



## Legal Politics of Optimising the Implementation of Regional Autonomy in Urban Areas: Perspective of Smart City Concept

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### Article Info

#### Article history:

Received 25 October 2023

Received in revised form 19

November 2023

Accepted 29 November 2023

#### Keywords:

Legal Politics

Smart City

Regional Autonomy

Urban Areas

### Abstract

Urban regions face numerous challenges in implementing regional autonomy. The smart city concept has been implemented by cities in various countries to tackle these issues. This article aims to comprehend and assess the political laws selected by the Indonesian government to address the challenges of implementing regional autonomy in urban areas using smart city concepts and indicators. The research method employed was normative research through a statutory regulations approach, in addition to a conceptual approach. The research material was secondary data comprising primary legal materials as well as secondary legal materials amassed via online and offline research at the library. The data was then analyzed in a descriptive manner. The analysis results demonstrate that numerous Indonesian cities have introduced smart city indicators. However, these indicators lack a legal foundation referencing smart city standards. The absence of specific regulations for smart cities in Indonesia has resulted in unstructured and immeasurable implementation. In Indonesia, the closest legal regulations or policies to the concept of a smart city are those outlined in Government Regulation Number 38 of 2017 concerning Innovation. Going forward, it is necessary to establish legal guidelines that contain specific standards for smart cities, from inception to implementation, in order to enhance regional autonomy in urban areas.

## Introduction

It is generally understood that Indonesia constitutionally adopts a system of vertical dispersal of power (decentralisation) through delegation of authority by granting regional autonomy to autonomous regions. The formal juridical basis for the implementation of regional government can be seen in Article 1 paragraph (1), Article 4 paragraph (1) and Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The purpose of governance through vertical dispersion of power is to ease the work of the central government by transferring various tasks of the central government to local governments (Bagir Manan, 2004).

Following up on Article 18(1) of the 1945 Constitution, at the end of 2014 the House of Representatives and the President passed Law No. 23/2014 on Regional Government. In the general provisions, it is formulated that autonomous regions are regions that have the authority to regulate and manage government affairs and the interests of local communities according to their own initiatives based on community aspirations, in the implementation of government affairs which fall under their authority. autonomous regions are led by regional heads.

Returning to the purpose of dissolution of power, in a political perspective there are several reasons for choosing a decentralised government, relevant to this paper, namely realising effective and efficient government, accountable government and ensuring political stability (Susanto, 2019). With regard to the complexity of the duties of the head of the region and

realising the objectives of decentralisation, it gives a message that in the administration of regional government, a regional apparatus unit is needed to assist the administration of government affairs.

Referring to the objectives of governance by implementing the principle of decentralisation, local governments have the challenge of formulating relevant and appropriate policies. In Indonesia, there is a division of local government units, namely the Provincial Government and Regency and City Governments. In connection with the government whose status as a city, it is explained that the city status area has its own challenges to optimise governance, this is based on previous research concluding that 50 percent of the world's 3.3 billion population lives in urban areas, this condition causes cities to become the centre of social interaction, In the end, this condition triggers the birth of various problems such as increasing the workload of the city, decreasing the quality of the environment due to the high activity of using fuel-based transportation that is not environmentally friendly, heavy traffic, rapid decline in the quality of public facilities and infrastructure, decreasing the quality of public service performance, triggering an increase in poverty, and other social problems (Igor Vojnovic, 2014).

Previous research that revealed and confirmed that local governments that administered the government in the city status area had a variety of challenges to achieve the objectives of implementing regional autonomy, this phenomenon became an alarm to immediately find a way out through legal politics as an instrument used by the government to achieve the ideals of the nation in terms of containing the direction and content of the law directed at answering the problems of the city (Sudiana, 2013).

In response to the challenges of governance in urban areas, many cities around the world have chosen to adopt smart city policies (Zaheer Allam and Peter Newman, 2018). The smart city concept has been accepted as a solution to various problems of city government administration realised by the use of high technology (Dameri, 2015). Urban scholars have long sought a concept of urban management that leverages the role of computerised big data, where cities are integrated and cities are self-regulating (Amy & Neibolo, 2016).

Indonesia as a state of law which is emphasised in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia requires that all government actions or actions must have a legal basis, this is in line with the teaching in state administrative law that the government is bound by the principle of legality known as "wetmatigheid van bestuur" Parikesit, R. A. (2021). Based on this description, this article focuses on analysing the legal politics of smart city regulation in Indonesia to optimise the implementation of regional autonomy.

## **Methods**

To answer the focus of the problem, normative research is used with a statutory approach and a conceptual approach. Normative research focuses on finding secondary data consisting of primary legal materials in the form of laws and regulations and all binding government policies, as well as using secondary legal materials consisting of books and journals. The collection of primary and secondary legal materials was conducted through offline and online library research by focusing on legal materials that correlate with smart cities. Data consisting of primary and secondary legal materials that have been collected, then sorted, validated, and analysed based on the needs of the discussion subchapters. The data that has been processed is presented descriptively to present the real conditions, in this case the policy has been made by the institution authorised to form laws and regulations relating to smart cities (Mamonto, & Gani, 2022).

## Results and Discussion

### Regional Autonomy as the Right to Organize and Manage Region

The classic teaching in legal science is the norm system as taught by scholars who have been accepted throughout the world and taught in all law faculties, that law as a system has levels or tiers (Herlin et al., 2020). In connection with these teachings, in the context of state administration, including Indonesia, the constitution is the basic norm that guides the administration of the state in Indonesia, concretised in the 1945 Constitution of the Republic of Indonesia.

One of the aspects regulated in the 1945 Constitution of the Republic of Indonesia is the agreement on the form of the state as stipulated in Article 1 paragraph (1) "The State of Indonesia is a Unitary State in the Form of a Republic", the use of the phrase "Unitary State" is an affirmation of the form of state adopted by Indonesia is a state without structure or only recognizes one sovereign body known as the Central Government.

Theoretically, experts explain the nature of the unitary state: centralised (unitary state by centralisation) and some are decentralised (unitary state by decentralisation) (Susanto, 2019). In a unitary state with a centralised system, all government affairs become the authority of the central government and are carried out by the central government itself. Meanwhile, in a unitary state with a decentralised system, some government affairs (which are not essential) are handed over by the central government to autonomous regional governments. Basic government affairs remain the authority of the central government (Ultsani et al., 2019).

It is generally understood that the choice of a country to adopt a decentralised unitary state form requires the formation of autonomous regions as regions that have regional autonomy, Bray explains that regional autonomy is the transfer of authority from higher government units to lower government units to make all decisions related to the use of various resources owned by the government (Sufianto, D, 2020). Wasistiono also explained, in principle, regional autonomy is the right of a legal community unit to regulate and manage its own household freely (Dwiyanasny & Wardhani, 2019).

### Basis for the Implementation Regional Autonomy in Indonesia

Indonesia, as a unitary state, was agreed by the framers of the 1945 Constitution of the Republic of Indonesia to be decentralised. This agreement is stipulated in Article 18 that "The Unitary State of the Republic of Indonesia is divided into provinces and the provinces are divided into districts and cities, where each local government is given the right to regulate and manage government affairs according to the principles of autonomy and assistance.

Based on the teachings of legal scholars that the constitution contains general norms, it confirms that the provisions in the Constitution require further arrangements, including the procedures for the implementation of regional autonomy. If you read various references, it is explained that the regulation of the implementation of regional autonomy in Indonesia has undergone a long journey, at the end of 2014 it was agreed to replace Law Number 32 of 2004 concerning Regional Government with Law Number 23 of 2014 concerning Regional Government as amended several times.

If you read the preamble, which contains a brief description of the main thoughts that are considered and the reasons for forming laws and regulations, it contains elements: philosophical, sociological, and juridical (Anggono, 2020). The main idea of the formation of laws on regional government is to accelerate the realisation of community welfare through improved services, empowerment, and community participation, as well as increasing regional

competitiveness by taking into account various other aspects, Article 1 point 6 of Law Number 23 of 2014 concerning Regional Government stipulates that the government is given the right, authority, obligation to regulate and manage its own government affairs and the interests of local communities (regional autonomy).

To achieve the objectives of implementing regional autonomy, an important aspect that must be understood is its purpose, explained by Hoessein, the purpose of regional autonomy is to reduce the burden on the central government in order to achieve efficiency and effectiveness of services to the community, more effective use of resources, strengthening development planning from below, increasing national unity and unity and political validity of the government by providing greater opportunities for the community to recognise the problems faced and convey them to these government agencies (Fatmawati, 2000). Fundamentally, the administration of decentralisation and the granting of regional autonomy are intended to optimise Dewey's (1983) functions of government: a) service delivery; b) regulatory function; c) development function; d) representative function; e) coordination function (Santoso, 2007).

### **The Smart City Concept as an Idea for the Optimisation of the Implementation of Regional Autonomy in Urban Areas**

The noble intention contained in the preamble of the regional government law that the implementation of regional autonomy is intended to accelerate the realisation of community welfare through improved services, empowerment, and community participation, as well as increasing regional competitiveness is both an opportunity and a challenge for regional governments.

Urban local governments face the challenge of the urbanisation phenomenon, as data released by the United Nations in 2008 showed that 50 percent of the world's 3.3 billion people live in urban areas and it is predicted that by 2030 it will reach 5 billion people (Vojnovic, 2014).

Data showing that the world's population in urban areas reaches 50 per cent of the total world population makes cities the centre of social interaction, which has an impact on increasing the city's workload, reducing the quality of public services, reducing the quality of facilities and infrastructure, traffic, pollution, the environment, poverty and various other social problems. This condition is a warning of the need for a policy to solve these problems.

Conceptually, the idea offered as a potential solution to the problems associated with increasing urbanisation and addressing sustainability needs is the smart city (Allam & Newman, 2018). In many parts of the world, the concept of smart cities has been accepted as a solution to various urban problems identified with the use of high technology (Dameri et al., 2019). Urban designers and engineers have long been searching for concepts about managing cities using the role of big data computerisation, therefore in achieving smart city development urban designers and engineers highlight integrated and self-regulating cities (Glasmeier & Nebiolo, 2016).

The concept of smart city in various parts of the world is introduced with various terms and definitions, for example, stated by Caragilu and Nijkamp at the Central European Conference in Regional Science that for example wired city, intelligent city, digital city, technocity, and so on (Caragliu et al., 2013).

Likewise, the notion of smart city is interpreted differently, namely smart city is a city that performs well built on a smart combination of support and self-determining activities, independent and conscious society (Giffinger & Suitner, 2017). In addition, the view that is also widely used in understanding smart cities is that smart cities are when investment in human and social capital and traditional transport and modern communication infrastructure trigger sustainable economic growth and high quality of life, with wise management of natural

resources, through participatory governance (Dameri, 2013). Furthermore, with regard to people in realising smart cities, the OECD underlines that people are an important component of the realisation of smart cities: they are not only the target of smart city initiatives, but they must also be smart. The description provides a reminder that people's use of technology should benefit and become capital in order to support the economic and social development of their city.

Cities that choose a path like the developed cities in the world, should be able to understand the purpose of using technology in urban management on how technology is directed at improving the quality of urban space, in the form of reducing pollution, reducing traffic congestion, increasing building efficiency, sharing information, and supporting communication and democracy (Alessandro Aurigi, 2005). Smart city aims to improve the quality of life of people living in the city with indicators of smart living, environment, utility, economy, mobility, people (Di Bella & Leporatti, 2015).

The big concept of smart city is sustainable city, smart city requires further examination of the values that drive the results of smart technology, how technology solves problems in cities, gather various information through technology to improve convenience, facilitate mobility, increase efficiency, save energy, improve air and water quality, identify problems and fix them quickly, recover quickly from disasters, collect data for better decisions, use resources effectively, and share data to enable cross collaboration. Furthermore, according to Andrea and Chiara, smart cities are expected to answer welfare issues or in other words, smart cities are able to produce the best quality of life (Caragliu & Del Bo, 2012).

Drawing on the views of various experts, it sheds light on the dimensions that influence the implementation of smart cities, including: (a) the technological dimension, which is the main characteristic of the smart city concept, where traditional city management switches to a digital system through the use of technology. However, what is important to underline is how technology is utilised to manage government policies; (b) the Human Resources dimension, as a general phenomenon, the availability of technology is sometimes unable to make the city a smart city due to the low understanding of the transformation of traditional (manual) systems to digital systems both to the government (Government Officials) and the community; (c) the institutional dimension, in this section the key to the implementation of the first and second dimensions is the government's commitment both in the form of legal basis and budgeting.

To measure the concept of smart city, we will start by situating the characteristics formulated by countries that first started the journey of city management based on the smart city concept. In 2007 in Vienna at the Centre of Regional Science meeting, 6 (six) smart city characteristics were proposed, namely: Firstly, smart economy, in this aspect it is not only about the provision of goods and services but how to generate innovation, increase competitiveness and entrepreneurial education through the use of technology to support countries and cities.

Second, smart people, a characteristic that requires the availability of formal education services evenly based on information technology (IT) and communities that are accommodated in creativity containers with the ability to use information technology, this emphasises the elimination of the digital utilisation gap in society and efforts to improve the quality of Human Resources.

Third, smart Government, a characteristic that specifically emphasises the role of government in terms of governance through cooperation between government and society with community empowerment and participation with the aim of realising clean, transparent, effective, efficient and accountable governance and improving the quality of democracy.

Fourth, smart mobility, a characteristic that is placed to solve problems that threaten the life of the city, namely transportation and mobility, the fulfilment of these characteristics is marked by integrating the transportation system using the Intelligence Transport System (ITS).

Fifth, smart environment, socialising a smart environment through the utilisation of natural resources with the use of applications and computers in the form of sensor networks and wireless sensor networks. The details are Virtual Computing Environment, Physical Environment and Human Environment.

Sixth, smart living, there are requirements, criteria and goals for the process of managing a better and smarter quality of life and culture.

### **Implementation of the Smart City Concept in Several Cities in Indonesia**

As a welfare state, Indonesia has determined the state's goal to promote public welfare as stated in the preamble of the 1945 Constitution of the Republic of Indonesia (Elviandri et al., 2019). This has several consequences for governance, namely that the state (government) is required to always play an active role in interfering in the social and economic life of the community. For this reason, the government is delegated the task of social services (bestuurszorg) or public service (Ansori, 2017). The more developed the civilisation of society, the more developed the demands and rights of the community for public services and development. Along with that, the wider and more diverse the tasks of the government.

In Indonesia itself, the Smart City concept has begun to be implemented in a number of cities and regions (Manguluang, 2016). The implementation of the smart city concept in Indonesia has started to run, among others, in the cities of Bandung, Surabaya, Yogyakarta, Makassar and others (Hidayatulloh, 2016). Two of them, namely Bandung and Surabaya, are often considered as pioneers of smart city development in Indonesia, judging by the many awards that have been won by these two cities (Pramesti et al., 2020). However, most Smart city implementations in several major cities in Indonesia are only based on legal arrangements at the regional level in the form of Regional Regulations, regional head regulations (regelend) or a series of policy regulations (beleidsregel). For example, the Yogyakarta City Government issued Yogyakarta Mayor Regulation Number 15 of 2015 concerning E-Government, even the Smart city implementation policy in Bandung City is only based on the Bandung Mayor Decree Number: 130/Kep.860-Bappeda/2014 concerning the Bandung Smart City Development Board, the Bandung City Information and Communication Technology (ICT) Master Plan 2013-2018 and through a Joint Agreement between the Company (Persero) PT Telekomunikasi Indonesia, Tbk and the Bandung City Government Number: 555/2425-Diskominfo concerning the Development and Implementation of Bandung Smart city (Santoso & Rahmadanita, 2020).

In addition to the various formal forms, some of the basic regulations in terms of substance are still partial and sectoral, so they do not illustrate a comprehensive, connected and interconnected smart city development concept. The Smart City concept in Indonesia is translated into different programmes. Jakarta implemented the Smart City Lounge, as a centre for public service complaints related to problems in Jakarta, such as flooding, garbage, crime and social problems in Jakarta. Bandung City Government designed various applications, including Hay U (for online licensing), SIP (for sub-district report card by citizens), online citizen complaint. The Makassar City Government launched the Smart Card as a payment and management system for the government, while Bekasi presents various applications related to government administration such as the Absence Application, Sikerja Application, Bekasi Iconic Application, and the Wilaya Spatial Plan Rapo Application which is integrated with the Command Centre (Widodo & Permatasari, 2020).

A number of research results related to the assessment of implementation show that the application of the smart city concept in several cities in Indonesia is still focused on technological development, and still ignores the human dimension (Rahmadanita et al., 2018). Whereas according to Giffinger, to be considered as smart city-based development, it must holistically cover 6 (six) dimensions of life, namely smart living, smart environment, smart mobility, smart governance, smart people, and smart economy (Giffinger et al., 2007). The Kompas-ITB Maturity Model even suggests twelve dimensions with three aspects: social, economic and environmental. The only concept that is somewhat different is applied by Yogyakarta City, which builds its smart city concept under the big umbrella of Smart Culture which is divided into 2 areas, namely Smart Education and Smart Tourism. This large concept was taken because the city of Yogyakarta has been very thick with its culture and is known as a city of education and a city of tourism (Faidat & Khozin, 2018).

Many parties claim that the successful implementation of an E-Government system is the realisation of a smart city. In fact, the application of technology in the governance of government administration is only one of the characteristics and objectives in the smart city concept. On a broader scale, the Smart City Programme should target the fields of public services, transportation services, education, environment and health services, with the aim of providing convenience and benefits for the achievement of a quality society (Meijer & Bolívar 2016). Therefore, the government itself must realise that technology alone is not enough to make a city smarter because technology is only a tool to achieve the smart condition of a smart city (Wibowo, 2018).

### **Ambiguity Legal Politics of Smart City Regulation in Indonesia**

One of the causes of the unsustainable and not fully effective implementation of smart cities in Indonesia is the absence of a national and integrated regulatory policy. In fact, until now there is no legal regulation that specifically regulates the issue of smart city development in Indonesia, let alone related to the characteristics, standards and guidelines for its implementation. For example, the provisions for smart city-based development are currently only contained in the document "Guidelines for preparing Smart City Master Plans through the 100 Smart City Movement in Indonesia" prepared by the Ministry of Communication and Information Technology (Kemkominfo). The document also explains that the Guide is only a tool for local governments in the process of planning, implementing, monitoring and evaluating the development of cities/regencies based on the Smart City concept. In addition, there is a Roadmap from the Ministry of Public Works and Housing (PUPR) in 2015 regarding the masterplan of 35 strategic development areas (WPS), which mentions sustainable smart cities.

Some argue that the legal basis of smart city-based development policies can be drawn from a number of regulations related to E-Government systems such as Presidential Instruction Number 3 of 2003 dated 9 June 2003 on National Policy and Strategy for E-Government Development and Law Number 14 of 2008 on Public Information Disclosure. However, all parties are aware that these regulations are very sectoral and cannot be used as a legal umbrella for smart city implementation which is very broad in scope.

The only regulation that comes close to its connotation with the implementation of the smart city concept is Government Regulation Number 38 of 2017 on Regional Innovation. Article 1 point 1 defines Regional Innovation as all forms of renewal in the administration of Regional Government. Furthermore, it is explained that Regional Innovation aims to improve the performance of Regional Government administration. The Government Regulation also states that the forms of Regional Innovations include: innovations in Regional Governance; Public Service innovations; and/or other Regional Innovations in accordance with Government

Affairs which fall under the authority of the Region. However, the Government Regulation does not mention the development of smart cities or the term smart city.

The lack of clarity regarding the regulation of the smart city concept seems to show that the central government is not serious in realising smart cities in Indonesia. This is evidenced by the regulations that do not yet exist, as well as the basic concepts of smart cities that have not been thoroughly understood, both by the central and regional governments. In fact, the legal basis is an important point in the application of a policy that can be implemented. If it is to be promoted as a movement, the government should issue legislation, either in the form of laws, Government Regulations (PP) or Presidential Regulations (Perpres) that specifically regulate smart cities and their implementation.

Ideally, as a state of law, a clear legal basis must be established for every state administration, including in terms of public services and urban development. First, the principle of *wetmatigheid van bestuur* or what is commonly referred to as the principle of legality in governance law, emphasises a government that is run based on laws or regulations (Mustamu, 2014). This is solely aimed at ensuring the implementation of government and development in accordance with the rule of law and guarantees the human rights of citizens.

As a consequence of the rule of law, government power cannot be separated from the principle of legality, which on the one hand aims to ensure legal certainty and the basis for authority in action. On the other hand, the principle of legality aims to provide legal protection for everyone from possible arbitrary actions taken by the government. As stated by Indroharto, with the principle of legality (*wetmatigheid van bestuur*), the power and authority to act of the government has been predictable from the start. Government authority based on statutory provisions makes it easy for the public to know about it, so that the public can adjust it. The consequence of this principle means that every action of state administrative bodies/officials must be based on formal laws, as a manifestation of recognition and respect for popular sovereignty (Rokhim, 2013).

So far, smart city development policies in various regions have only been seen as innovations that rely on the discretion and initiative of local governments. Discretion in the perspective of Law Number 30 of 2014 concerning Government Administration is defined as Decisions and / or Actions determined and / or carried out by Government Officials to overcome concrete problems encountered in the administration of government, in the event that the laws and regulations provide options, do not regulate, are incomplete or unclear, and / or there is government stagnation.

In essence, discretion is needed to complement the principle of legality, but at the practical level, this has the potential to cause a number of polemics. First, discretion does not originate from a specific regulatory basis, but from the principles of good governance and public interest, but it is not uncommon for the use of discretion by public officials under the pretext of the public interest to sacrifice people's rights (Susilo, 2015). This authority provides breadth and freedom for the government to interpret existing circumstances and regulations so that it is prone to abuse (*detournement de pouvoir*) (Guslan, 2018). Second, because it is not based on concrete rules, discretion requires legitimacy of circumstances (government stagnation) and requires courage from government officials in making legal breakthroughs. It is not uncommon for an act of discretion to lead to maladministration and even be suspected of criminal acts of corruption (Ansori, 2015). This causes not many government officials to dare to take this option. Third, if some big cities have more progressive and adaptive regional heads in responding to smart city development, then smart cities can automatically be implemented, but

there is no imperative obligation for governments in other regions to establish the same policy. This will actually cause inequality and development gaps between regions to widen.

Reflecting on this, it is necessary to formulate a concrete regulation of the smart city concept. This is important in order to determine the direction of policy or legal politics for smart city development in Indonesia. Based on the explanation of the urgency of smart city regulation, it is necessary to conduct a juridical-constitutional review in order to formulate a more integrated, clear and firm regulation in the future. The Smart city concept also needs to be harmonised with the 1945 Constitution of the Republic of Indonesia as the state constitution. This is solely so that existing development policies do not deviate from the ideals of realising a prosperous, just and prosperous Indonesian nation as mandated by the constitution.

## Conclusion

Several Indonesian cities have integrated indicators of the smart city concept into their regional autonomy plans. However, there is currently no legal framework in place that specifically regulates or standardises the implementation of smart cities in Indonesia, thus hindering the optimisation of regional autonomy through the use of the smart city concept. The implementation of smart cities often falls short of established standards and indicators, which undermines the optimal execution of regional autonomy in urban areas. According to the study, smart city regulation in Indonesia remains fragmented, with the closest legislation being Government Regulation Number 38 of 2017, which pertains to innovation. In order to optimize the implementation of regional autonomy in urban areas, objective legal policies are necessary. The policies should lead to the creation of specific regulations which govern the implementation of smart cities from start to finish. These legal policies will provide the government with a framework for implementing their actions in administration.

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