility. Through regional expansion, it is expected that the prevalence of the availability of public facilities such as government DOBHP the course will provide the tools that to support the implementation duties and administration adequately in work units within the local government as well as a form of public service improvement by one through the development of public service facilities which can be directly accessed by the public.

Construction of public facilities is certainly expected to meet the satisfaction of the public as users of public facilities. Of course, level of satisfaction with public facilities provided by the local governments that depend on the extent to which the public judge whether the public facilities provided it is beneficial or not. From

the results of the study showed that respondents when averaged more dominant satisfied with the public facilities provided by the local government DOBHP.

3. The Government of effectiveness

Paradigm shift governance that occurred during the reform era is the right moment to redefine the model of local government in Indonesia is effective to accelerate the realization of welfare of the community. . In the period before the reform in 1998, the central government is so dominant in the conduct of day-to-day government. Local government as a level of government that is directly related to the public cannot do much to provide services to the public, with limited authority. Through a policy of regional autonomy, after the enactment of Law No. 22, 1999 which was later replaced by Law No. 32 of 2004 led to the local government has the broadest powers in conducting the affairs of government. With the authority to regulate and manage the affairs of the government to the local government, then the government administration will be performed better because the local government as the level of government closer to the people has been so understood in the context of the needs of local community livelihood. Likewise, the regional expansion is expected to be close the gap between local governments that held government affairs with society as recipients of government affairs services. From the research, the authors showed that respondents when averaged less satisfied the more dominant of the effectiveness of governance implemented.

4. The Equitable of Development

Through regional expansion expectation of equitable development becomes ideals to be realized. Because through regional expansion will be able to promote the establishment of development in areas that are far from the center of governance in parent regions. Expansion areas are also expected to further improve the sense of justice, because with the DOOPHP allow the new local governments that for more attention to the interests of the communities that have been marginalized. Stakeholders feel their interests are less noticed by the local government of its parent, so when successfully established a new autonomous regional government is expected DOBHP was more concerned with their interests.

Region expansion is a manifestation of process dynamics of social, economic, political, cultural, welfare is happening in the local community. This is a mirror of the dynamics of change and renewal that is done by all levels of society that is trying to get a better welfare of the community, the application of the concept of state welfare state Indonesia. Therefore, regional division can bring public services and improve the welfare of the people in development in Indonesia. To determine the increase equitable development in DOBHP the authors examine several factors, namely: (1) Human Development Index (HDI) which showed an increase from year to year in the HDI (Human Development Index) in which the authors carefully DOBHP, (2) Unemployment Rate, shows that the number of unemployed has decreased in number, and (3) Number of Poor, showed a decrease in the number of poor in DOBHP the authors carefully.

4.3 Factors Inhibiting Effectiveness Autonomy Results Expansion in Public Service in Southeast Sulawesi

1. The Law of Culture Factors

A component of this law culture includes all factors that determine how the legal system to obtain place logical within the framework of the cultural community property. Components can be defined law culture attitudes and values that have to do with the law and the legal system (Ahmad Ruslan, 2013). When linked to the effectiveness of regional expansion in the provision of public services, it is intended to comply with society's attitudes mechanisms and procedures to be followed in the implementation of a public service

Through regional expansion, it is expected that the public service to the community increased. In other words, that through regional expansion allows the implementation of public services can be enjoyed by society According to Lukman Sampara, service is an activity or sequence of activities that occur in the direct interaction between a person with another person or a physical machine, and provide customer satisfaction (Sampara Lukman, 2000). In view Sampara Lukman can be understood that the essence of service is an activity that provides customer satisfaction. Relating to the public services DOBHP in Southeast Sulawesi Province, based on the research the authors showed that it is still not optimal effectiveness of public services. Based on author interviews with respondents to the local government showed that the level of public awareness in following legal procedures are still lacking, as told to complete the documents immediately but slow in meeting society completeness of the documents People do not come on time as promised, it is likely to assume the maintenance officer because his mind can be influenced by the fact baksheesh apparatus being not as low as the people imagined because they are also bound by legal procedures.

2. Apparatus Factors

Apparatus as employees who work for the government to carry out the task in accordance with the legislation in force, Apparatus is a man executing within each government activity, as the actor and the driving mechanism of process in the government system. Therefore, in order that the government machinery running as

well as possible, which is in accordance with the expected goals, the apparatus must be able to understand their duties and functions and be able to implement the tasks and functions as it should. Based on the author's research, the authorities often do not provide timely service, even in the office but not on time, arrive late so that the service provided is not timely. Although basically already providing service, but the service provided is not timely, convoluted so basically affect the effectiveness of services.

3. Facility Factors

The facilities here are a means to accelerate the implementation of functions, which are provided to the public, and the public interest, such as office facilities, schools, hospitals, places of worship, roads, lighting equipment, communication equipment, transportation and others. The research authors showed in general the respondents stated that the facilities available are sufficient to DOBHP in Southeast Sulawesi. Availability of facilities to DOBHP in Southeast Sulawesi Province the researched of write showed that generally available is sufficient to support governance. Therefore, it can be concluded that adequate facilities to support local government to hold public services.

4. Financial Factors

The factors of funds is very important to the in the activities government, because almost no activity in management of governance that do not require funding. The greater the amount of funds available the more the possibility of activities that can be done. The research of write shows that the APBD (local government budget) DOBHP in Southeast Sulawesi is absorbed by personnel expenditure above 40%. That is, almost the majority of APBD used to finance personnel expenses, while the remainder is used to finance the construction sector.

VII. CONCLUSION

The nature of regulation of regional expansion is an act of state law (legislative and executive) as an instrument to regulate regional expansion procedure so as to create a definite legal basis in an effort to achieve the goal of regional expansion of regional expansion. The effectiveness of regional expansion in public services to communities in Southeast Sulawesi Province shows that it is still not optimal effectiveness of public service delivery, but along with the expansion of regional autonomy in the area is expected to be a medium or instrument in order to build an effective public service. Factors that hamper the effectiveness of a new autonomous region of the division in the provision of public services in the province of South East Sulawesi are: (1) *the law of culture* factors, the level public legal awareness in the following legal procedures are still less, as told to complete the document immediately, but the community slow to meet the completeness of the documents community does not come on time as promised tend to assume the management of it was an easy because his mind officers can be influenced by kickbacks were in fact officers behave not as low as community imagined because they are also bound by legal procedures; (2) officials Factors, officers often do not providing excellent service on time, even in the office but not timely, coming late to the service provided is not timely. Although basically already providing service, but the service provided is not timely, convoluted that basically affects the effectiveness of services, and (3) financial factors funds, that on average above 40% of large APBD ((local government budget) be used to finance to pay personnel expenses, while the remainder be used to fund the construction sector.

REFERENCES

- [1] Achmad Ruslan. 2013. *Teori Dan Panduan Praktik Pembentukan Peraturan Perundang-Undangan di Indonesia*, Cetakan Kedua, Rangkang Education, Yogyakarta.
- [2] Advisory Service Supports for Decentralization (ASSD) GTZ-CIDA-Bappenas. 2009. Naskah Akademik Rencana Pembangunan Jangka Menengah Nasional Bidang Desentralisasi.
- [3] Ateng Syafrudin. 1985. *Pasang Surut Otonomi Daerah*, Bandung, Bina Cipta.
- [4] Ateng Syafrudin. 1993. *Bacaan Pelengkap Tata Pemerintahan Di Daerah*, Badan Pendidikan Dan Pelatihan Departemen Dalam Negeri, Jakarta, hlm. 13
- [5] Bagir Manan. 1994. *Hubungan Antara Pusat dan Daerah Menurut UUD 1945*, Pustaka Sinar Harapan, Jakarta.
- [6] Bagir Manan. 1995. *Pertumbuhan dan Perkembangan Konstitusi Suatu Negara*, Mandar Maju, Bandung, hlm. 19.
- [7] Bambang Sunggono, 1997, *Metode Penelitian Hukum*, Raja Grafindo Persada, Jakarta, hlm. 91, dikutip dalam Rosmini, 2011, *Eksistensi Program Legislasi Daerah Dalam Mewujudkan Peraturan Daerah Yang Baik*, Disertasi UNHAS, Makassar, hlm. 194.
- [8] Direktorat Jenderal Otonomi Daerah Kementerian Dalam Negeri. 2011. *Laporan Hasil Evaluasi Daerah Otonom Hasil Pemekaran (EDOHP)* 2011, Jakarta.
- [9] Edie Toet Hendratno 2008, *Negara Kesatuan, Desentralisasi, dan Federalisme*, Graha Ilmu, Yogyakarta.
- [10] I Gde Pantja Astawa. 2000. *Hak Angket Dalam Sistem Ketatanegaraan Indonesia Menurut Undang-Undang Dasar 1945*, Disertasi Pascasarjana Universitas Padjadjaran, Bandung.
- [11] Jazim Hamidi, dkk. 2008. *Pembentukan Peraturan Daerah Partisipatif*, Aksara Baru, Jakarta.
- [12] Jimlly Asshiddiqie, 2008, *Menuju Negara Hukum Yang Demokratis*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, Jakarta, hlm, 144.
- [13] Jimly Asshiddiqie, 2011, *Perihal Undang-Undang*, Rajawali Pers, Jakarta.
- [14] Mahkamah Konstitusi. 2004. *Cetak Biru: Membangun Mahkamah Konstitusi Sebagai Institusi Peradilan Konstitusi Yang Modern dan Terpercaya*, Mahkamah Konstitusi Jakarta, hlm. 3dikutip dalam Alwi Wahyudi. 2012. *Hukum Tata Negara Indonesia, Dalam Perspektif Pancasila Pasca Reformasi*, Pustaka Pelajar, Yogyakarta, hlm. 87.
- [15] Marbun dalam Kata Pengantar Buku S.F. Marbun, dkk. 2004. *Dimensi-Dimensi Pemikiran Hukum Administrasi Negara*, UII Press, Yogyakarta, hlm.V.

- [16] Moh. Kusnardi dan Harmaily Ibrahim. 1988. *Pengantar Hukum Tata Negara Indonesia*, Cetakan Ketujuh, Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia dan Sinar Bakti, Jakarta.
- [17] Moh. Mahfud MD. 2007. *Perdebatan Hukum Tata Negara, Pasca Amandemen Konstitusi*, Pustaka LP3ES Indonesia, Jakarta.
- [18] Pasal 1 ayat (3) UUD 1945 Perubahan Ketiga : “Negara Indonesia adalah negara hukum”. Gagasan negara hukum (*rechtsstaat*) ini juga termuat dalam Penjelasan UUD 1945 sebelum perubahan, yang berbunyi : “Negara Indonesia berdasar atas hukum (*rechtsstaat*), tidak berdasarkan kekuasaan belaka (*machtsstaat*).
- [19] Risalah Rapat Panitia Khusus RUU Tentang Perubahan Atas Undang-Undang Nomor 22 Tahun 1999 Dan RUU Tentang Perubahan Atas Undang-Undang Nomor 25 Tahun 1999 Tentang -Perimbangan Keuangan Antara Pemerintah Pusat Dan Daerah, Tahun Sidang 2003-2004 Masa Sidang IV Rapat Ke 26 Rapat Kerja Ke 10.
- [20] Sampara Lukman, *Pengembangan Pelaksanaan Pelayanan Prima*, LAN, Jakarta, 2000.
- [21] Satjipto Rahardjo, 2006, *Ilmu Hukum*, Citra Aditya Bakti, Bandung
- [22] Satjipto Rahardjo. 1980. *Hukum, Masyarakat dan Pembangunan*, Alumni, Bandung.
- [23] Sri Soemantri. 1992. *Bunga Rampai Hukum Tata Negara Indonesia*, Alumni, Bandung.
- [24] Sri Soemantri. 2006. *Prosedur Dan Sistem Perubahan Konstitusi*, Alumni, Bandung.
- [25] Suprin Na.a. 2004. *Perda Dalam Perspektif Ilmu Perundang-Undangan*, Tadulako University Press, Palu.
- [26] Thomas Suwarta, Delapan Puluh Persen Daerah Otonomi Hasil Pemekaran Gagal, <http://politik.news.viva.co.id/news/read/164765-80--daerah-pemekaran-gagal--data-dari-mana-->, 19 September 2012, 13:39 PM.
- [27] Tititk Triwulan Tutik. 2010. *Konstruksi Hukum Tata Negara Indonesia Pasca Amandemen UUD 1945*, Kencana Prenada Media Group, Jakarta.