

# Reconstruction of Regional Autonomy to Strengthen Governor's Authority

*by* IZA RUMESTEN

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## Reconstruction of Regional Autonomy to Strengthen Governor's Authority

Bambang Sugianto<sup>1</sup>, Febrian<sup>2</sup>, Ridwan<sup>3</sup>, Iza Rumesten<sup>4</sup>

<sup>1</sup> Program Doktor Ilmu Hukum Fakultas Hukum Universitas Sriwijaya, Indonesia

<sup>2</sup> Yayasan STIH Sumpa Pemuda Palembang, Indonesia

<sup>3,4</sup> Fakultas Hukum Universitas Sriwijaya Palembang, Indonesia

[bambangugianto1969@gmail.com](mailto:bambangugianto1969@gmail.com)<sup>1</sup>, [febrian\\_zen@yahoo.com](mailto:febrian_zen@yahoo.com)<sup>2</sup>,

[ridwanrosita@yahoo.com](mailto:ridwanrosita@yahoo.com)<sup>3</sup>, [izarumestenunsri@yahoo.com](mailto:izarumestenunsri@yahoo.com)<sup>4</sup>

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### Abstract

Autonomy is one of the essences of realizing regional independence and accelerating development, so that the community will enjoy development through the role of local governments that involve the community directly in development based on local wisdom. However, in the implementation of regional autonomy, problems arise and there are still many regions that are not prosperous and unable to make it happen. To get out of the problems faced in the implementation of autonomy, reconstruction of several inhibiting factors is carried out, namely: **3** exploitation of regional income, understanding of the concept of decentralization and regional autonomy that is not yet stable, provision of inadequate regulations for implementing regional autonomy, human resources of government officials who have not fully supported the implementation of autonomy. area, corruption in the regions, a factor in the potential emergence of conflicts between regions. To get out of the problems in the implementation of autonomy, it is necessary to have the concept of strengthening the authority of the governor in regional autonomy so that the acceleration of economic growth and development will require some reconstruction of authority, namely: reconstruction of authority based on legal certainty, reconstruction of authority based on justice, reconstruction of authority based on a unitary state, and reconstruction of authority based at the provincial government level.

## 1. Introduction

The 1945 Constitution of the Republic of Indonesia in Article 18 and paragraphs

(1) The unitary state of the Republic of Indonesia is divided into provincial regions and the province is divided into regencies and cities, each of which has a regional government, which is regulated by law.

(2) The provincial, district and city governments regulate and manage their own government affairs according to the principle of autonomy and co-administration.

(5) The regional government shall exercise the widest possible autonomy, except for government affairs which are determined by law to be the affairs of the central government.

From the provisions in the article above, it is explained that Indonesia is a unitary state in the form of a republic with the *principle of decentralization* which is a joint provision and the central government as the person in charge of exercising the highest sovereignty of the state (Busroh et al., 2022). To be able to realize the goals of the state so that it is fair and equitable in development, the central government delegates some of its authority to the regions to manage and implement state goals through the principle of autonomy. (Huda, 2019)

From this problem emerged an idea and idea of vertical division of power by the government in running the government system so that it is not concentrated in one government authority, namely the central government, hence the concept of a unitary state with the *principle of decentralization was born*. This principle is in accordance with Article 4 paragraph (1) of Law Number 23 of 2014 concerning Regional Government with the aim of reducing some of the central government's authority. (Hadjon, 1987)

The authority that is partially delegated to the regional government is to the governor as a representative of the central government and the governor is always the regional head in autonomy with the aim of being able to be independent and regulate the affairs of the public interest. Delegation of authority through local governments with the aim of being able to carry out their duties and functions properly to realize accelerated and equitable development, including in creating good services for the community.

The objectives of *decentralization in regional autonomy* in government administration are in accordance with the basic principles of autonomy, namely:

- a. To strengthen the independence of innovative regions, according to the aspect of compatibility between central and regional government programs in the financial sector, there is no dependence on central government assistance. Autonomy also builds democratization in government administration in **3**engkulu.
- b. To increase the efficiency and effectiveness of the administration of local government, especially in the implementation of development and services to the community as well as to improve the development of political stability and unity, nation.

Regional autonomy is aimed at accelerating and equitable development that is imposed on regional governments by placing great authority and responsibility on the regions (Setianingsih, 2015). This great authority and responsibility of the government is expected to be able to provide change and high motivation in the utilization of regional potential with the aim of increasing economic growth and local governments that will be independent with no dependence on financial assistance to carry out development.<sup>1</sup>

In the course of autonomy to form an independent region and there is no financial dependence from the central government for development and improving people's welfare so that they can get out of poverty this has not materialized, including for regions with special regional autonomy status, poor and delays in economic growth are still a problem. main.

To create independence and innovation for the regions, it is necessary to reconstruct the regional autonomy system, including regions under special autonomy, where we see that autonomous regions and special autonomy are included in the poorest provinces and economic growth is very low. One of the efforts to optimize regional autonomy is to strengthen the authority of the governor as the head of the regional government while still strengthening the unitary state and increasing the level of community welfare.

Special arrangements through the reconstruction of authority in implementing autonomy will support the acceleration and distribution of development so that it is more advanced and development is more equitable. development with the support of authority in managing regional potential.

The problems that will be identified in the writing are as follows:

1. What are the obstacles to the implementation of regional autonomy for the acceleration and equitable distribution of development.
2. How is the concept of strengthening the governor's authority in regional autonomy?

## 2. Research Method

The type of research used in the research is legal research. In this study, the researcher examines and will solve the legal issues that occur to the obstacles to the implementation of regional autonomy and how the concept of strengthening the governor's authority in regional autonomy.

To support research and solve legal issues in this study, the author uses several legal materials, both primary legal materials and secondary legal materials. The primary legal material consists of several statutory regulations and court decisions related to regional autonomy, while the secondary legal materials consist of books, legal journals and expert opinion related to autonomy.

<sup>1</sup>In the 1945 Constitution of the Republic of Indonesia which has undergone four changes (amendments) from 1999-2001

### 3. Results and Discussion

#### a. Obstacles to the implementation of regional autonomy for the acceleration and equitable distribution of development.

The enactment of regional government laws, especially in the regulation of regional autonomy in Indonesia from the beginning of independence until now, and finally Law Number 23 of 2014 concerning Regional Government has not contributed much to the acceleration of development in several regional governments, including in several regions, other provinces in Indonesia that have limited resources in the area. Especially for local governments whose human resources and natural resources are limited.

The limited potential of natural resources and human resources, as well as weak management in governance become problems, including the issue of authority in the regions, are one of the factors that become obstacles in addition to several other factors that hinder regional independence in the implementation of autonomy. With the existence of broad authority in strengthening the governor's authority, with the aim that the regional government in this case the governor by innovati<sup>6</sup> the program will be optimistic to be able to change the unfavorable situation in the implementation of regional autonomy.

However, in the midst of optimism that the acceleration, equitable distribution of development and increased economic growth can work, of course it can also raise a concern that regional autonomy will also have some problems and problems, if the problems and problems faced are not immediately carried out and seek solutions. This will complicate regional efforts to promote the welfare of its people.

There are several problems that are feared in the implementation of autonomy, if the problems are always left unchecked, it will have a very bad impact on the implementation of regional autonomy. There are several problems that are inhibiting factors in the implementation of regional autonomy in Bengkulu Province, namely:

#### 1) Regional income exploitation factors

One of the consequences or consequences of the implementation of autonomy in the regions, is that the authority of a region will be greater in its financial management, starting from the process of collecting revenues to the allocation of the use of regional revenues. In this kind of authority, there will actually be inherent risks, or inherent risks in the authority of regional financial management.

Overexploitation of natural resource management and other resources in obtaining optimal regional income must be encouraged, so that regions must have sufficient funds to finance all activities, both routine and other activities, namely development.

Activities like this in the management of excessive resources, this results in many regions being trapped in traditional patterns to obtain regional income.

namely intensifying the collection of taxes and levies which the community will be increasingly burdened with. For local governments, optimizing the collection of taxes and levies will be very easy and easy to implement because of the cohesive power possessed by government institutions.

If studied in depth, intensification for income generation that tends to be exploited will actually bring new problems in the long term, rather than short-term economic benefits for the region. The problems faced when overexploiting resources are:

- a) The amount of taxes and levies will be too heavy a burden that must be borne by the community, even though the taxes and levies collected from the people are of small value but are a burden to the people, moreover taxes and levies are charged to people who do not have adequate income.
- b) The obligation of taxes and levies will be in contradiction with the government's efforts to move the economy in the region, the large number of levies will only increase economic costs which in the end will only burden and harm the economic development of the local area. This attitude, in contrast to the purpose of regulation where local governments want to attract as many investors as possible, why at the same time it reduces the interest of investors to invest.

One of the factors of exploitation of these resources as an obstacle does not mean that exploitation is not beneficial to the region, but the problem is that the licensing authority and management process are more under the authority of the central government, so that Bengkulu has the potential for natural resources including coal mining and other mining not managed by the local government. This encourages starting from licensing and management should be submitted to the authority of the governor.

### 3 2) Factors Understanding of the concept of decentralization and regional autonomy is not yet steady.

Decentralization and regional autonomy are still looking for an ideal format, so that up to now they often undergo changes, these changes have given birth to several special autonomy for a region. The granting of autonomy when viewed as a whole has not experienced a very significant change in the regions. For example, the concept of special autonomy for several provinces, including the new one is West Papua, including the division of regions, in the division of regions between one region and another there is unequal treatment, this is one of the obstacles to acceleration and jealousy of the central government arises.

The granting of autonomy is aimed at increasing the efficiency and effectiveness of work towards the administration of a regional government, regional autonomy as a vehicle for democratic political education in the regions, including also to maintain a unitary state or national integration. To realize the dynamics of democracy in government administration starting from the regions and providing broad opportunities for the government to innovate and for the community to be able to have a career in politics and government.

Autonomy in addition to regional independence, is also to realize a clean and authoritative government, therefore an understanding of the concepts of decentralization and autonomy must be solid. Based on Law no. 23 of 2014 with the amendment of Law no. 9 of 2015 concerning Regional Government and Law no. 33 of 2004 concerning Central and Regional Financial Balance, repealed by Law No.1 of 2022 concerning Financial Relations between the Central Government and Regional Governments. With the enactment of this law, it appears that a large number of government functions have been transferred from the central government to local governments in many ways bypassing the provinces, based on both rules

. Based on these two laws, all public service functions except defense, foreign affairs, monetary and fiscal policy, trade and legal affairs, have been transferred to autonomous regions. This means that the district and city governments assume a responsibility in almost all sectors including public services such as health services, education services, and infrastructure, while the provincial government acts as coordinator and supervision of public service tasks.

If you look at article 10 paragraph 1 of Law No. 23 of 2014 concerning Regional Government, it means that other tasks that are not mentioned in the regional government law are the authority and responsibility of the regional government. The law can reflect a political reality and it can be seen that these Indonesian citizens mostly want a wider role and authority for local governments to manage their own household affairs. However, in reality, good local governance has not yet been implemented in Indonesia, even though a decentralized system has been implemented.

The human resource factor and mentality of the government apparatus, both central and local governments, have not undergone any fundamental changes and still think that autonomy can stand alone without the support of good human resources. This happens because changes in the system in government management are not accompanied by strengthening the quality of human resources which is the main factor and supports the new government system.

The expected public service is a bureaucracy that fully owns and dedicates itself to meeting the needs of the people as service users in an ideal public service. To realize a form of public service that is in accordance with the principle of decentralization, a radical paradigm shift is needed from the bureaucratic apparatus as the main element in achieving good local governance.

### **3) Factors that provide regulations for the implementation of regional autonomy are not sufficient.**

Regulation of regional autonomy through parliaments in the regions will grow into a real and new political force, which recently the legislative body (DPRD) can independently and freely make regulations related to intervention of political interests and influence by the government. In the end, many regulations are ineffective and detrimental to society.

In terms of autonomy, regional regulations and policies should be self-determined at the regional level based on an agreement between the regional government and the Regional People's Representative Council (DPRD). This is needed considering the attraction of interests through regulation is often an obstacle, there are at least two main reasons why this can happen, namely first, the central government in this case has never been serious in granting autonomy rights to local governments. Both decentralizations have made local government overzealous which eventually got out of control among some political elites in the regions, giving rise to very strong regional sentiments.

The emergence of the term son of the region including religious and ethnic issues that surface everywhere that represents regional sentiment which is manifested through a kind of necessity that the leadership and bureaucratic apparatus in the area must be occupied by the community and original figures from the area concerned, this ends up creating a bureaucracy and unprofessional leadership.

The relationship between the central government and regional governments is still tug of war and also still holds a threat as well as hope, in terms of a threat because many demands that lead to the disintegration of a nation are getting bigger, on the grounds of injustice to the regions given by the central government which was finally granted. Regional autonomy or special autonomy is not the goal of increasing the standard of living and the economy in the region, but the political factor that is more dominant in the formation and granting of regional autonomy.

The granting of autonomy from political factors is seen in the provinces of Papua and West Papua and the provinces of Aceh, which finally and until now have not seen a positive effect from the local government, in fact the provinces are categorized as the poorest provinces. Thus, special regulations in other forms are given to autonomous regions, so that the goal of forming a regional government with autonomy can be realized.

#### **4) Factors of human resources of government officials who have not fully supported the implementation of regional autonomy.**

The enactment of regional autonomy is a mandate given to local governments to carry out basic constitutional rights for the community, namely increasing the people's standard of living, prospering the people, and educating the people. Meeting the main and basic needs becomes the philosophical foundation of regional autonomy which is the main obligation of the regional government and is able to organize a government and succeed in creating and prospering the people in the region.

The realization of a prosperous society and local government capable of being independent in the economic field and equitable development in accordance with the vision and mission of a healthy region can be realized through increasing the capacity and competence of the regional government through qualified human resources in implementing the bureaucracy in the region.



<sup>2</sup> The implementation of regional autonomy can only run as well as possible if human resources as apparatus and bureaucracy have good integrity, in the sense that they must have mentality, morality and capacity. The importance of the position of the bureaucracy in the content of humans with integrity, where humans are the implementers because humans are dynamic things in government organizations that act and function as the driving subject of the wheels of government organizations.

As a driving force in the bureaucracy, if the government is filled with bureaucracy with inadequate quality capacity and mentality, it will naturally give birth or have an impact on unfavorable implications for regional autonomy administrators.

##### 5) The factor of corruption in the region.

The rise of the phenomenon of corruption in the reform era carried out by all sectors of local government is a challenge and an obstacle to the success of regional autonomy. This phenomenon has long been a concern in the autonomy era for many people related to the implementation of regional autonomy, the thought of shifting corrupt practices from the center to local governments.

This factor is increasingly reasoned as one of the obstacles to regional autonomy, this is proven by many public officials including governors, regents and mayors who still have a habit of wasting public money for the benefit of their families, by having luxurious facilities and taking vacations including other activities that require money. many. This phenomenon does not only affect the executive, but also occurs in many members of the legislature with the power they have together with the executive to play the APBD for the common good.

Corruption cases are almost evenly distributed in the regions, especially in the Bengkulu Provincial Government which involves three governors and several regents, which in the end has an impact on accelerating development, due to regional financial management not in accordance with its designation. Corruption occurs in very systematic regional autonomy, starting with the management and discussion of the APBD, <sup>3</sup> the placement of bureaucratic officials, including in the basic service sector, both in the fields of education and health. What is very ironic is that corruption or extortion is carried out in the public service sector and this permit is clearly detrimental to the community directly by local government officials.

The provision of excessive facilities without being followed by a regulation and direct supervision of regional heads is also evidence of the local government's indiscretion in managing regional finances, both APBD funds and direct assistance funds from the central government. From the socio-political aspect, regional heads and regional officials are often trapped and playing games in the management of grant funds from third parties to regional officials, other parties, especially grantees, can be said to have a close relationship with the regional head.

#### 6) factors for the potential for inter-regional conflicts to arise

Regional autonomy as a manifestation of the principle of decentralization not only has a positive effect on the economy and accelerates development, but also has consequences for vertical and horizontal conflicts that result in slow regional development, connectivity between regions, public services and the decline in people's trust.

This vertical conflict is caused where each party (provincial government and district/city government) cannot understand its position and does not apply effectively from the concurrent authority given to the provincial government and to autonomous regions. The struggle for authority in this case is mostly in sectors related to economic resources and cross-border mining. Meanwhile, this horizontal conflict involves many local political elites, both formal and informal, who do not want to understand their respective positions which emphasize their respective ethnocentrism (culture and customs), including the problem of egoism in the struggle for power. Greed and greed for power and material do not see wider interests.

Within the framework of conflict resolution, one of the obstacles to autonomy, whether vertical conflict or horizontal conflict is needed an intervention in the form of clear regulations and institutions so that the conflicting parties can work together and interact with each other and communicate with the principle of a partnership between the government and other parties.

#### b. The concept of strengthening the governor's authority in regional autonomy.

The reconstruction of the governor's authority through the restructuring of regional autonomy, is aimed at accelerating development in Indonesia, the rearrangement is also due to a change in the "restoration" of the existing autonomous system which is seen as not being able to bring about very significant changes in certain regions. Reconstruction is carried out in the sense of rearranging or rearranging the legal concept that regulates the "legal policy" of regional autonomy to be better and in accordance with the main objective of establishing a regional government. (Abdullah, 2011)

Rearrangement of autonomy through a reconstruction concept with the aim of reviewing and evaluating how the implementation of autonomy has been so far, whether the implementation of autonomy in regional governments can provide positive values related to the actions and authorities of local governments to be able to take care of their own household affairs, take care of their own households. one of the embodiments in which the regional government is not dependent on the central government both in terms of finance, licensing and managing the potential of existing resources in the region by paying attention to local wisdom. (Syaukani et al., 2002)

Autonomy also allows the region to provide positive values to the people of Indonesia, especially the people in Bengkulu will be able to compete with other

provinces both in the field of infrastructure development, human resources including the field of natural resource management. (Basri, 1919)

The journey of autonomy as mandated by Article 18 of the 1945 Constitution which is regulated through Law No. 23 of 2014 has not brought many major changes to several provinces in Indonesia (Abdullah, 2011) . Especially for Bengkulu Province, it can be seen from the index of development and economic growth of Bengkulu Province, which is the poorest area. Various government efforts to issue regulations related to autonomy as a positive law for the acceleration and equitable distribution of development carried out so far have not changed too much, revoked and replaced several regulations, the last one being Law No. 23 of 2014 and perfected by Law No. 9 of 2015, including the enactment of Law no. 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments.

Changes in several rules related to autonomy in regional governments are aimed at ensuring legal certainty, avoiding diversity in implementing and interpreting the nature of autonomy in providing protection for authority and existence to regional governments with the aim that development and economic growth can be fair and equitable.

Although there have been several changes to the laws and regulations related to regional autonomy, these regulations include Law no. 5 of 1974, Law no. 22 of 1999, Law No. 32 of 2004 and finally Law No. 23 of 2014 with the latest amendment to Law No. 9 of 2015, including several laws and regulations governing special autonomy. It can be said that all regulations have not been successful and have not been able to touch the subject matter of the objectives and nature of regional autonomy itself.

The problems and main objectives of autonomy to be able to establish and create a regional independence (Syaukani et al., 2002) will have an impact and lead to legal certainty through regulation so that the region in this case the Provincial Government can determine the direction of regulation through the authority it receives from the central government. , So that the regional government, in this case the governor, is the representative of the central government in the region and the governor is the head of the autonomous region.'

#### 1. Reconstruction of Authority Free from Legal Certainty

The definition of reconstruction in the Big Indonesian Dictionary is derived from the word "construction" which means development which is then added with the suffix "re" in the word construction to become "reconstruction" which means rearranging the original concept (Kbbi, 2016) . In Black Law Dictionary explains, *reconstruction is the act or process of rebuilding, recreating or reorganizing something* , "reconstruction here is defined as the process of rebuilding or re-creating or reorganizing something." (Black et al., 1999) . Meanwhile, BN Marbun reconstruction is the return of something to its original place in the form of a

compilation or depiction that is rearranged as it was at the original time (Marbun, 2002).

Reconstruction in question is to build or restore something based on the original incident, in the reconstruction there are basic values that become standards that remain in the activity of rebuilding something according to its original condition. To rebuild something, whether it is events, historical phenomena, to the basic concepts of thought that have been issued by previous thinkers. (Nugroho, 2018)

The obligation in reconstruction is to look at all sides so that later what is trying to be rebuilt is in accordance with the actual situation and avoids excessive subjectivity. In this reconstruction, it is associated with concepts or ideas or ideas related to the authority of autonomous regional governments, this reconstruction as a process to rebuild or rearrange according to the true nature of what autonomy is. According to Satjipto Rahardjo, regulation or law is a tool for engineering or rearranging which in nature can force reforms in the bureaucracy. (Rahardjo, 1981)

If the reconstruction is related to the concept or idea of the issue of authority in office, it must be followed by a reconstruction of the rules "law", legal reconstruction is defined as a process to rebuild or rearrange ideas, each legal formulation must be interpreted according to its own context as an instrument in the administration of government, carried out by state institutions, whether institutions in the central government or local government institutions.

While "legal certainty" is epistemologically "certainty" comes from the word "definitely" with the prefix "ke" and the suffix "an", and the word definite can be interpreted as fixed, must, and of course. In the Big Indonesian Dictionary, the definition of certainty is a certain (state) thing (it is fixed) or interpreted as a provision and determination (Khbi, 2016). While "law" in Indonesian is a rule that comes from the word "huk'mun" in Arabic which can be interpreted as "to determine". Whereas in English it is called *law*, for German and Dutch it is called *das/hest* or *recht*. While the law in French means "le droit", in Spanish "el derecho" which means rights. (Kusumohamidjojo, 2019)

Thus etymologically it can be said simply that "law" is a matter of establishing something that is straight and true, but universally until now the understanding of law is not that simple to interpret it, so that until now the standard legal understanding has not been agreed upon and understanding the law depends on where do we see the law (Suseno, 1991). In another sense, law can also be interpreted as a norm or rule that regulates and binds in social relations, including in the management of the state. (Shidarta, 2006)

So the sentence "legal certainty" is a provision or stipulation made by the legal apparatus of a country that is able to guarantee the rights and obligations of every citizen. Thus, in other words, legal certainty refers to every clear, permanent and consistent application of the law where its implementation cannot be influenced by subjective circumstances. (Duswara, 2003)

Meanwhile, according to Gustav Radbruch quoted by Muhammad Erwin in his book *Critical Reflections on the law*, explains that in law there are three basic values (*grundwerten*) which are the objectives of law, namely justice (*gerechtigkeit*), expediency (*zweckmaessigkeit*) and the value of legal certainty (*rechtssicherheit*). As a reflection of the thought of the three basic values of law, a definite law, a just law, and a just law must also provide benefits and the three basic values must go hand in hand in order to achieve the essence of a law. (Erwin & Arpan, 2011)

Certainty in a legal regulation contains the legal principles that form the basis for its formation. According to Satjipto Rahardjo that legal principles can be interpreted as the "heart" in legal legislation, so to understand a legal regulation it is necessary to have a legal principle. In other languages, according to Karl Larenz in his book "*Methodenlehre der Rechtswissenschaft*" concludes that legal principles are ethical legal measures that provide direction to law formation. (Rahardjo, 2000)

Therefore, the legal principle related to the legal formation of the problem of reconstructing the governor's authority as a bridge between the general regulations of regional autonomy and special regulations in the management of regional government requires legal certainty. The presence of this principle is interpreted as a condition where there is legal guarantee in the authority that has concrete power for the organizers of the country concerned.

The existence of the principle of legal certainty is a form of protection for the government against the duties and authorities in acting to create sustainable local government management (MS Mertokusumo & Pitlo, 1993). This statement is in line with Van Apeldoorn's opinion that legal certainty has two sides, namely that it can be determined by the law itself in concrete terms in legal security. On the other hand, legal certainty can also provide direction on what to do so that the act can provide guarantees, and legal certainty refers to clear, permanent and consistent implementation where implementation is not influenced or interfered by other parties who have an interest. (Prayogo, 2018)

Article 18 paragraph (1) of the 1945 Constitution affirms that Indonesia "The Unitary State of the Republic of Indonesia is divided into provincial regions and the provincial regions are divided into regencies and cities, where each province, district and city has a regional government, which is regulated by law, -law." This article clearly explains the position of the provincial government in the Unitary State of the Republic of Indonesia, if this article is linked with Article 10 Paragraph (1) of Law No. 23 of 2014 relating to the principle of regional autonomy, the limits of authority that are not delegated are the fields of foreign policy, defense, national and religious security, judicial, monetary and fiscal.

The relationship between these two articles is related to the existence of a provincial government and the authority of the governor is quite clear, but in reality and regulations issued by the central government are not in line with the main objective of the principle of decentralization in the implementation of regional autonomy. The existence of regional (provincial) government as

described in Article 18 Paragraph (1) of the 1945 Constitution which is a reference in the field of regional government regulation to achieve state goals.

Indonesia as a state of law (*rechtsstaat* and *rule of law*) for the realization of the principle of legal certainty in relation to regional autonomy regulations in the *rechtsstaat* state combined with the principle of justice in the *rule of law* state in the implementation of regional autonomy (Mahfud, 2006). with the vertical division of power between the central government and the provincial government in a modern state (*welfare state*) with the authority owned by the regions is not clear (Mustafa, 1990) , with the difference in the location of authority between the central government and the regions on the philosophy of state which is based on the Pancasila philosophy on the precepts third (Hadjon, 1987) . Therefore, the development of legal politics in the reconstruction of the authority of state institutions (governors) must be based on the basic values of autonomy.

The logical consequence in a state of law with the reconstruction of the governor's authority in a legal state that adheres to a written legal system (*civil law system*) as in Indonesia, legal certainty is guaranteed by being written down with regulatory rules on autonomy issues in a legal state (Gautama & Law, 1983) . The principle of decentralization in the rule of law in regional autonomy are the principles that form the basis for the reconstruction of the governor's authority in reorganizing the nature of autonomy.

The principle of legal certainty can also be called the starting point in the formation of legislation and interpretation in understanding epistemologically of regional autonomy. According to several experts, one of them Sudikno Mertokusumo explained another aspect, namely the legal principle is a *logical ratio* in legal arrangement, the legal principle (*rechtsbeginsel*) is a the basic and general nature of thought is the background for the formation of concrete rules (positive law) and can be found by looking for general characteristics in understanding autonomy. The legal principle here is not a concrete legal rule but as a basis, so that the formation of autonomous regulations does not go out of its essence.<sup>2</sup>

According to Van Apeldoorn, legal certainty is a guarantee in action, and actions are carried out based on a given authority and do not conflict with positive law, so that decisions or *beschikking* can be carried out properly (Van, 1990) . Meanwhile, according to Achmad Ali, understanding the term legal certainty is very broad in scope, depending on the position where we see it, as for the elements of legal certainty, among others (Ali, 2009) : *first* , that law is positive law which is defined by law as statutory regulations (*gesetzliches recht*); *secondly* that this law is based on a fact (*faitsacheb*) not a formulation of the judgment to be made by the judge; *third*, that the facts are formulated in a clear way so as to avoid mistakes in the meaning of the law, and the law is easy to implement; and the *four* positive laws should not be changed frequently.

<sup>2</sup> Sugipto Rohaepa, 2006. *Legal Studies*. Publisher Citra Adita Bakti, Bandung, p. 81

The same thing was stated by Bernard Areif in his book *Reflections on the Structure of Legal Studies* who quoted Prof. Scheltema's opinion saying that the main principles contained in legal certainty are as follows: (Sidharta, 2009)

1. The principle of legality, constitutionality and the rule of law;
2. The principle of law stipulates various sets of regulations on how the government and officials carry out or carry out government actions;
3. *non-retroactive* principle means that before binding legislation, the law must first be promulgated and promulgated properly;
4. The principle of a judiciary that is free, independent, impartial and objective, rational, fair and humane;
5. The principle of *nonliquet* judges may not reject cases because the law does not exist or is unclear;
6. Human rights must be formulated and their protection guaranteed in the constitution.

Michael Jefferson explained that legal certainty in the implementation of a statutory regulation there are several conditions and consequences that exist as the main principle of legal certainty, namely: (a) the law should not be vague so that it gives birth to multiple interpretations, (b) the legislature is prohibited from creating laws that apply universally, retroactive, (c) the judiciary is prohibited from creating new offenses, and (d) the laws and regulations must be interpreted strictly. These four things become basic instruments for lawmakers and implementers, so that there is no *abuse of power*. (Marullang, 2017)

The idea of legal certainty in legislation will occur through the formulation of a positivist legal basis, this is due to the formation of law in the sense that regional government legislation must be based on the principle of certainty and as optimally as possible based on the basic values of autonomy (Hadjon, 1987). ), and one of the problems is the existence of vague or unclear norms that give birth to discretionary authority or great authority to interpret the law. With unclear norms, conflicts of authority arise between the central and regional governments in implementing autonomy.

Meanwhile, Franz Magnis Suseno in understanding legal certainty behind the *principle of legality*, actually there is a *principle of ethical legitimacy* that can provide legitimacy for state authority (government) based on moral principles, meanwhile *legality* provides functions to the state so that functions (obligations to manage the state) are carried out in accordance with law. applicable. *Legality* is held to prevent the decline of a country into authoritarian conditions and actions, meaning that legality is the most important element in the concept of a state of law, because morally, state politics can be carried out and carry out tasks based on the principle of legal certainty. (Mahendra Oka, 2004)

In the formation of legal rules (laws) for local government, the main principle must be built in order to create clarity on the legal regulations, this principle is the principle of legal certainty (S. Mertokusumo, 1919). Legal certainty is very important and most essential in the rules that regulate and have a guarantee to

carry out the authority by the governor as a form of legality principle in carrying out the rights and obligations for the management of regional government.

The authority of the governor as the administrator of the regional government cannot act arbitrarily, what is meant by this arbitrariness is defined as the governor as the representative of the central government in the region and the governor as the head of the autonomous region in obtaining and obtaining authority based on delegation by the central government through statutory regulations. . The essence of legal certainty within the governor's authority in the concept of a state of law is not merely a formulation, but the law made must be clear and firm and there are no vague formulations.

In relation to the reconstruction of authority based on legal certainty in the rule of law, this is the main principle as the basis for the formation of legislation as positive law based on legal certainty which is a reflection of the principle of legality as a benchmark for the validity of the actions of government officials in carrying out their authority, so that the existence of local government regulations become a legal instrument for those who are given the authority.

Theoretically, the principle of legality associated with the reconstruction of the governor's authority consists of two types, namely:

1. The principle of formal legality is that this principle establishes the basis for forming and determining an act of a regional official (governor) which is justified based on authority so that it does not deviate from the actions of state administration, and the actions of officials before they are carried out must have rules that already regulate it.
2. The principle of material legality is the basic values in the formation of regulations relating to the reconstruction of the governor's authority regarding the contents of the regulations to be developed that must not conflict with the constitution of a country as the highest source of law. This means that the relationship between the central government and the regions on the material basis becomes a vertical unit and does not stand alone in exercising its authority.

The principle of formal legality in the reconstruction of the governor's authority to ensure the legality of an authority is regulated based on Article 18 paragraph (7) of the 1945 Constitution, explaining the structure and procedures for the administration of regional governments, where further arrangements relating to authority will be regulated by law, while the principle of material legality related to the content of the regulations must not be separated from and contradict the 1945 Constitution and Pancasila by maintaining the values of local wisdom based on democracy.

In that context, the reconstruction of the governor's authority based on legal certainty in legal reform in the field of autonomy in accordance with the objectives of legal politics will be aimed at the formation of the future law from *ius constituendum* to a law, *ius constitutum* must reflect and based on the value of certainty, this is aimed at the governor in exercising his authority not there are doubts and the governor's actions relating to authority are public legal acts, and



the provincial government has a number of powers to impose laws on citizens. The meaning of the governor's authority in reconstruction must be clear and unequivocal about his authority as a representative of the central government, and his position as head of an autonomous region must be stated in the law.

## **2. Justice-based Reconstruction of Authority**

The nature of the law is a set of rules or rules that are arranged in a system that determines what people can and cannot do (legal subjects) (Ali, 2002) . The law is sourced both from the community itself, as well as from other sources that are recognized by the highest authority (government) in society and are actually enforced by government administrators in state life.

Law was born because of instrumental demands against the government, and law cannot be separated from the existence of a government, because as Donald Black said that "law is social control by the government" and law is not all legal rules made by the government (in the broad sense that includes legislative, executive and judicial powers), but a rule can only be said to be a rule of law, if its entry into force gains legitimacy by a government. (Ali, 2002)

Justice is closely related to law, this can be seen from the provisions of Article 28D Paragraph (1) of the 1945 Constitution which states 'everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law', it is explicitly written that justice In law, it has a function as a measure as well as the purpose of the law itself. Measures of justice are often interpreted differently and justice itself has many dimensions in various fields and justice is moral integrity in an institution (Rawls, 2020) , for example economic justice, development justice and legal justice itself.

Talking about justice is something that is always the main topic in solving problems related to law enforcement. As is known, the term justice is always contradicted with the term injustice, where there is a concept of justice, there is a concept of injustice and the two concepts are juxtaposed in the context of legal studies and there are many legal issues that are not resolved because they are drawn to political issues.

Justice comes from the word "fair" which means not arbitrary, impartial, impartial, in a fair decision it means that a decision or attitude made by state administrators in their actions is based on objective norms. Justice is basically a relative concept, and everyone understands that justice will not be equal and fair according to one is not necessarily fair to the other. Justice must be relevant to public order where justice varies greatly from one place to another, and justice is actually determined by the community in accordance with the public order of the community. (Santoso, 2014)

Understanding the meaning of "justice" (Wiwoho, 2017) itself has long been a serious conversation since the beginning of the emergence of Greek philosophy. The discussion of justice has a very broad scope, ranging from ethical, philosophical, legal, to social justice. According to John Rawls in his book *A Theory of Justice* , justice is the main policy in social institutions as well as truth in

the system of thought (Rawls, 2020) . To know what is fair and what is unfair is not a big policy, moreover justice is linked to positive legal rules, as an action must be carried out in accordance with legal norms and how to uphold justice. To be fair seems easy enough, but of course that is not the case in the application of state life. (Jonaedi Efendi, 2018)

Justice is actually a continuous condition, harmony and harmony that brings peace in people's hearts and if disturbed will result in shock, Justice does not make someone neutral when something unfair happens, thus it can be said that justice always contains an element of appreciation. , judgment, or judgment. In everyday life. in reality, human justice can be seen if people are meritorious, then they must receive a gift (*reward*) and if people make mistakes, they must receive punishments that are commensurate with their mistakes (*punishment*) .

In the administration of government justice, it is an idea and a legal goal for the realization of community welfare through regional autonomy (Nasution, 2015) . The essence of the organizers of the government itself rests on the idea of justice and moral strength. The idea of justice can not be separated and separated from the law as the goal of the state. (Lili & Arief, 1987)

According to Ulpian, there are three principles in understanding and recognizing justice, namely *honeste vivere, alterium non ledere and sum quique tribuere* (living with respect, not disturbing others, and giving everyone their share). what is good, right and right in life. Thus justice is binding on everyone, both the community and state administrators (Tanya & Bana, 2011) . Meanwhile, according to Rudolf Stammeler explained that justice is an effort or action that leads to positive law as an effort with coercive sanctions towards something just (*zwangversach zuon richtigen*) . (Theo, 1995)

Therefore, justice is an effort and action to direct positive law to legal ideals, and legal ideals arise in society as basic principles in the administration of the state, the principles being the norm for justice or injustice in law. A good law if the law is really towards the social ideals of certain communities that can provide change (Theo, 1995) . According to A. Hamid S. Attamimi, a just law is a positive law that has a nature that is directed by legal ideals to achieve the goals of society in the state. (Indrati, 2007)

### 3. Reconstruction of Authority based on Unitary State

Talking about the form of the state, it can be classified into two, namely the *unitary state (unitary state, eenheidsstaat)* and the *union state (federal, bond2staat)*. (Prasetyo & Bernard, 2005) . In Indonesia, it is noted that based on a long struggle to give birth and determine the form of the Indonesian state, through the process of sacrifice from all elements of the nation who are united and have the spirit of nationalism to oppose imperialism or colonialization, this challenge and struggle gave birth to and established Indonesia which was agreed upon in the form of Indonesia as a unitary state. . (Abdullah, 2011)

With the Decree of 5 July 1959, one of its contents returned to the 1945 Constitution of the Republic of Indonesia (UUD 1945) which was a national

agreement that redefined the Indonesian state in the form of a unitary state. This can be seen in Article 1 paragraph (1) of the 1945 Constitution which states; "The State of Indonesia is a Unitary State in the form of a Republic". to explain the form of state adopted by Indonesia is a unitary state. While the term "Republic" explains that the system of government adopted by the Indonesian state to carry out the life of the nation and state is the Republic system headed by the President. (Riau, 2020)

The form of a *unitary state* was chosen by *The Founding Fathers* Indonesia through a discussion process in the Investigating Agency for Preparatory Efforts for Indonesian Independence and the Preparatory Committee for Indonesian Independence (BPUPKI-PPKI), and friends and on the other hand who wants an independent Indonesian state to be a federal state spearheaded by M. Hatta. (Muhammad, 1959)

The unitary state according to Cohen and Peterson can be understood where the state as a unit where the central government exercises the highest sovereignty in the state (Huda, 2019) . Meanwhile, according to CF Strong, explaining the essence of a unitary state is a sovereign state that is not divided, or in other words a state whose central government power is not limited because the unitary state constitution does not recognize the existence of a law-making body other than the central government agency, so that the central government can carry out its duties, effectively and activities can be monitored and limited by law, all government units must obey and obey the central government. (Strong, 1960)

In a unitary state, the parts of the country are called local governments, this term is used to refer to a territorial part that has its own government in the country (Huda, 2019) , the word regional government (*gebiedsdeel*) to explain that there is an environment formed to divide the unity in the country. In its environment, it is called a region (*gebied*) or in other words, a region means part of an element of a larger unit, and the central government in an autonomous region is an authority that is given and not stipulated by the constitution as the essence of a unitary state. (Soemantri, 1981)

nature or essence of a unitary state (*unitary state*) from two sides, namely from the side of sovereignty and the composition of the state administrative system (Riyanto, 2006) . *First*, in terms of sovereignty, there is a unitary state in which sovereignty is not divided or in other words, the power of the central government is not limited because the *unitary state constitution* does not recognize other legislative bodies other than the central legislature. *Second* , the essence of a unitary state is from a state structure where the power of government and the state is composed of a single state or in other words a state that does not consist of several countries as contained in a federated state (*landsstaat*).

The power and authority of local governments (regional legislatures) to make regulations for their own regions (Perda) does not mean that local governments are sovereign because the highest control in a unitary state remains in the hands of the central government. The principle of undivided sovereignty as contained

in the unitary state is in accordance with the real principle of sovereignty which is indivisible. (Budiardjo, 2003)

According to Thorsten V. Kalijarvi in the book Introduction to Political Science by Fred Isjwara (Isjwara, 1964) , the unitary state is a state with a single structure, there is one government, namely the central government with the consequence that all government affairs become the authority of the central government which is stipulated through the constitution of the unitary state. A unitary state with a centralized system in which all power is concentrated in one or several central organs without a division of power between the central government and the government of parts of the country, and local government is only part of the central government which acts as representatives of the central government to carry out local administration. (Isjwara, 1964)

The unitary state divides its territory into several autonomous regions, and each autonomous region is given the power by the central government to take care of its own household affairs which is then called a unitary state with a decentralized system (*unitary state by decentralization*). (Riyanto, 2006) . On the other hand, a unitary state that does not divide its territory into several autonomous regions or only makes its territory administrative is a unitary state with a centralized system (*unitary state by centralization*) . In a unitary state with a centralized system, all government affairs are regulated and managed by the central government, while local governments have no authority. Therefore, government affairs in a unitary state with a centralized system are carried out through two principles, namely the principle of centralization and the principle of concentration.

According to (Soehino, 1980) , the principle of centralization is a principle that requires that all power and government affairs belong to the central government, while the principle of concentration is a principle that requires all power and government affairs to be carried out by the central government alone. The existence of a unitary state with a centralized system is now very limited in number, but still exists today, for example Singapore and other unitary states which are relatively small in terms of population, area and social fragmentation, especially ethnicity, race, ethnicity, religion, culture and language. (Riyanto, 2006)

The formation of a unitary state, <sup>3</sup>with the aim of maintaining the unity and integrity of the state is one of the reasons for the central government to dominate the implementation of government affairs, by setting aside the role and rights of local governments to be directly involved and the existence of regional independence in managing all existing potential (SDA) for the benefit of the region. . The dominance of the central government over government affairs resulted in the relationship between the central government and local governments in a unitary state being disharmonious or even in certain matters

<sup>3</sup>S. Endang Poesyowati . 2011. Observing the Conception of a Unitary State with the Widest Autonomy System, *Journal of PROGRESSIVE JUSTICE*, Volume 2 No. September issue, pp 137-146

which were very worrying so that the idea of the regions to turn into a federal state emerged.<sup>4</sup>

A unitary state with a federalistic decentralization system is a unitary state that is characterized by a federal state because it adopts the principle of decentralization with an emphasis on regional autonomy, adopts the very limited deconcentration principle and adopts the federation principle of the union state in the administration of a unitary state (Riyanto, 2006) , a confederalistic decentralization system because it adopts the principle of decentralization with an emphasis on regional autonomy, adopts a very limited deconcentration principle that adopts the principle of confederation of confederate states in the administration of a unitary state.<sup>5</sup>

From several concepts of a unitary state when it is associated with the Unitary State of the Republic of Indonesia, where Indonesia with such a large area is in the form of an archipelago consisting of thousands of islands and flanked by two oceans and two continents and with a large population, then Indonesia has its own problems in the country. unity with a decentralized principle system, besides the above which is a problem in managing the government, there are also other problems between them, which are caused by the diversity of cultures and customs that are different from each other, so it is called *Bhinneka Tunggal Ika*.<sup>6</sup>

Based on the above view, it shows that in a unitary state there is no *shared* sovereignty and sovereignty is only in the hands of the state or the central government, while regional governments as implication in a unitary state only have power that is domiciled in the center. Representative institutions in the regions (DPRD) only have the authority as regulatory power to make regional regulations that do not conflict with the products of the central legislative body (DPR) and their products in higher laws.

The administration of the state, in this case the authority of the president as head of government, can *review legislation* on regional regulations and cancel them, if these regulations are deemed to be contrary to higher laws and regulations, so that the essence of a unitary state is absolute sovereignty with the central government. Meanwhile, the power in regional government is a delegation from the central government, and the delegated power can at any time be withdrawn or abolished again on the sovereignty of the government, even though in the regions there are bodies or institutions that make laws and regulations that do not have power.<sup>7</sup>

Thus, in a unitary state there are several shortcomings, namely: *first* in a unitary state the workload of the central government tends to be excessive, *secondly* due to the existence of a remote government administrative center resulting in insensitivity to the problems faced by the community in the region, resulting in a lack of attention and interest in the region. *Third* , there should be

<sup>4</sup>Amnal Sakaedja, 2012, *Constitutional Law and State Administrative Law in Seychelles Fiji Perspective*, Sinar Grafika, Jakarta, p. 114  
<sup>5</sup>*Ibid.*, p. 361

<sup>6</sup>A. Ubaidillah and Abdi Rozak, 2013, *Partisipasi, Demokrasi, Human Rights, and Civil Society*, Prenada Media Group Publisher Eighth printing, Jakarta , p. 123

<sup>7</sup>Amrial J Prang, 2015, *Local Government Law " The Context of Symetric and Asymmetric Autonomy "*, Publisher Bina Etikosa, Lhokseumawe Aceh, p. 3

no regions that voice their rights that are different from other regions, on the grounds of centralization so that all services must be the same which results in frequent resistance and conflict with the regions.<sup>8</sup>

Meanwhile, according to Jimly Asshiddiqie,<sup>9</sup> who quoted John Locke's opinion, there are different views in understanding the unitary state in exercising its sovereignty which describes people's sovereignty, which can be distinguished between popular sovereignty which was dissolved in the *first treaty*, where when the state was formed it was part of the people's sovereignty, it remains in the hands of the people, and the sovereignty of the people can be used at any time in determining state policies and appointing officials through general elections or a referendum (*second treaty*).<sup>10</sup>

From several theories, the unitary state in general looks more at its authority, whether the authority is centralized in the central government as a whole or some authorities are delegated to local governments. Delegation of authority to local governments does not explain explicitly, whether to the provincial government and district/city governments, this is why until now the understanding of regional autonomy is still debated regarding the scope of authority of the two regions (provincial and district/city) in carrying out their authority. .

In connection with the reconstruction of the governor's authority, so as not to change the basic concept of autonomy in the State of Indonesia, the reconstruction within the authority remains based on the principles of a unitary state. As for the reconstruction of authority based on a unitary state as intended by this author, with the aim of having limitations in the reconstruction of authority so that it will not conflict with the 1945 Constitution. This reconstruction also reaffirms the functions and authorities of the governor through regional autonomy regulations regulated by law.

Based on the unity-based concept of authority, regions in carrying out their duties and authorities may not take or touch the authority of the central government, namely the foreign policy sector, the defense sector, the security sector, the judicial sector, the national monetary and fiscal sector and the religious sector. Of these, the regions have the authority to manage them for the benefit of the people within the Unitary State of the Republic of Indonesia. The authority outside the authority of the central government must be fully delegated to the provincial government as part of the national government.

#### 4. Reconstruction of Authority based at the Provincial Government level

In the government system, it can be understood as a system of governance relations between state institutions. According to Jimly Asshiddiqie, in understanding the government system, it is divided into 3 (three) categories, namely the presidential system of government (*presidential system*), parliamentary government system (*parliamentary system*), and mixed system of

<sup>8</sup> K. Ramasathan, 2005, *Principles of political science*, Fajar Bakti Sdn. Bhd., Selangor, Malaysia, p. 142

<sup>9</sup> Jimly Asshiddiqie, 2005, *Procedural law for Judicial Review*, Yurif Watanegara Publisher, Jakarta, p. 32

<sup>10</sup> *Ibid*, p. 33

government (*mixed system or hybrid system*) . The system of government in the country can run well with the existence of organs and institutions as a government organization in which there are and have duties and functions in the administration of government. (Busroh et al., 2022)

As a country by implementing a government system that is headed directly by the president, the State of Indonesia has a composition where the management of the government (cabinet and regional government) is directly accountable to the president and the position of regional government which is a vertical unit in the government system which is the principle of a unitary state, namely holders of the highest authority over all state affairs is the central government and the provincial government as representatives of the central government domiciled in the regions.

Indonesia with a very wide area with geographical conditions in the form of an archipelago, this is one of the problems in the single principle of power that exists in the central government so that the guidance, supervision and equitable distribution of development will often face obstacles. Thus, to be able to coordinate with government units that are far away and difficult to reach, a regulation is needed to get out of these problems, namely by applying the principle of decentralization.

The provincial government which is the unitary government of Indonesia is a consequence that arises from the granting of authority in order to maintain the integrity of the unitary state and each of them is not the same in the distribution of authority. Such an arrangement shows that there is a tug of war of interest (provincial and district/city governments) in institutional relations. According to Bagir Manan, the attraction of interests as an extension of the central government and regional heads as part of regional government creates disharmony as a result of identifying various forms of authority, overlapping between government agencies and the rules that apply at both the central and regional levels.

Many authority disputes (provincial and district/city governments) including in the licensing sector as well as regulatory issues in the regions are the main problems, where the central government revokes many regional regulations (Perda) which are considered problematic, including regulations that hamper economic growth a lot, regions and extending the process of bureaucratic pathways that are considered to hinder the licensing and investment processes and hinder the ease of doing business. Many regulations that the government claims are contrary to higher regulations and do not reflect tolerance, need harmonization between provincial and district/city authorities in relation to regulations.

Constitutionally, autonomy is enforced as widely as possible, even autonomous regions are given the right to regulate and manage themselves some government affairs, but there is a mistake in understanding the true essence of the principles of decentralization and autonomy. special rules in several sectors which are often dissimilar in their placement and the tug-of-war between the

central and regional governments, as well as between the provincial and district/city governments.

The basic problem with the governor's authority related to regional autonomy related to the authority of the central government and district/city governments in government organization<sup>2</sup> has given rise to multiple interpretations, it can be seen that some authorities from the district/city government directly coordinate to the central government so that the provincial government is left in coordination, including that there are several activities for the provincial strategic program that lack the support of the district/city governments.

Starting from this issue in the reconstruction of autonomy where the governor as the representative of the central government in the regions and the governor as the regional head, it is necessary to strengthen the authority. The strengthening of the authority in question is that broad autonomy and responsibility rests with the provincial government, so that the centralistic relationship between the provincial government and the regencies/municipalities can run well, including other authorities possessed by the governor in the form of supervision, coordination and guidance can run well.

Thus, it is necessary to restructure related to the powers and authorities of governors which have been considered less effective in managing the government, on the other hand, district/city governments assume that the authority of the administrative area is to elect the district/city governments. Therefore, in implementing the principle of decentralization, it is necessary to strengthen the governor's authority in the formulation of reconstruction at the provincial government level, as for the formulation of strengthening the authority in the governor's position as regional head. From the concept of autonomy will give birth to the independence of the territory and not a form of freedom of a region.

#### **4. Conclusion**

From the description of the problems above, it can be concluded that several obstacles in the implementation of regional autonomy so that the acceleration of economic growth and development does not materialize<sup>3</sup> including the exploitation of regional income, the understanding factor of the concept of decentralization and regional autonomy that is not yet stable, the factor of providing regulations for implementing regional autonomy which has not been established<sup>2</sup> adequate, HR factors of government officials who have not fully supported the implementation of regional autonomy, Factors of corruption in the regions and factors of the potential for conflicts between<sup>6</sup> regions. Regarding the concept of strengthening the governor's authority in regional autonomy in order to realize the acceleration of economic growth and development, several reconstructions of authority are needed, namely the reconstruction of authority



based on legal certainty , the reconstruction of authority based on justice, the reconstruction of authority based on a unitary state and the reconstruction of authority based on the provincial government level.

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