POLICY IMPLEMENTATION OF THE REGIONAL AUTONOMY AND ITS IMPACT ON THE PROSPECT OF LOCAL DEMOCRACY IN INDONESIA

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Abstrak

Kebijaksanaan desentralisasi seperti yang digariskan dalam Undang-undang (UU) Nomor 22 Tahun 1999 adalah suatu pendorong dalam rangka reformasi total dalam segala aspek kehidupan bernegara di dalam Negara Kesatuan Republik Indonesia. Reformasi yang dilaksanakan lebih ditekankan untuk melengkapi system administrasi agar 'Pemerintahan yang baik' yang menganut nilai-nilai demokrasi, transparansi, kejujuran serta keadilan bagi seluruh penduduk.

Pengaruh positif dari reformasi total adalah terjadinya pergeseran paradigma dari pemerintah yang sentralistik ke arah pemerintahan yang desentralistik dengan memberikan kesempatan yang luas kepada daerah dalam menjalankan pemerintahan secara otonomi. Hal itu akan mendorong timbulnya kreativitas dan inisiatif secara local yang didasarkan pada aspirasi masyarakat setempat. Dengan demikian akan mendorong masyarakat untuk berpartisipasi dan dengan secara sadar melaksanakan demokratisasi.

Karena itu dengan lahirnya UU Nomor 22 Tahun 1999 tentang Pemerintahan Daerah yang kemudian dilengkapi dengan UU Nomor 25 Tahun 1999 tentang Proporsi Pengaturan Keuangan Pusat dan Daerah, telah dianggap sangat penting, karena melalui pelaksanaan kedua undang-undang itu, diharapkan akan membawa perubahan pada pelaksanaan pemerintahan daerah yang mampu meyakini akan terwujudnya kehidupan berdemokrasi. Dan semua itu akan bermuara pada pelayanan yang baik, serta berusaha menuju kemakmuran rakyat secara umum.

The regional autonomy policy launched in the reform era especially the birth of Law No. 22/1999 on local government, has invited controversies. There are some who considered that this Law has gone too far in providing power to the region, inviting apprehension to cause disintegration, because of the compartmentalization between one and the other regions, and uncontrollable power from the central government.Then, at regions which feel very strong would separate itself from the Unitary

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State of the Republic of Indonesia. On the other hand, there are some who consider this Law still contains a "status quo" element, the government which named itself as "government of reform order" is in fact does not bear reform character and halfheartedly gives autonomy to the region.

Despite the various different views. Law No. 22/1999 was born and approved on 7 May 1999. This Law came into effect and had been given a transitional period for no later than two years as from the day of the stipulation. In the meantime, 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.

1. Philosophical ground of the formation of Law No. 22/1999.

The prolonged economic-political crisis and distrust that hit the nation, has brought impact on almost all aspects of life. Although this awful condition was a bitter experience of the Indonesian nation and people, but the positive wisdom which was a blessing in disguise was, the emergence of idea and basic thought of total reform in all aspects of state and nation affairs. The main focus of this total reform was to establish the involvement of a civil society in the administrative, social and state affairs which include Good Governance values such as transparency, honesty and justice attitude and accountability.

The positive impact of this total reform is, viewed from political and administrative context, that there has been a shifting of paradigm from centralistic government towards decentralized one, by giving opportunity to the Region in the form of extensive and accountable regional autonomy, to manage and run the interest of local society and local potentials.

The Law No 22/1999 on Local Government, and Law No. 25/1999 on Central and Regional Fiscal Balance is considered to be very important. It is expected, the implementation of these Laws would bring about changes to the life of regional government which would be able to realize a *democratic development of local government administration.* It is also expected that through this law will be closer relations between the government and its people, which in turn could promote the services, empowerment and prosperity of the people as a whole.

Regional Autonomy as an implementation of decentralization principle in fact an application of the concept of the theory *"area division of power"* which divides power of a state vertically. In this system, state power is divided into *"central government"* in one hand, and the *"regional 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.

The authority of regional autonomy moving towards the independency of the region in a Unitary State, can not be interpreted that

there would be a full and absolute freedom of a region in discharging rights and functions of its autonomy in accordance with its own will without considering the interest of other regions and national interest as a whole. The difference between freedom of autonomy and defending the unity of the nation is usually an area of *"conflict of interest"* which used to be drawn out, since everyone sees the matter from a different perspective, making regional autonomy pivoting upon a view of different perspective would develop into a lengthy *"dilemma"*.

At present, 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 standing system, but it is a series of units in one broader system, that is *nation state.* Therefore, a nation state that follows *decentralization* principle would not mean an alternative of *centralization.* Decentralization and centralization must not be confronted and must have no dichotomy in character, but it is a sub-system in the context of a state organization system. The problem is, whether with the decentralization principle followed by Law No 22/1999 the development of democracy in the region would be assured? The Law stresses that the Regional Legislative Council (known as DPRD) being a people representative institution in the region forms a vehicle for implementing *"democracy"*. Nevertheless, would the interest of the Central Government, which seems to keep this Law, would exert a pressure on the development of democracy?

The difference between the *central and the regional government interests are* is sometimes difficult to avoid, because the domination of the central is too strong, causing pressure and hindering the regional initiatives, and further inviting pattern of central instruction and tight control under pretext of nurture. For example, Article 112 of Law 22/1999 among other states that in the context of nurture, the Government provides facilities for means discharging regional autonomy. Providing facilities here means an effort for empowering. Autonomous Region should be conducted through the provision of guidelines, guidance, training, direction, and supervision (Article 112 of Law No 22/1999 and its explanatory memory). 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.

For example, the equal distribution of economic resources viewed from the national perspective was considered to be fair. But the regional perspective would see that the gain of the regional wealth resources drawn to the central is far from being equitable from the gain that the central would give back to the region. Agricultural and natural resources produce in the region was not enjoyed by the respective region, because they got only a little percentage of the whole natural wealth, while most of it was drawn to the central, for no further clear purposes.

Likewise in the political dimension, from the central government perspective, the arrangement of the political posts in the region was

considered to be sufficiently loose, but on the contrary, the region would consider that the intervention of the central was too far, resulting in the hampering of the implementation of the regional autonomy.

This different perspective was getting sharper and moved to the regional jealousy. The result was an increase in regional demands or claims, which in turn would lead national disintegration.

This different perspective must in fact not become a dichotomy which moves conflict of interest between central and region, if the interests of the two kind of government could be based on objective criteria, especially viewed from the aspects of justice, diverse condition and regional potential.

The core of the problem is, to what extent the regional autonomy 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 national unity ? Regional autonomy should rightly to be a support for the existence of the national and nation that remain intact and well kept. In other words, how to find a balance between the policy of *"centrifugal"* will that would give birth to the *decentralization* policy, and placing the "*centripetal"* position that gave birth to part of *central power* to assure the national identity and integrity. It is difficult to establish a right formula to find solution to the problem, since it would be largely influenced by political configuration at a given time, and it is almost certain, that every country would always put economics, politics, social prosperity and security into consideration in finding a balancing-point.

However, however difficult to establish a formula, 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 problem is for the interest of the whole society, and not for the interest of a small segment of society or certain group only.

An emphasis on *"local interest criteria"* would give birth to an administration that is *democratic-decentralistic* in character. This should be equalized by *" national interest criteria'* which would remain to assure the national identity and unity, as well as national interest as a whole. This 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 and aspirations. The reason is, the members of the society would be more secured and peaceful if government body closer to the people, both physically and psychologically (Bonne Rust, 1968). In the meantime, giving loose autonomy to the region, would not cause "disintegration", and would not lessen the degree of authority of the national government. On the contrary, it would produced respect of the region to the central government (Bryant Smith, 1986).

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

Out of this general overview and critic, there is an idea coming up on the need for giving autonomy to the region as broad as possible, and putting the focus of regional autonomy at level of areas closest to the people. It was based on this consideration, that implementing regional autonomy would not only provide a meaning of maturation of local people politics, but also at the same time it would give a meaning to giving people a prosperous life. The demand for equal distribution, demand for justice that often echoed, both economic and political areas, would at the end become the main focus in discharging regional autonomy.

This is in fact the philosophy that gives ground to the birth of Law No 22/1999 on Local Government on 7 May 1999 as the substitute of Law No. 5/1974 as well as the birth of Law No. 25/199 on the Central and Regional Fiscal Balance on 19 May 1999 being the substitute of Law No 32/1956.

At least there are 5 (five) basic thoughts that give ground to the formation of Law No 22/1999: *First*, as an effort of materializing a strong legal foundation for the 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/DPRD, both as a regional legislative body, controlling body, and as a mean 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 village)* or a similar level of government 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 which regulates rural administration uniformly throughout Indonesia, as villages in Java, was declared abrogated by Law No 22/1999, and regulation on *Desa* and its right and origin is left to the region which will be regulated by the regional regulations concerned.

2. Decentralization policy during the administration of the New Order.

Seeing the decentralization policy contained in Law No 5/1974 on Principles of Government in the Region issued during the administration of the New Order, although it had run for about 24 years, but the

implementation of real and accountable autonomy putting emphasis of regional autonomy at Level II Local Government, ran at choppy rhythm, slow and in several things even a setback.

The very basic mistake in realizing Article 1 8 of 1945 Constitution, by Law No 5/1974, was to establish "autonomous region" and at the same time as "administrative region" *(fused model)* which should be actually a separate thing *(split model)*. The consequence of mixing "autonomous region" with "administrative region", the regional administration head was held by a Head of Region who due to his position he was at the same time acting as Head of Territory.

This construction encouraged a system of administration that is centralistic in character, because of the dual-function position of the Head of Region, and that in this case the role of Head of Territory came more to the forefront. Consequently, the 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 of the Republic. The Head of Region was only responsible for providing "information" of accountable report to the DPRD. In that way, the accountability of Head of Region to the people was not visible the further and consequently 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, Region Level I and Region Level 11 (Local Government Level I and Level 11) 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 I Local Government and then Level II Local Government would get the smallest remaining portion. Within this pattern to materialize that the autonomy should go to Level II Local Government, would be very difficult to achieve, since the existence of Local Government Level I, would remain to have greater authority comparing to Local Government Level II. Therefore , the distribution of authority to the autonomous region would remain to be an *"upside down pyramid"* with all excesses of dupli6tion and confusion causing the position of Level II Local Government that is closest-to the people, become the least powerful in the system.

The decentralization policy followed during the New Order was more oriented to using the model of discharging decentralization called *"the structural efficiency model"* rather than using *"the local democracy model"*. The first model emphasizes the importance of providing services efficiently to local communities, consequently it tended to encourage greater intervention of the Central to control the regional government for assuring efficiency and economic progress. This model also emphasizes to

"uniformity and conformity", ignoring local values and regional diversity, which in the turn ignored the democratic values. While the second model emphasizes to *democratic and local values* rather than *efficiency values.* In addition, the local democracy model appreciates *local differences and diversity, because local authority has both the capacity and the legitimacy for local choice and local voice* (A.F. Leemans, John Halligan and Chris Aulich, in Bhenyamin Hoessein, 1998).

Choosing "structural efficiency" according to Leemans (in Bhenyamin Hoessein, 1998) had created tendency as follows: (1) to cut off the number of composition of autonomous region; (2) to sacrifice *democracy* by limiting the role and participation *of local people representative institution* as a policy decision institution and control institution; (3) reluctance of the central to devolve authority and greater discretion to the autonomous region; (4) giving more importance to deconcentration rather than decentralization; (5) formation of paradox; on one hand efficiency needs territory from a large autonomous region to make resources provision possible to support 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 in forming and structuring autonomous region, an autonomous region with large territory often became the prime target for liquidation or broken into smaller entities.

Therefore, it would be easy understood that the "principle of real and accountable autonomy" with "emphasis of implementation put at Level II Local Government" followed by in Law No 5/1974 was more rhetoric rather than substantial.

3. Shift of paradigm from Law No 5/1974 to Law No 22/1999.

The old paradigm in Law No 5/1974 using *"the structural efficiency model"*, is no longer followed in Law No 22/1999. The latter tends to use *"the local democracy model" with "split model"* putting autonomy at Regency and City Region/Local Government.

According to Law No 22/1999 the autonomy is laid down at Regency and City Local Government as an autonomous region, and is not concurrently functioning as *Administrative Territory.* The type of its administration remains a *"single (headed) administration"* ("Eenhoofdig Bestuur") and not a "collegial administration" (Collegiaal Bestuur) as Indonesia had in Law No 22/1948 and Law No 1/1957. The Head of Region according to the new law has the position of merely as "instrument of the region" and not concurrently as " instrument of the central", and also not as an extent ion of the central government. The Head of Region is assisted by a Vice Head of Region. The Head of Region is elected directly

by the DPRD, without the intervention of the central government. The candidate who gains a majority vote is nominated as Head of Region by the DPRD, and approved by the President. The approval of the President is based on the outcome of the election by the DPRD. The prerogative of the President, in this construction, is no longer followed. Likewise, Law No 22/ 1999 stipulates that the Head of Region is responsible to the DPRD. This is the consequence of a clear separation of 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 able to exercise the legislative and control function, as well as plays its role in channeling the people's aspiration in the context of developing local democracy.

With the empowerment of the DPRD through assignment of task, its authority is extremely large. The unique one in Law No 22/1999 is the provision of *"subpoena right' to* the DPRD as a consequence of the giving of "right of investigation", namely DPRD in carrying out its task has the right to ask the 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 state, the nation, the governance and the development. In that Law, it is expressed that for those who refuse and not fulfilling the request is sanctioned by jail punishment for no longer than one year (Article 20, Law No 22/1999). This is meant to avoid *"contempt of parliament"*, namely prevention for humiliating *the dignity and honour* of the DPRD.

Relating to the *"accountability"*, the Head of Region is liable to submit accounting to the DPRD at *"every end of budget year"*, and or *"for certain matter'* upon request of the DPRD (Article 45 and 46 Law No 22/1999). The accountability examined by the DPRD and corrected by the Head for no longer than 30 (thirty) days time". Refusal of the accountability by the DPRD for the second time, 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 end of his office term. According to Article 46, when the accountability is declined for the second time by the DPRD, the DPRD could 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 the process before terminating his post, they are:

(1) his accountability is declined by the DPRD;

(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 confidence; Crisis of trust publicly

(6) conducting criminal acts sanctioned by 5 (five) or more years in jail;

(7) when charged for doing attack against the Government and proved to do detrimental acts to the Unitary State of the Republic of Indonesia.

The first five categories is exercised through 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 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. As explained in Article 46 Paragraph (3), a Head of Region whose accountability is declined for the second time, the DPRD can propose his dismissal to the President. In that way, there will be a *"check and balance"* between election, appointment, approval 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: (a) a 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; (b) a Head of Region who is proved to undertake assault against the government. Action whose may disintegrate the unitary state of the Republic of Indonesia.

Reasons for dismissal of Head of Region is explained in Article 49 of Law No 22/1999, namely: (1) upon death; (2) requests termination at own will; (3) end of term of office, and new official has been installed; (4) no longer meets the requirements as meant by Article 33 (on the requirements to be Head of Region); (5) offending the oath/pledge of Head of Region; (6) offending the restrictions of Head of Region; and (7) developing public distrust, 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 member 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 the 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

4. The position of Provincial region as an Autonomous and Administrative Region.

According to Law No 22/1999, the position of Provincial Region as an *Autonomous Region* at the same time also as an' *Administrative Territory"*. Thus, Provincial Region is treated by this Law as still applying the *"fused model"*.

Consequently, the Governor has dual position, as Head of Region and as the *"Representative of the 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 City Region. The difference is only in the process of candidacy. Governor candidate nominated by the DPRD prior to the election, 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 of City Region, namely through majority vote stipulated through the decision of the DPRD, and approved by the President.

Putting the Governor so far as representative of the central government, is based on the following consideration: (1) 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; (2) to run Regional Autonomy across Regency and City Region, as well as carrying out authority of Regional Autonomy which can not yet be implemented by Regency and City Region; and (3) to carry out tasks of certain governance devolved in the context of carrying out deconcentration principle.

5. Comparison between Law No 22/1999 and Law No 5/1974.

If compared to the previous Law, in Law No 22/1999 there are very fundamental differences, among others are as follows:

(1) Law No 5/1974 was termed as Law on "Principles of Government in the Region", meaning that the Law does not only regulate the running of regional government in the context of *decentralization* principle, but also regulates the discharging of government under the *deconcentration* principle; it is stressed that the discharging of regional autonomy based on the *decentralization* principle, the implementation is performed at the same time with the *deconcentration.*

(2) Law No 22/1999 is termed as Law on ""Regional Governance"; it means that the discharging of regional autonomy is carried out based merely on the *"decentralization"* principle, which tend to move to the *devolution* principle; the Head of Region is merely as "regional instrument" and does not concurrently act as "Head of Territory". When this Law was still a draft prior to being brought to the Parliament (DPR), the writer had suggested that the title should not be "Regional Government", but "Law on Decentralization and Regional Autonomy", by focusing on regulating the freedom and liberty of

participation, initiative and empowerment of the people and territorial potential, and not merely on power of the regional government.

(3) In discharging regional government, Law No 5/1974 had followed the *"Structural Efficiency Model",* while Law No 22/199 follows the *"Local Democratic Model";*

(4) The principle used in Law No 5/1974 was *"real and responsible autonomy",* putting emphasis that in fact "regional autonomy" was more an *obligation* rather than *a right,* while basically the autonomy in Law No 22/ 1999 is a *"broad, real and responsible autonomy", by* stressing on the principles of *democracy, people participation, equal distribution and justice,* and by *observing regional potentials and diversity;*

(5) The definition of "regional autonomy" according to Law No 5/1974 is more emphasis on transfer of authority to local government institution, namely the transfer of authority to empower the bureaucracy of "local/ regional government" but not the people; while regional autonomy according to Law No 22/1999 is more oriented to the community (is of more "people democracy") rather than to local government. It means that the authority of autonomous region is to run the interests of the local community in accordance with their own initiative based on the community aspiration. In other words, the authority of the local government is only an instrument and facilitator for providing services to the community, channeling the aspiration and interests of the people, providing facilities to the community through people participation and empowerment

(6) Law No 5/1974 put emphasis of autonomy at Level II Local Government, and Level I Local Government remained to have the status of an integral autonomous region; while Law NO 22/ 1999 *putting broad and integral autonomy to the "Regency and City Region",* and does not concurrently to be an "administrative region"; while the authority of the Province as an "Autonomous Region" is limited, and concurrently to be an "administrative region", where the Governor being a representative of the Government is performing the duties delegated by Central Government in the context of deconcentration;

(7) In Law No 5/1974 there was a *hierarchical relation at* Local Government Level I and Local Government Level II through "Head of Territory"; in Law No 22/1999 there is *no hierarchical relation and no subordinating relation* between autonomous regions;

(8) Discharging of administration in Law No 5/1974 had followed *"Strong Executive System",* where power domination was with "Head of Region" in his capacity as "Head of Territory"; even the DPRD can be controlled by the Head of Region, while in Law No 22/1999 the position of DPRD is empowered by extending its right and authorities, and accountability of the Head of Region to the DPRD is made clear-

cut, making process of "impeachment " to the Head of Region possible when his accountability is declined by the DPRD. Nevertheless, the position of DPRD remains as an equal counterpart with Head of Region in maintaining a good cooperation and to maintain *"check and balances"* between the DPRD and the Head of Region, as well as the affectivity and stability of local government;

(9) Law No 5/1974 was of the old paradigm oriented by using *"functions follow money"* model, giving more emphasis to local government financing depends on the central through SDO and development assistance through Presidential Instruction (INPRES); while in the new Law No 22/1999 the paradigm has changed into money *follows functions"* through arrangement of Central-Regional Financial Proportion (Law No 25/ 1999), which makes the Region have more initiatives and higher pro-active power.

6. Uniformity character in Regional Autonomy.

Although there have been basic changes on the principles of regional autonomy from the old Law to the new one, namely Law No 22/1999, the format of autonomous region called as "large and small region" remains to follow the old format, namely "Local Government Level I" being an autonomous region of large scale becomes a "Province", and "Local Government Level 11, Regency and Municipality" become "Regency" and "City", each of which have become autonomous region of small scale. Thus, this Law has still followed a "uniformity" in defining the format of Autonomous Region, meaning that the Province Local Government Level I, Regency Local Government Level 11, and Municipality Local Government Level 11, established under Law No 5/1974, remain as they are, and only the wording that has been changed, to be "Provincial Region"; "Regency Region", and "City Region". Thus, according to this new Law, there are three forms of Autonomous Region: Provincial Region, Regency Region and City Region, with emphasis of autonomy at Regency and City Region, each of which is independent, and has the authority to manage and to run the interest of the local people.

The implication is, for the Regency and Municipal Region, which area has sufficiently strong economic potentials, it is expected that the regional growth and the autonomous independency of the region would be more assured. On the contrary, a region that lacks resources, it is afraid that it would get difficulties in achieving the growth of its region, and the realization of its autonomy would also be delayed. Although this weakness could be overcome through the policy of fiscal equity between the central and region as contained in Law No 25/1999, it is not yet assured, because Law No 25/1999 still put the weight to the central.

The format of the regional autonomy should actually be structured as such in accordance with wide requirement for a territory to develop the capability for becoming autonomous. Either from economic

democratization, population, participatory or people empowerment points of view, the uniformity in structure and in the format of autonomous region should be avoided. That way, the position of regional autonomy is not necessarily be equally put for all Local Government Level II (Regency and Municipality), but it would depend on the strength and the potentials of the respective area/territory.

For instance: for Bali Island it might be more appropriate when the autonomy is placed at the Provincial Region of Bali. Likewise for Special Region of Yogyakarta, and Riau Provincial Region, it might be more appropriate when the focus of the autonomy is laid at the Riau Provincial Region.

But, at the end the Law Formulating Team had decided that the format of autonomy remains as it is now, namely: Local Government Level I and Local Government Level II established under Law No 5/1974, each of them has become Provincial Region and Regency/City Region with broad autonomy laid down at the Regency/City Region, and agreed by the Parliament to be Law No 22/1999.

In the meantime, this Law is also anticipating the possibility of abolishing and/or joining Autonomous Region with the other Region, when the related Region is not capable to discharge the autonomy of its region. This possibility seems difficult to carry out, in view of political-psychological and cultural consideration, because a Region that was declared as an Autonomous Region if it is abolished, it will be considered as *a "retreat from autonomy"*. Nevertheless, for regions which people have a strong will to undertake cooperation and fusion of authority to become a sufficiently large and strong integrated territory as "an autonomous region", is made possible by this Law, so that the position of its autonomy would not be at Regency/City, but at a Province, either at the old or at the newly established province, for instance: Provincial Region of Riau Islands; former Region of Banten Regency; Madura Region and others. That way, the impact to the independency of its autonomy would be stronger, especially from an economic point of view. Nevertheless, the autonomous status for Regency and City Region, would not change, only for Regency an City Region would be able to make option to certain areas the consider unable or incapable to carry out, and from economic potential point of view it would be right if this is done by Provincial Region. In this situation Regency/City Region can for the time-being devolve its authority to the Provincial Region.

On the other hand, according to Law No 22/1999 the possibility is open for an autonomous region to be further developed into more than one Autonomous Region, especially those for Regency/City territory. This policy would cause the weakening of the economic potential of Regency/City Autonomous Region, and in turn the sustainability for independency of an Autonomous Region would also lessen. Therefore, the implementation of this policy of "further developing the territory of an Autonomous Region" into more than one Regency/City Autonomous

Region, should not be encouraged, because it would not strengthen the potential of its autonomy.

Although the authority of autonomy is broadly given to the Regency and City Region, the unique thing in this Law No 22/ 1999 is the Regency and City Region have a possibility for making an "option" to an authority. That is if due to technical, financial, personnel reasons or efficiency consideration it can not yet be undertaken, the authority can for the time-being be devolved to the Provincial Region.

On the contrary, there are 11 areas which form the principal need and basic services which are very vital to the interest of the society, that "must" be carried out by the Regency and City Region. In other words, for those areas the Region can not make an option for not providing them. These include public works, health, education and culture, agriculture, communication, industry and trade, investment, human environment, land affairs, cooperatives, and manpower. Thus, to these areas as far as they are the authority of the Regency and City Region, the relevant Regional Government must undertake them (Article 11 paragraph (2), Law No 22/1999).

It seems, that Article 11 paragraph (2) of Law No 22/1999 looks awkward, because in the scope of authority of autonomous region which categorically expressed in Article I I paragraph (1) Law No 22/1999, just exactly "an obligation" for carrying out certain areas, so that the meaning of autonomy as discretionary power for Local Government, which interchangeably with the word "obligation" could produce confusion in its implementation.

7. The impact of regional autonomy implementation to the developing of local Democracy in the Mileages.

Law No 22/1999 is also aiming at improving the position and role of Village, which was previously regulated by Law No 5 1979. The idea is to reposition Village or mentioned *by other name* recognized in the national administration system as a social entity and honored for having right of origin and original autonomy, as well as local custom or tradition. It is agreed that Village arrangement will be stipulated through the respective Regional Regulations, with obligation to acknowledging and honoring the right of Village origin

To return the Village authority of the existing authority in accordance with the right of Village origin, would surely be a difficult task. The right and authority of the Village have been modified and transferred to the authority of the government, resulting from the policy of Law No 5/1979, that put a uniformed the status of all Villages as the one like in Java.

A problem that may arise would be in the context of carrying out the democratization principle in the administration. The transfer of

authority of regional autonomy broadly given to Regency and City Region through the decentralization principle of Law No 22/1999, is not only an implementation of decentralization to the regional government bureaucracy, but operationally should touch the *implementation of decentralization to the society*, implemented through *citizen participation and people empowerment*. People participation in the administration is in the process of planning, decision making, and implementation, but they should also participate as *"stake-holders" and "share-holders"*.

This is considered important, since Law No 22/1999 does not explicitly regulate the *direct access of decentralization to the society*. At least, one which can be explicitly used as a reference relating to the *direct access of decentralization to the society*, is the Article explaining the obligation of the DPRD, among others: cultivating democracy in discharging the Regional Governments; enhancing the prosperity of the people in the Region based on economic democracy; and observing and channeling the aspiration, receiving complaints of the people, and facilitating the follow-up of its settlement (Article 22, Law No 22/1999). Other reference, is the obligation of Head of Region, among others: honoring the people's sovereignty; and enhancing the level of prosperity of the people (Article 43, Law No 22/1999) .

Therefore, in the context of developing *grass root democracy*, the construction of Law no 22/1999 has regulated the position of the Village Representative Body as a village representative institution playing the role and functioning to protecting village people's custom and tradition; making village regulations; accommodating and channeling people's aspiration; and conducting control to the discharging of village administration.

The members of the Village Representative Body are elected from and by the village people directly. The chairman of the Village Representative Body is elected from and by the members of this Body. This, is a new paradigm in developing democratization in the village, since according to the old Law (Law No 5/1979) the Head of Village and the Village Consultative Assembly (commonly known as LMD) being the people's representative institution was combined as village administration, where the Village Head, because of his position as Chairman of the Village People Institution/LMD, he was rightly to be responsible to that Institution. That way, the LMD could not be entrusted to function as a vehicle for channeling the aspiration of the village people, and as a controller to the discharging of the village administration, since this institution was largely intervened by the position of Village Head being the executive office-holder who was at the same time *"ex-officio"* the Chairman of the LMD. On the contrary, Law No 22/1999 which has been the starting-point of developing the democracy from the village, categorically separate the position of Village Head as a village executive body and the Village Representative Body as a village legislative institution, being the vehicle and the instrument for carrying out the developing democracy in the village. In the meantime, the Village Head

has the tasks and obligations: to run of the Village Administration; to cultivate the Village social life; to develop the Village economy; to maintain law and order of the Village society; to bring to terms any disagreement in the Village; and to represent his Village in and outside the law court. In carrying out his tasks and obligations, this Law says that the Village Head is responsible to the village people through the Village Representative Body. That way, the Village Head is no longer responsible vertically, but horizontally responsible to the people ("public accountable") through the Village Representative Body, since the Village Head is elected directly by his Village people.

This differs from carrying out democracy in the Regency and City Region. Although Law No 22/1999 has anticipated and put the position of the Regional Government separate from the one of the DPRD, and stressed that the DPRD being a people representative institution is a vehicle for carrying out democracy, but the representative democratic system followed in the administration system in Law No 22/1999 and the general election system following the proportional system in Law No 2/1999 and Law No 3/1999 are difficult for developing of pure and effective democracy.

The provisions of Law No 22/1999 in empowering the DPRD by extending rights, task, authority, and obligation as such, so that this institution is expected to be capable of playing the role and function earnestly as a representative institution. The position of the DPRD is now highly acknowledged as a "legitimate" institution because it is elected through "just and fair general election". But several observers have been doubtful about the quality of the members of this institution who are supposed to be professionally capable of observing and channeling people's aspiration, receiving complaints from the people. Also, there is a worry to the prevalent practice of "money-politics" corruption -collusion and nepotism (known as KKN) and others discrepancies among the members of the DPRD, especially in the process of electing Head of Region and other Regional officials. Obstacle or impact that may occur, would be how and to whom the DPRD and or its members will be responsible in carrying out the tasks and obligations. Those should be argued, since Law No 22/1999 does not regulate the accountability of the DPRD. Unlike Law No 5/1974 that stipulates "when the DPRD neglected or because of one and other reasons is prevented from carrying out its function and obligation that would cause damage to the Region or State, after hearing the consideration of the Governor Head of Region, the Minister of Home Affairs shall determine the way how the right, authority and obligation of the DPRD could be carried out" (Article 35, Law No 5/1974).

In Law No 22/1999, there is no provision regulating the control mechanism to the Regional legislative institution, so there will be no follow-up when the DPRD can not carry out its function or neglecting its obligation which could produce damage to people of the region or state. This role has so far been carried out mostly by NGO or "LSM", controlling

both the people representative institution and the regional executive institution.

Therefore, there should be a thought for possible establishment of a *"Community Coalition'* forum, which would give a direct access *(community input),* to both the regional government and to the DPRD in accordance with the people's aspiration. This is in line with the aim of the decentralization policy which gives a broad autonomy to the region for materializing an accountable local government *("Good Governance" or "Behoorlijk Bestuur")* that have a characteristic of transparency, intellectual honesty, not passing the buck, carrying out law supremacy and equal law enforcement, having a professional and neutral bureaucracy, and decentralistic authority.

It is therefore, regional autonomy which gives more stress on the materializing of people's participation and empowerment people would be more relevant. When people is empowered, then people would be more capable of electing people's representatives who would be earnestly fighting for the interest of the people they represent.

This would be the true core of autonomy and democracy, as explained by Moh. Hatta (I 95 7):

> *'... Giving regional autonomy would not only mean carrying out democracy, but encourage the developing of auto-activity. Auto-activity means to act at their discretion, carrying out on their own what is considered important for their own community. By developing an auto-activity what is meant by democracy would be achieved, namely the government carried out by the people, for the people. People would not only determine their own destiny, but also more importantly promote their own destiny… "*[2]

The prospect of democracy starting from the Village in the context of regional autonomy will be more significant to develop compared to the implementation of democracy in the Regency and City Region.

For developing local democracy through decentralization principle and discharging regional autonomy in the Regency and City Region, there should be an adjustment to the Law on the existing local government, Law on Political Parties and Law on General Election, to enable changes from proportional to district system, and enable the DPRD members, Head of Region and other political posts to be directly elected by the region and responsible to the people.

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[2] Hatta, Moh., Autonomie dan Auto-aktiviteteit, Indonesia Raya, 1957, in Bhenyamin Hoessein, Gagasan Pendayagunaan Aparatur Negara dalam Pelita VII, Aspek Kelembagaan, Jakarta : LAN, 1996, p.4

Bibliography

Amal, Ichlasul, 1992, *Regional and Central Government in Indonesia, West Sumatra and South Sulawesi 1949-1979*, Yogyakarta : Gadjah Mada University Press.

Badan Litbang, 1991, *Prospek Otonomi Daerah*, Jakarta : Badan Litbang Departemen Dalam Negeri.

Bryant C., and White, L.G., 1982, *Managing Development in the Third World*, Boulder, Co : Westview Press.

Cheema, Shabbir, G., and Dennis A. Rondinelli, 1983, *Decentralization and Development : Policy Implementation in Developing Countries*, Beverly Hills,CA : Sage Publications.

Departemen Dalam Negeri, 1985, "Pokok-pokok Uraian Penjelasan Pasal 18 UUD 1945" in *Departemen Dalam Negeri : Tugas dan Peranannya dalam Pemerintahan di Daerah*, Jakarta : Departemen Dalam Negeri.

Devas, Nick, 1989, *Financing Local Government in Indonesia*, Athens, Ohio : Center for International Studies Ohio University.

Fesler, James W.,1968, "Centralization and Decentralization" in *International Encyclopedia of Social Sciences*, ed Davis L. Sills, New York : Macmillan.

Hoessein, Bhenyamin, 1998, "Format Pemerintahan Daerah dalam Era Reformasi" Makalah Seminar *Program Magister Administrasi Publik*, Pasca Sarjana Universitas Krisnadwipayana 5 Desember 1998.

Koswara, E., 1992, *Kebijaksanaan Perencanaan Pembangunan dan Pelaksanaan Otonomi Daerah*, Yogyakarta : Modul Program PPTMPP, Universitas Gajah Mada.

Maryanov, Gerald, S., 1958, *Decentralization in Indonesia as a Political Problem*, Ithaca NY : Cornel University Press.

McAndrews, Colin, dan Amal Ichlasul, 1993, *Hubungan Pusat-Daerah dalam Pembangunan*, Jakarta : Raja Grafindo Persada.

Morfit, Michael, 1986, "Strengthening the Capacities of Local Government: Policies and Constrains" in McAndrews, Colin, *Control Government and Local Development in Indonesia*, New York : Oxford University Press.

Moeljarto, T., 1987, *Politik Pembangunan, Sebuah Analisis Konsep, Arah dan Strategi*, Yogyakarta : Tiara Wacana.

Obsborne, David and Ted Gaebler, 1992, *Reinventing Government : How the Entrepreneurial Spirit is Transforming the Public Sector*, Mass : Addison-Wesley Publishing Co.,Inc..

United Nations, 1961, *A Handbook of Public Administration, Current Concepts and Practice with Special Reference to Developing Countries*, New York : United Nations.

----------, 1962, Technical Assistance Programme, *Decentralization for National and Local Development*, New York : Dept. of Economic and Social Affairs, Division of Public Administration.