REGIONAL AUTONOMY IN INDONESIA
(An analysis on Fiscal Decentralization Policy supporting Local Governance according to the Law No 32/2004 and No 33/2004)[1]

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Abstract

The decentralization policy and regional autonomy stipulated in the Law No 22/1999 on local government which has been launched by the Government of the Republic of Indonesia since January 2000, is a spirit within the framework of total reform in all aspect of life of the Indonesia nation and people. Reform is more emphasized to realize the creation of civil society in the administrative, social and state affairs which have "Good Governance" values which created democratic value and transparency, honesty and justice attitude which has people interest oriented character and accountability to the people.

It has been positive impact of this total reform viewed from political and administrative context, that there has been a shifting of paradigm from "centralistic government towards decentralized government" by giving opportunity to the region in term of extensive and accountable regional autonomy to regulate and manage the interest of local society in accordance with their own initiative based on the aspiration of the society, participation of the people and concern of democracy.

It is therefore, the birth of the Law No 22/1999 on Local Government complemented by the birth of the Law No 25/1999 on Central and Regional Financial Proportion, and the updates of Law No 32/2004 and No 33/2004 is supposed to be considered very important, since through implementing of these Laws, it is expected to bring about changes to the life of regional government and supporting local governance which would be able to realize a democratic development of local government administration in the effort of bringing closer relations between the government and its people, which in turn would promote the services, empowerment, social-justice and prosperity of the people as a whole.

Keywords*: Decentralization policy, Local government, Regional autonomy.*

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1. THE PHILOSOFICAL BACKGROUND

The discussion on decentralization and regional autonomy based on the assumption that the relationship between the government and the governed, likewise the relationships between Central Government and Local Government, which is the classical problem in political science.

The main problem is how far the society and local government have the discretionary power to move and initiate within the environment of the state sovereignty, and also how far the local society could be able to influence the state policy. This is the basic thought of decentralization and autonomy concept which should be viewed as a political phenomenon and public administration as well.

New paradigm of decentralization is a challenging for the State and Nation of Indonesia in terms of understanding that *unity of the Nation is prerequisite.* In other words, although we adopt the decentralization policy, and most of the authority have been given to local government, it does not mean that local government has been separated from the national government, but a local government is a sub-system of national government, that mean the local government is subordinated by national government, the local government is an integral part of the Unitary State of Republic of Indonesia.

The Government of the Unitary State of the Republic of Indonesia, is not involved to the system for *"Centralism"* in governmental power, but adopted *the principle of decentralization* in terms of *devolution of power* to local authorities, as stated at the constitution that the Unitary State of the Republic of Indonesia is divided into provinces and the province is divided into kabupaten (regency) and cities.

The Government of the Republic of Indonesia gave some authorities to the provinces and kabupaten (regency) to regulate and manage their government for the benefit and prosperity of the people in the region based on the laws created by the central government. This is the broad discretion given to the regional and local government by the central government. In the policy of Indonesia decentralization, especially on the distribution of power between central and local government is based on the principles of *broad, real and accountable autonomy*.

The broad autonomy means the discretionary power carried out by the local government covering all the authorities of governmental affairs, except *the political foreign policies; security and defense; justice; national monetary and fiscal policy, and religion*, and other discretions which will be stipulated by law or by the governmental regulations.

The real autonomy means that the implementation of the certain governmental affairs which be real and exist, and it is needed for the benefit of the people, and grow and develop at the region for the prosperous of the people.

The accountable of autonomy means that the manifestation or realization of accountability as the consequences of right and authorities given to local government *in terms of functions and obligation* carried out by the local government.

Currently, almost every nation state follows *decentralization* as a principle in discharging state administration. Nevertheless it should be borne in mind that decentralization is not a system that is standing alone, but it is a series of a unit of one broader system, that is *Nation State.*

Therefore, there are at least two reasons as follows: *First,* a Nation State following decentralization principle would not mean an alternative of *centralization* making decentralization and centralization must be confronted and must have dichotomy in character, but it is a sub system in the context of a state organization system; *Second*, even most of the discretionary power have been given to the Region, there are some affairs or certain functions still belong absolutely to the State, in terms of externality and accountability of the nation. In other words, those affairs and functions did not be given to the Region, but must be carried out centralized by central government absolutely.

In our case, there is a statement stipulated in the Law 22/1999 and updated Law 32/2004 as well, that all the authorities and functions of government have become authorities and functions of Region of *Regency and Municipality,* except *the policy of foreign affairs; security and defense; justice; national monetary and fiscal policy, religion, and other functions relating to the existence of the State and Nation.*

Indonesia, after having its independence proclaimed on the 17th of August, 1945 directly created Unitary State of Republic and adopted *decentralization principles* in its State to show the World that Indonesia is more democratic state compared with during colonial administration. Some Laws on *decentralization policies* have been created, e.g. Law No.1/1945; Law No. 22/1948; Law No. 1/1957; Presidential Act No. 6/1959; Law No. 18/1965; Law No. 5/1974; Law No. 22/1999, and the last one is updated Law No. 32/2004 and 33/2004.

Seeing the decentralization policy contained in the old Law No 5/1974 on Principles of Government in the Region issued during the administration of the New Order, although it had run for almost 25 years, but the implementation of real and accountable autonomy putting emphasis of regional autonomy at the Second Level of Local Government, ran at choppy rhythm, slow, and in several things even a setback or retreat.

The very basic mistake in the Law No 5/1974 was establishing *"Autonomous Region"* and at the same time as *"Administrative Region"* (which is usually called *"Fused Model"*) which should be actually a separate thing *("Split Model").* The consequence of mixing "Autonomous Region" and "Administrative Region" the Regional Administration Head posted by a Head of Autonomous Region, and in the same time he was also Head of Administrative Region or Head of Administrative Territory with the status of a central apparatus.

This construction encouraged a system of administration of centralistic character, because of a dual position of the Head of Region, in which the Head of Administrative Territory was more dominant position in carrying out of central authority in the region through the *de-concentration principle*. Consequently, the Regional Legislative Council *(DPRD)* was less functioning, both as legislative body, as controller of regional executive, and as a channel of people's democracy. The reason is, the Head of Region was not subordinate and was not responsible to the DPRD, but he was subordinate and responsible to the President. The Head of Region was merely responsible for providing *"information of accountable report"* to the DPRD *(Regional Legislative Council).* That way, the accountability of Head of Region to the people was not visible, and the further impact was that the democratization of regional administration was not developing.

In the meantime, the pattern of giving autonomy followed by Law No 5/1974 was *"graded proportional",* meaning that all different administration levels, beginning from the Central, Provincial, and Regency/Municipality had basically similar authority to do the same task, function and affairs, but in different proportion. In general, the sharing ratio of authority tended to expand upwards, meaning that the Central would get a far greater proportion, followed by level of Province, and then the Second Level of Government *(Regency and Municipality)* would get the smallest remaining portion.

It is therefore, to realize the policy of decentralization that the autonomy should be emphasized at the Second Level of Local Government *(Regency and Municipality)*, if this pattern of giving autonomy like this was continued, it would be very difficult to achieve. Since the existence of First Level of Local Government *(Provincial government)* being an Autonomous Region, which would remain to have greater authority comparing to Second Level of Local Government *(Regency and Municipality)*, so that however it may be the distribution of authority to the autonomous region remain to be an *"upside down pyramid"* with all of the excesses of duplication and confusion causing the position of Regency/Municipality being an autonomous region closest to the people, to become powerless.

The decentralization policy followed during the New Order Administration was more oriented to using the model of discharging decentralization used to be called *"The Structural Efficiency Model"* rather than using *"The Local Democratic Model".* The first model gives more importance to providing services efficiently to local communities, to maintain stability, integrity and unity of the nation. It is therefore, this model tended to encourage greater intervention of the central to control the regional government for assuring efficiency and economic progress, to prevent disintegration, more emphasis to *"uniformity and conformity",* ignoring local values and regional diversity, which at the end ignoring the democratic values, while the second model gives more emphasis to *democratic and locality values* rather than *efficiency values.* In addition, local democracy model appreciates *local differences and system diversity, because local authority has both the capacity and the legitimacy for local choice and local voice.*[3]

Choosing *"The Structural Efficiency Model"* had created tendency as follows: *First,* to cut off the number of composition of autonomous region; *Second*, to sacrifice democracy by restricting the role and participation of local people, representative council being a policy decision institution and control institution; *Third,* reluctance of the Central government to devolve authority and greater discretion to the autonomous region*; Fourth,* giving more importance to de-concentration principle rather than decentralization; and *Fifth,* formation of paradox, on one hand efficiency needs territory from a large autonomous region to make resources provision possible to give more support for the discharging of local administration, but on the other hand an autonomous region with large territory would cause apprehension to have potentials to grow into a separatist movement which would lead to disintegration.

Therefore, in the context of realizing decentralization policy of forming and structuring autonomous region, an autonomous region with large territory often

[3] A.F. Leemans et.al., in Benyamin Hoessein, 1998.

became the prime target for liquidation or broken into smaller entities under pretext of developing.

That way, it would be easily to understand that the *"principle of real and accountable autonomy" with emphasis of implementation put at the Second Level of Local Government (Regency and Municipality)* adapted by Law No 5/1974 was more used for *"rhetoric means"* rather than for earnestly materializing the implementation of regional autonomy operationally carried out in the field.

It is therefore, within the framework of Indonesian reformation we changed the policy of decentralization and regional autonomy stipulated in the Law No 5/1974 which is too centralized in character, by the Law No 22/1999 which is more decentralized, more democratic considering aspiration, initiative, and participation of the people, social justice, local differences, potential resources of heterogeneous area, system diversity etc.

2. DECENTRALIZATION POLICY AFTER THE NEW ORDER ADMINISTRATION.

The decentralization policy launched in the era of Indonesian reformation after resigning of the New Order Administration, through the new paradigm *(the birth of Law No.22/1999 on decentralization and regional autonomy)*, nevertheless, has invited various wide public opinion and views, especially in terms of both distribution of authorities between central and local government and financial proportion.

In the one hand, there are some who considered that this new paradigm conceptually has gone too far in providing discretionary power to the region, inviting apprehension to cause disintegration, because of the compartmentalization between one and the other regions, disparities and uncontrollable from the central government ending at region which feel very strong in terms of natural and human resources would separate itself from the Unitary State of the Republic of Indonesia, and a not potential Region will remain a weak. On the other hand, there are some who consider that this law still contains a *"status quo"* element, the government which named itself as "government of the reformation order" is in fact does not bear reform character and *halfheartedly* in giving authority to the region, especially in terms of financial proportion, sharing revenues and fiscal decentralization.

Apart from the various different views, this new paradigm stipulated in the Law No.22/1999 was borne and was approved by the parliament on May 7, 1999. This law come into effect and has been given a transitional period for no later than two years as from the day of the stipulation. In the meantime, instrument of the executor provisions being the follow up of this law should be ready no later than one year as from the day of stipulation of this law.

The prolonged economic-political crisis and crisis of confidence hitting the Indonesian nation, has brought impact to almost of all aspect and structure of life. Although this awful condition was a bitter experience to the Indonesia nation and people, but the positive wisdom which was *"a blessing in disguised"* was the emergence of ideas and basic thought has grown total reform in all aspects of life in the state and nation affairs. The main focus of this total reform was to materialize the creation of civil society in the administrative, social and state affairs which have *good governance* values which created democratic value based on the local differences and

potential diversity, transparency, equity, honesty and justice attitude which has people interest oriented character and accountability to the people.

The positive impact of this total reforms is viewed from political and administrative context, that there has been *a shifting of paradigm from centralistic government towards decentralized government* by giving opportunity to the region in the form of extensive and accountable regional autonomy to self-regulate and manage the interest of local society in accordance with their own initiative based on the aspiration of the society, in accordance with the condition and potentials prevailing in their territory.

The birth of the Law No. 22/1999 on Local Government and the Law No. 25/1999 on Financial proportion between Central and Regional Government was considered very important, since through implementing these Laws, it is expected to bring about changes to the life of regional government which would be able to materialize a *democratic administration* in the effort of bringing closer relation between the government and its people, which in turn would promote the services, empowerment and prosperity of the people as a whole.

Regional Autonomy as a materialization of implementation of decentralization principle in discharging of administration is in fact an application of the academic concept what we called *"Division of Power",* divided into two part, *"Capital Division of Power" (CDP)* which constitute power of a state *horizontally,* and *"Areal Division of Power" (ADP)* which divides power of the state *vertically.*

In this system, State power is divided into "*Central Government"* in one hand, and *"Sub System of Central Government) or "Regional Government" or "Local Government")* on the other. The system of division of power in the context of "*Devolution" of authority of regional autonomy* differs from one country to the other, including Indonesia which constitutionally follows a Unitary State system.

In a Unitary State system, although the authority of regional autonomy moving towards the independency of the region, it does not mean that there would be a *full and absolute freedom for a region ("absolute onafhankelijkeheid")* in discharging rights and functions of its autonomy in accordance with its own will, but it must consider the interest of other regions and national interest as well.

The difference of interest between freedom of autonomy and defending the unity of the nation is usually to be an area of *"conflict of interest"* which is very difficult to be drawn out, since everyone sees the matters from the different perspectives making regional autonomy pivoting upon a view of different perspectives, apparently would develop into a lengthy *"dilemma".*

Different perspective review between the *central interest and the regional interest* is sometime difficult to avoid, because the domination of the central role is sometimes too strong causing pressure and killing the regional initiatives, and further inviting pattern of central instruction and tight control under pretext of nurture.

In addition, the two different views between central and region, is often dominated by subjective emotional power of authority rather than by more rational objective thought. Example, the equal distribution of economic development viewed from the national perspective was considered to be sufficiently equal distributed, but from the regional perspective would see it differently, seeing that the gain of the regional wealth resources drawn to the central is far from being equitable from gain that the central would give back to the region. It is because they got only several

percent of the whole natural wealth, while most of it was drawn to the central, for no further clearer purposes.

Likewise in the political dimension, viewed from the central perspective, arrangement on political posts in the region was considered to be sufficiently loose, but on the contrary, the region would consider that the intervention of central to the region and the development of democracy are too far.

This different of perspectives was getting sharper and moved to the regional jealousy, the result was the coming up of regional demands or claims, which in turn when this goes on in a prolonged situation it would not be impossible moving to the national disintegration.

Again, this difference of perspective must in fact not become a dichotomy which moves to incoherent conflict of interest between central and region, if only the two interests would be based on objective criteria, especially viewed from the aspects of justice, diverse condition and regional potentials.

The core of the problems is how far the extent of the regional autonomy could be given to the region, so that the Region would be able to function as an independent "*Autonomous Region"* based on the principle of democracy and people sovereignty without disturbing the national stability and totality of unity of the nation?

As a matter of fact, the strong independency of the Autonomous Region, should rightly to be a support for the existence of the state and nation to be remain intact and well kept. In other words, how to find a balancing–point between the policy of "*centrifugal",* would that give birth to the *decentralization policy*, and placing the *"centripetal"* position that give birth to part of *central power* to assure the national identity and integrity.

It is difficult to establish a right formula to find out solution of the problem, since it would be largely influenced by political configuration at a given time, and I think it is almost certain that every country in finding a balancing-point would always think of economic, political, social prosperity and security considerations.

However, how difficult to establish a formula is, people have to continue the effort in finding the right, objective, and rational formula, even it should be accompanied by full *ability and wisdom,* by seeing that this matter is for the interest of the nation's society, and not for the interest of a small segment of society or certain group only.

Emphasis that gives more consideration on *"local interest criteria"* would give birth to an administration of *democratic de-centralistic character,* which would be equalized by *"national interest criteria"* which would remain to assure the national identity and unity, as well as national interest as a whole which would give birth to limited *center power* so that *a centralistic administration* would be limited.

Public view being a sharp critic, has acknowledged that *a centralistic administration* has been less popular, because of its inability to understand rightly the local values or local aspiration. The reason is, the members of the society would feel secured and peaceful with a local government body closer to the people, both physically and psychologically *(Bone Rust, 1968).* In the meantime, giving more discretionary power in the form of autonomy to the region, it was acknowledged would not cause *"disintegration",* and would not lessen the degree of authority of the national government, even on the contrary it would produced respect of the region to the central government *(Brian Smith, 1986).* Therefore, there is a slogan of regional

autonomy that often launched: *"As much autonomy as possible, as much center power as necessary" (W.Buckelman, 1984),* should become a consideration in defining division of power between central government and the region.

From this general overview and critic, there is a thought coming up on the need of giving autonomous authority to the region as broad as possible, and putting the focus of regional autonomy at the level of areas closest to the people. It was based on the thought that in implementing regional autonomy would not only provide a meaning of maturation of local people politics where a participating role and people empowerment are materialized, but also at the same time it would give a meaning to giving people a prosperous life. Because, however strong is the demand for equal distribution, demand for justice that often launched, both involving economic and political area, would at the end become the main focus in discharging regional autonomy.

This is in fact the philosophy that gives ground and accompanies the birth of Law No 22/1999 on Local Government at 7 May 1999 being the substitute of Law No 5/1974 which formed a package with the birth of Law No 25/1999 on Central and Regional Financial Proportion at 19 May 1999, which has been updated by Law No. 32/2004 and 33/2004.

3. BASIC CONSIDERATIONS GIVING GROUND TO THE FORMATION OF LAW NO 22/1999

At least there are five basic considerations giving ground to the formation of Law No 22/1999: *First*, as an effort of materializing a strong legal foundation for discharging of regional autonomy by giving a large extent to the region to turn the Autonomous Region into an independent one in the context of maintaining the administration system of the Unitary State of the Republic of Indonesia based on 1945 Constitution; *Second*, the discharging of a broad Autonomous Region carried out on the democratic, people participation, equal distribution and justice principles, as well as by observing regional potentials and diversity; *Third*, promoting the role and function of the Regional Legislative Council, both as regional legislative body, controlling body, and as a means and vehicle for developing democracy; *Fourth*, for anticipating the development of the situation, both domestic and challenge of the global competition which influence will hit the region; *Fifth*, to reposition the *Desa (Rural villages)* or with other name as the lowest legal entity which has the right of origin and original autonomy acknowledged and honored in the administration system of the Unitary State of the Republic of Indonesia. It is therefore, Law No 5/1979 regulating rural administration uniformly throughout Indonesia, as villages in Java, in the same time by Law No 22/1999 was declared abrogated, and regulation on *Desa* and its right and origin is left to the region which will be regulated by the regional regulations concerned.

4. SHIFTING OF NEW PARADIGM FROM THE LAW NO 5/1974 TO THE LAW NO 22/1999.

The old paradigm in the Law No 5/1974 using *"The Structural Efficiency Model"* that is no longer followed in the Law No 22/1999, and it tends to use *"The*

Local Democratic Model" with *"Split Model"* format putting autonomy at the level of Regency and Municipality.

According to the Law No 22/1999 the regional autonomy is laid down at the level of Regency and Municipality, and is not concurrently functioning as *Administrative Territory.* The type of its administration remains following *"a single (headed) administration" ("Eenhoofdig Bestuur")* and not *"a collegial administration" ("Collegial Bestuur")* just like Indonesia ever had in the Law No. 22/1948 and the Law No 1/1957. The Head of Region according to the new Law has the position of merely as an *"instrument of the region"* and not concurrently as an *"instrument of the center",* and also not as an extent or long hand of central government.

The Head of Region is elected directly by the Regional Legislative Council *(DPRD)* without the intervention of the central. The candidate who gains a majority vote is nominated as Head of Region by DPRD and legalized by the President. The legalization of the President is bound to the outcome of the election by the DPRD. The prerogative of the President, I would say in this context, is no longer followed.

Likewise, the Law No. 22/1999 categorically explains that the Head of Region is responsible to the DPRD. This is the consequence of clearly separating the position between the DPRD as a regional legislative body and Head of Region as a regional executive institution, so that there will be no duplication and confusion between the executive task and the legislative task. The Head of Region conducts the task in the Executive area, and the DPRD in the legislative area; the DPRD is empowered as such so that it will be truly able to exercise the legislative and control function, as well as truly plays its role in channeling the people's aspiration in the context of developing local democracy.

There is another reason why is the Head of Region responsible to the DPRD, not to the Governor or to the President? Because, *Firstly,* Head of Region is selected, elected and nominated by the DPRD, it is therefore, he must be responsible automatically to the DPRD; *Secondly*, the Status of Regency/Municipality is merely local apparatus, to carry out of the autonomous government is merely based on decentralization principle. There is one thing important to inform, that both position of DPRD and Head of Region as well are the same position as a partnership institution in carrying out of local government. It is imperative in the Law of No 22/1999, that the two institutions should cooperate tightly for the benefits of the people. There is no subordinate position between Legislative council and Head of Region and two institution can not impeach to each other, in other words they have to be able to maintain the equilibrium check and balances in order to have an stability and solely for the beneficial and prosperity of the people.

The empowerment of the DPRD through assignment of many tasks, the authority of the Legislative council (DPRD) is sufficiently large. The unique one in Law No. 22/1999 is the provision of what so called *"subpoena rights"* of the DPRD as a consequence of giving *"right of investigation",* namely that DPRD in carrying out its task has a specific right to ask some people, such as state official, government official or member of the society to provide information on matter that requires to be dealt with for the sake of the interest on the state, the nation, the governance and development. In that Law, it is categorically expressed that for those who refuse and not fulfilling the request, it is sanctioned by punishment for no longer than one year in

jail.[4] This is meant to avoid *"contempt of parliament",* namely prevention for humiliating *the dignity and honor of the Legislative council".*

Relating to the *"Accountability",* the Head of Region is liable to submit accounting to the Legislative council at "*every end of budget year",* and or *"for certain matter"* upon request of the Legislative council.[5] The accountability turn down by the Legislative council, can be corrected for no longer than 30 (thirty) days time. Refusal of the accountability by the Legislative council for the second time, it would make possible for a Head of Region to be sent for a process of a kind of "*impeachment",* namely dismissing the Head of Region before the termination of his office. According to the Law, when the accountability report is declined *for the second time* by the Legislative council, the Council can propose to the President for his dismissal.

There are 7 (seven) categories of the possibility for a Head of Region that his dismissal could go for processing before terminating his post, they are:

(1) his accountability is declined by the Legislative Council;
(2) not fulfilling the requirements as Head of Region;
(3) breaking the oath/promise of Head of Region;
(4) offending restrictions for Head of Region;
(5) developing crisis of wide public in trust and confidence;
(6) conducting criminal acts sanctioned by 5 (five) or more years in jail;
(7) it was charged for doing attack against the Government and proved to do acts harmful to the Unitary State of the Republic of Indonesia.

The first five categories is exercised by involving the Regional Legislative Council (DPRD), meaning if the *"impeachment"* will be imposed to the Head of Region, his dismissal would not automatically be effective, but it has to go through a process of DPRD Session, at least 2/3 (two third) of the number of the members of the DPRD attending the Session should agree for making a proposal of his dismissal to the President of the Republic of Indonesia.

As explained in Article 46 Paragraph (3), that for the Head of Region whose accountability is declined for the second time, the DPRD can propose his dismissal to the President. That way, there will be a *"check and balance"* between *selection, election, appointment, approval (legalization) and dismissal of Head of Region.*

The process of dismissal for the last 2 categories, does not require involvement of the DPRD, but it is directly exercised by the President, namely: *First,* for the Head of Region suspected to undertake assault against the government and/or other action which would disintegrate the Unitary State of the Republic of Indonesia, shall be temporarily dismissed from his position by the President without going through the decision of the DPRD; *Second,* for the Head of Region who is proved to undertake assault against the government and act that may disintegrate the Unitary State of the Republic of Indonesia declared through a finding of the law court that gained final judgement, is dismissed from his position by the President, without going through the approval of the DPRD.

Reason for dismissal of Head of Region is explained in Article 49 of Law No. 22/1999, namely: *First,* upon death; *Second,* requesting dismissal at own will; *Third,*

[4] Article 20, Law No. 22/1999.
[5] Article 45 and 46, Law No 22/1999.

end of term of office, and new official has been installed; *Fourth*, no longer meeting the requirements as meant by Article 33 (on the requirements to be Head of Region); *Fifth*, offending the oath/pledge of Head of Region; *Sixth*, offending the restrictions of Head of Region; and *Seventh*, developing crisis wide public in confidence, resulting from a case (cases) involving the responsibility of Head of Region, and his information on that case is declined by the DPRD.

Basically, the authority to dismiss a Head of Region lies with the DPRD when reasons for dismissal is definite, but when the matter still requires consideration it must go through a process through the attendance of 2/3 of the number of the DPRD and approval of 2/3 of the members attending the session. While things relating to the accounting declined by the DPRD for second time, the dismissal remains requiring a process through the proposal of the DPRD to the President. This is one of the styles of local democracy followed by Law No 22/1999.

According to the updated Law, namely Law No 32/2004, Head of the Region is elected directly by the people, and responsible to the President not to the Legislative Council any longer, but Head of the Region has an obligation to provide *"Information of accountability report"* to be submitted to Regional Legislative Council *(DPRD)* at every end of budget year.

5. THE POSITION OF PROVINCIAL REGION AS AN AUTONOMOUS AND ADMINISTRATIVE REGION.

According to Law No 22/1999, the position of Provincial Region is both as an *Autonomous Region* and *Administrative Territory* as well. Consequently, the Governor has dual position, namely as Head of Region in the capacity of Autonomous Regional Government, and in the same time as a *Representative of Central Government.* The electing and appointing process to be a Head of Region is similar to the one to be a Head of Regency Region and a Mayor of Municipality. The difference is only in the process of candidacy. Governor candidate nominated by the DPRD, prior to the election, it should first be brought to the President for consultation, the electing and appointing process is similar to the one for Head of Regency Region and Mayor of Municipality, namely through majority vote stipulated through the decision of the DPRD, and approved by the President.

Putting the Governor as Representative of Central Government is based on the following consideration: *Firstly*, to maintain harmonious inter regional relations, and between the Central and the Region in the context of the Unitary State of the Republic of Indonesia; *Secondly*, to run Regional Autonomy across Regency Region and Municipality, as well as carrying out authority of Regional Autonomy which can not yet be implemented by Regency and Municipality concerned; *Thirdly*, to carry out tasks of certain governance devolved, especially in the context of carrying out de-concentration principles.

Most of the authority and functions were transferred to the Regency and Municipality, but not to Provincial Government, because the authority of the Provincial Government has only limited autonomy, as the status of the Provincial Government, as I above mentioned, has a dual position, as Regional Autonomous Government and Provincial Administrative Territory as well. This is what we called academically *"Fused model".* Consequently, the position of the Governor is dualism

in function, e.g. as a Head of Regional/Provincial Government discharging authority and functions in accordance with the policy of decentralization and regional autonomy, and as a representative of the central government discharging the authority and functions within the framework of de-concentration principle.

It is therefore, the role and position of the Governor is more concentrated to carry out regional scale or inter Regency/Municipality, and supervision and facilitating for local government on behalf of central government. Monitoring, supervising and facilitating directly conducted by central government are too far, and in terms of span of control is too wide for central government to control Regency/Municipality directly.

The position of the Governor, therefore, is very important, he has dual role, from the perspective of central government the Governor is an interpreter of central government policy, he must be able to interpret the central policy which must be implemented in the region in accordance with the situation and condition of the regions, and from the regional perspective, the Governor must be able to support and encourage empowerment people and autonomous local government by providing support, direct, facilitate and other things to succeeding regional and local autonomy. It means that the success or failure of the decentralization and regional/local autonomous implementation, more or less the Governor is accountable.

Unfortunately the position of the Governor as a representative of central government was limited to three things as stipulated in the Law No 32/2004 as follows:[6]

(1) Supervising and facilitating local government (Regency/Municipality);
(2) Coordinating of governmental affairs in Provincial Government and Regency/Municipality as well;
(3) Coordinating of supervising and facilitating for implementation of co-administration in Provincial Government, and Regency/Municipality.

The other functions which are not stated here should be delegated by the President to the Governor according to principle of de-concentration policy. Therefore, the position of the Governor is often called *"delegated position"* not *"attributed position",* means that the activities of the Governor as representative of central government depends on the delegation of authority from the central government within *the principle of de-concentration policy*.

In order to be more effective, the role and the position of the Governor should have an authority what so called *"Nach Freies Ermessen",* it is a discretionary power for the Governor to make any decision automatically *("Ex-officio")* on behalf of the central government as far as the activities concern regional scale, and those activities merely for the beneficial of the people in the region and/or for running well of administration, otherwise all of the problems accumulated in the region would be a burden of central government.

It is important to note, that all matters of regional problems as a matter of fact, just should leave to the Governor to be accomplished, and dignitaries of central government should more look at the world, how to bring and promote Indonesia to the world, how to increase the Indonesia in global competition.

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[6] Article 38, Law No 32/2004.

But practically it depends on the behavior and value judgment of the dignitaries of central government, it also depend on the elite of central bureaucracy, which remain in some cases defend the *"statusquo",* and not willing to transfer of authority to the region. Even a small things belongs to local or domestic affairs, sometimes is carried out directly by central bureaucracy of government.
There is a system adopted by updated of Law No 32/2004, namely *"Concurrent System"* within the framework of distribution of authority between central and regional government as a pattern in order to be able to avoid conflict of interest between central and local government, and to prevent for accusing of each other.

6. BASIC ELEMENT FOR REALIZING REGIONAL AUTONOMY FOR BETTER LOCAL GOVERNMENT.

In order to be able for local government to implement its autonomy, there are at least four basic elements for realizing local government efficiently and effectively, The four basic elements as follows:

A. First, Governmental Affairs ("Function").

By adopting *"decentralization"* principle, the transfer of authority from central to local government is a must, because it is prerequisite for local government in order to be able to run self local government. It belongs to the scope of the distribution of authority between central and regional.

A Nation State who adopting decentralization policy identified by transferring a part of authorities from Central Government to Regional and Local Government. There are two kind of model which is usually used universally in transferring of authority from Central to Region. The first model is *"Restricted autonomy model"* or is often called *"Ultra vires"* is a model in which the authority of regional government given by the Central Government is limited. Empirically the functions given to the region connected with the implementation of basic services, such as *Education, Health, Environment, Transportation, Housing and other functions locally.* The second model is *"Extended Autonomy"* or is often called *"General Competence"* giving authorities to regional and local government in the broader functions, in which the Central Government give the discretionary power to Region in order to be able to self-regulate and manage functions related to the interest of the local people, except "*Political Foreign Policy, Defense, Security, Judicial, Monetary and Fiscal Policy, and Religion" (Absolutely centralized).*

Continuing *"General Competence"* model adopted by Law No 22/1999, currently we develop a system what we called *"Concurrent System"*[7] followed by updated of Law No 32/2004 in distributing of authority between Central and Regional Government.

Within this system there are some functions given to the region are divided into two parts: *First, "Obligatory Authority".* These authorities must be implemented

[7] Concurrent system means a part of certain function can be carried out by three level of government together depend on the externality, accountability, efficiency, and harmoniouis relationship among the three level of government, (stipulated in the Law No 32/2004).

and carried out by Local Government absolutely, in other words the local government does not have any option but to carry out those functions completely, because those functions concern with the interest of the people *as basic services* and identified *locally*, such as: *Education; Young Generation and Sport; Health; Public Works; Environment; Housing; Investment; Small and Middle Enterprises; Demography of administration; Labor and Transmigration; Women Empowerment; Family Planning; Transportations; Communications and Information; Agrarian Affairs; Political Unity of the Nation; Community Development; and Social Affairs.* Second, *"Optional Authority".* It is different from *"Obligatory Authority",* means that are some functions should be option and it is a matter of choice from the perspective of local government, whether is it necessary or important for the benefit of the people, especially to be developed as *"a core competence"*, or it depend on the ability of the local government in terms of local financial capacity.

It is therefore, within the framework of "*Concurrent System*," a part of one function could be arranged together by three levels of authorities, e.g. by center, provincial and local government (regency or municipality), it depends on at least of the four criteria: *Externality; Accountability, and Efficiency; and Consideration of Harmonious relationships among the three level of government.*

In this relations, what is meant by *Externality* is some sort of approach in dividing of power with considerations of affecting or impact as a result of carrying out or acting of government, whether are nationally, regionally, or locally. If a part of function is more nation wide, that function must be treated by national government, if more regional by provincial government, and if it more local, treated by regency or municipality. *Accountability* is an approach of dividing of power considering that a part of function directly serve people should be conducted by the level of government which closest to the people. The criteria *of efficiency* means that implementation of a part of function must be considered related with resources in terms of personnel, fund, and materials concerned. In other words, if a part of function will be more efficient and effective to be conducted by local government, let the regency or municipality do it, and if it more efficient by provincial or central government, let them do it.

The last criteria *Harmonious relationship* means that there is no conflict of interest among the different of three levels of government.

Theoretically this system is good, but operationally is sometimes hard to be implemented. We realized that there are some pros and cons of this system. The pros of this system is that we would be able to constitute the distribution of power clearly between central, provincial and regency/municipality, and to prevent for accusing of each other, but the negative of duplicating and conflict of interest will be hard to avoid.

It is therefore, in order to be able to avoid *the negative impact of Concurrent System*, we stipulated in the Law No 32/2004 the basic and scope functions of three level of government as follows:

(1) Central Government:
   a. Establishing the rule of the game in implementing of certain functions by creating norms, standard, and operating procedures;
   b. Forcing the rule of the game in implementing of certain functions by doing monitoring, evaluation, directing, and supervising within the corridor of

norms, standard, and operating procedures established by central government;

c. Facilitating by empowering and increasing capacity building of regional and local government;
d. Carrying out certain functions affecting national, inter provincials, and international wide.

(2) Provincial Government:
a. Establishing Provincial regulations and management within provincial scale and inter regency/municipality in accordance with norms, standard, and operating procedures established by central government;
b. Forcing the rule of the game in implementing of certain function by Governor as representative of central government by doing monitoring, evaluating, directing, and supervising local government within the corridor of norms, standards, and operating procedures established by central government;
c. Facilitating by empowering and capacity building of local Government;
d. Carrying out certain functions affecting regional, inter Regency/municipality, and certain functions could not be able to carry out by regency/municipality.

(3) Regency/Municipality:
Regulating and executing *obliged and optional authorities* have been given to local government in accordance with norms, standards, and operating procedures established by central government and provincial government.

B. Second basic element is Institution.

The authority of local government won't be possible to be implemented if there is no *Institution* accommodating authority and function of local government. There are two kinds of institutions: *Political and Carrier ("Bureaucratic") Institution.* Political Institution accommodates *Elected Position,* such as Head of Local Government and Local Legislative Councils. *Carrier Institutions* accommodate all of the bureaucratic position, such as Secretariat, technical agencies and administrative organization.

Empirically, with the discretionary power possessed by local Government for self-regulating and managing local government, most of the Local government tends to create their organization with limited structure following amalgamation considering efficiency, because of limited local budget. However, there are some local governments in creating their organization tend to be prolific, especially for accommodating the transferring of personnel from central government. It's about 2.034.177 central employees having been transferred to local government and changed their status to become "local employees".

C. Third basic element is Personnel.

Currently, the existing of Personnel at the local government like this:

a. Local government tends to have personnel in a great number affecting a burden for local government in terms of local financial capacity. According to research conducted by Directorate General for Regional Autonomy, the Ministry of Home

Affairs, justified that ratio between employee and people is 1 : 103, it means that 103 people must be served by one personnel;

b. Although the local government have exceed personnel, but in the same time the local government actually have a shortage of personnel in terms of qualified and competence personnel, so that many of the strategic positions posted by unqualified and incompetence people;
c. In some cases the structural positions should be posted by "local people" without considering prerequisite of qualifications. If a forced appointment fulfilled by the "outsider", after sometimes there will be no guarantee for security of tenure;
d. For the developing country like Indonesia, it is urgent to remain strengthening the position of employees as a binding of the nation; it is therefore in recruiting personnel for certain position, we followed *integrated and separated system* as well;
e. It is often, that the local government employees to be involved in the political practices influenced by Head of Local Government and Local Legislative Councils as well, making the patronage and political cooptation to the employees. This is because of the weaknesses of neutrality and competent qualifications in the system of personnel administration, such as manpower planning, career planning and career development etc;
f. It is therefore, necessary to have a plan of action to anticipate the weakness of personnel administration by formulating and stipulating the government regulations on prerequisite for certain position, administrative and competent qualifications, maintain the mobility of personnel horizontally as well as vertically for the benefit of "Nation Building".

D. Fourth basic element is Local Finance.

Local Finance is a basic element of regional autonomy implementation Local Finance is he consequence of having authority and functions given by central government to local government in accordance with the principle *"money follows functions".*

As an autonomous government, local government must have financial resources from taxation within the framework of fiscal decentralization policy and the policy of financial balancing between central and local government as well.

7. THE POLICY OF FISCAL DECENTRALIZATION WITHIN THE FRAMEWORK OF FINANCIAL BALANCES BETWEEN CENTRAL AND LOCAL GOVERNMENT ACCORDING TO THE UPDATED LAW NO 33/2004.

The Financial Balance between Central and Local Government is related to implementation of Fiscal Decentralization Policy. Within the framework of Financial Balancing between Central and Local Government, according to the Law No. 33/2004, the Financial Balancing for local finance consists of revenue sharing, block grants and specific grants.

There are at least three principles of Financial Balance policy, as follows:

(1) Financial Balance between Central and Local Government is a sub system of state finance as a consequence of distribution of functions between Central and Local Government;
(2) State Financial resources given to Local Government within the framework of decentralization policy implementation based on the functions transferred by Center to Local government with the consideration of fiscal stability and balance;
(3) Financial Balance between Center and Local Government is an integrated system within the framework of Decentralization, De-concentration, and co-administration funding.

The Financial Balance is aimed: *First*, to decrease fiscal gap between Central and local government *(vertical fiscal imbalance),*and cross local government as well *(horizontal fiscal imbalance)*; *Second,* to decrease *public service provision gap; Third,* to encourage *fiscal sustainability* within the framework of macro economy policy; *Fourth,* to increase local capacity in gaining potential local revenue; and *Fifth,* to increase *national resources efficiently.*

Financial Resources of Local Government consist of: (a). Local Own Revenue (*PAD)*; (b). Financial Balance; (c). Loan; and local government enterprise, and other resources in accordance with laws and regulation.

Financial balance is divided into three parts: *First,* **Revenue Sharing** consists of Land rent and building tax *(PBB)*; cost of Land and Building Rights (*BPHTB);* Individual Income Tax; Revenue from Natural Resources *(SDA)* distributed according to system of Revenue Sharing based on percentage by origin; s*econd, **Dana Alokasi Umum (DAU),*** it's some sort of ***"Block Grants",*** where the Local Government does have discretionary power (full authority) to use it; and *Third, **Dana Alokasi Khusus (DAK),*** it's some sort of ***"Specific Grants"*** allocated to Local Government for financing local specific need which is impossible to finance from DAU or *"Block Grants".*

It would be possible for Local Government to create a loan, domestic or foreign, especially for financing infra-structure having potential quick yielding.

The total **Dana Alokasi Umum (DAU) or *"Block Grants"*** is derived from Net Domestic Revenue at least 25,5% in the year 2001 – 2007, and 26% from Net Domestic Revenue of the year 2008. According to Law No 33/2004 it should be stipulated at the National Budget.

The allocation based on the *"Fiscal gap"* and *"Basic Allocation".* What does it mean by the *"Fiscal gap"*? *"Fiscal gap"* means *"Fiscal Need"* minus *"Fiscal capacity",* and *a "Basic Allocation"* based on the salary of employees which must be paid by local government. *"Fiscal Need"* is a local funding need for carrying out the function of public basic services.

This is the *"Formula of DAU* or *"Block Grants"*:

DAU or *"BLOCK GRANTS"* = Ba + FISCAL GAP (Fg)

Ba = Basic allocation

Fg = Fiscal need (Fn) – Fiscal capacity (Fc)

Thus:

DAU : *"Block Grants";*

Ba : Basic allocation based on number of salary for Local employees;

Fg : Fiscal gap

Factors affecting DAU or *"Block Grants"* having variables, as follows:

Fiscal need:

- Population;
- Broad of territory;
- Construction Cost Index;
- Product Domestic Regional Bruto (PDRB) per capita; and
- Human Development Index (HDI) inverse;

Fiscal capacity:

- Local revenues;
- Revenue sharing from Tax and Natural Resources.

The formula of Fiscal need, as follows:

Fn = TBD (a1IP+a2IW+a3IKK+a4IPM+a5PDRB/cap)

Note:

TBD : Total cost of APBD (local Budget);
IP : Population Index;
IW : Wide of Territory Index;
IKK : Construction Cost Index;
IPM : Human Development Index;
PDRB/cap : Product Domestic Regional Bruto per capita
a : Percentage Index

a1 = 30%; a2= 15%; a3= 30%; a4= 10%; a5= 15% is determined by using consideration of proportional and simple test statistic.

The Formula of Fiscal capacity, as follows:

Fc = PAD + PBB + BPHTB + PPh + SDA

Note:

PAD : Total of Local revenues;
PBB : Sharing revenue from land rent & building tax;
BPHTB : Rights fee of Land and Building (Sharing revenue);
PPh : Individual Income tax as sharing revenue;
SDA : Sharing revenue from natural resources.

Basic allocation is determined by realizing paid salary of local employees by using assumptions, such as: Average of increasing salary by 15%; increasing honor for functional positions; the 13^{th} salary etc.

DAK or *"Specific Grants"* is a fund allocated to certain local government for financing special activity, and should be consistent with the functions determined at the State Budget based on the general criteria, specific criteria, and technical criteria. General criteria are determined by considering capability of local budget concerned. Specific criteria are determined by considering laws and regulations, and local characteristic. Technical criteria are determined by technical agency.

8. IMPACT OF DECENTRALIZATION ON REGIONAL AUTONOMY IMPLEMENTATION

In accordance with the objectives of regional autonomy, there are some impact of decentralization on regional autonomy as a realization of Law No 22/1999 and updating of Law No 32/2004 either positive or negative impact.

A. Positive impact.

1. Increasing the development of democratic process in government and community life as well;
2. Increasing people participation in dealing with the activities of government, in process of policy formulation, implementation, control, and evaluation as well;
3. Growing regional creativities and innovation for planning and implementing of regional development;
4. By having more extended discretionary power, in terms of making decision, carrier opportunity and professional competitive of the region, performance of regional bureaucracy is more effective;
5. By having effective control to the executive institutions, both by Regional Legislative Council and society as well, making the existence of regional government cleaned, credible and accountable;
6. Increasing the role of Regional Legislative Council, both as a means of democratic process and vehicle of people aspiration as well, especially in carrying out of legislation, budgeting, and controlling functions;
7. Increasing public services, quantitatively and qualitatively as well;
8. Regional and local spirit as a strong factor encouraging regional/local development, it means the accountability for development is coming up from the local people.

B. Negative Impact

Although we have some positive impact of decentralization on regional autonomy, but it necessary to anticipate the negative impact in implementing regional autonomy according to Law No 22/1999 and updating of Law No 32/2004, as following:

1. By having extended regional autonomy given to regional/local government, they assume that regional/local government should have own money as much as possible with their slogan *"autonomy is auto-money*. It means that they have to levy revenues from the local resources intensively and extensively as well. This action would not only make an additional burden for the local people, but also make *a high cost economy* affecting business life and community enterprises and damage life environment;
2. It would be possible creating *conflict of interest* inter regions and between region and central in related to use the natural resources such as water resources, environment; etc.;
3. It would be also possible creating *over-regulated* or *conflict of regulation* between central, provincial and local regulations, because of weaknesses of

integrity and synergy in development planning; and also possibility of segmentation inter regions;

4. Narrow local egoism encouraging local exclusivism and protectionism would disturb the unity of the nation;
5. The attitude and behavior of central bureaucracy which is still defend *"status-quo",* especially does not have any willingness to transfer of authority to the region;
6. The Laws and regulations of sectoral of central government are not consistance with Laws on Local Government which should be *"a corner stone"* of all of the Laws;
7. There is still having *"multi-interpretation"* towards Laws No 22/1999 and 32/2004, in terms of its spirit and articles as well.

9. EVALUATION ON THE REALIZATION OF THE LAW NO 22/1999 AND UPDATING OF LAW NO 32/2004.

The realization of the Law No 22/1999 and updating of law No 32/2004 were not automatically running well, but there were some problems, juridical, political, psychological and socio-cultural obstacle the way out of realization of regional autonomy in Indonesia.

The implementation of decentralization policy based on the Law No 22/1999 coming effectively into force on January 1, 2001, which has been divided into four phases as following: *First,* was the *initiation phase* carried out during a year 2001;

Second, was the *installation phase* projected within the year 2002 – 2003; *Third,* was the *consolidation phase projected* within the year 2004 – 2007 after having updated Law No 32/2004; *Fourth,* was the last phase what we called *the phase of stabilization* which will be conducted by 2007. After 2007's hopefully we are going to *lay out* or regional autonomy framework will be real could be justified autonomous region for the whole Indonesian territory.

In the mean time, we have now 33 of Regional autonomous government with scale of Provincial Government; 440 of Regencies/Municipalities; it's about 7500 of Kecamatan (some sort of Sub Districts), and approximately of 75–85,000 of Desa (or Rural Villages) scattered in Indonesian Territories.

10. CONCLUSION

Before I conclude of my paper, one thing I would like to say which is to be proud that Indonesia when during New Order Administration accused by International Community as an authoritarian government, a hard-hearted military system, and evading and neglecting the Human Rights happened in various area such as in Papua, in Aceh, and even in East Timor, now within the Era of Reformation Order, we are coming up with democratic society, more decentralized governance with active participation of the people, appreciate local democracy, local differences, and system diversity towards to realize the Good Governance, especially in terms of better local government, and at the end in all of these merely for the beneficial, prosperous, and social justice of the people.

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