



**German Technical
Cooperation**

**CAPACITY BUILDING NEEDS
ASSESSMENT FOR LOCAL
GOVERNMENTS AND
LEGISLATURES**



**CLEAN
Urban Project**

**Decentralisation in Indonesia -
The Framework for Local Governance -
A Discussion Paper**

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Introduction

In May 1999, the Indonesian parliament passed Law No. 22 (1999) on Regional Governance, and Law No. 25 (1999) on Fiscal Balance between the Central Government and the Regions.¹ Both laws once implemented fully will substantially change the pattern of government and administration in Indonesia by giving the sub-national level (especially the local level) far-reaching responsibilities for the provision of public services, and by making the local and provincial executive accountable to elected representative bodies. Both laws envisage the new system to become effective by 1 May 2001, however implementation and full realisation of both laws will take much longer. At the time of writing the emerging picture is still sketchy and often uncertain: the implementing Government Regulations flashing out meaning and substance of the stipulations of both laws are either still on the drawing board, or first drafts are under discussion with sector agencies and the regions. The Government has set a tight timetable to complete the regulations, and considering the stipulations of the laws (which envisage the coming into force of the decentralisation arrangements by 1 May 2001) and the change of the budget cycle (with the FY 2001 starting on 1 January instead of 1 April 2001) little time is left for completing the groundwork to implement decentralisation.

The new framework for local governance gave rise to a number of initiatives dealing with capacity assessment and the formulation of capacity building initiatives targeting both the legislative body (DPRD) and the local administration as executive body. In June 1999, BAPPENAS requested GTZ to undertake a comprehensive capacity building needs assessment for local governments and legislatures, and to inventorise past and present initiatives relevant in the context of local government capacity building. GTZ fielded a team of consultant in November 1999, and since then has been conducting the study in cooperation with CLEAN Urban, an USAID sponsored project dealing with local government services and local government finance.² Part of the assignment of the study team was an assessment of the emerging framework for local governance in Indonesia as a background for the more detailed formulation of recommendations and action plans contained in the thematic reports on the nine thematic areas of the study.

This discussion paper intends to widen the focus of discussing the future of local governance in Indonesia. In the understanding of the team, understanding local governance must not be limited to a narrow analysis of the two laws No. 22 and No. 25 (1999) which form the legal backbone of the decentralisation policy. Local governance in Indonesia will be influenced by a wide-ranging number of factors, like political issues, the socio-economic development, public sector management concepts and the further development of the legal system. These factors have to be taken into

¹ Undang-Undang Nomor 22 Tahun 1999 tentang Pemerintahan Daerah; Undang-Undang Nomor 25 Tahun 1999 tentang Perimbangan Keuangan Antar Pemerintah Pusat Dan Daerah.

² The CIDA sponsored Development Planning Assistance project is contributing to the study by developing a data base on TA activities related to decentralisation and local government. For details on the background of the study and its approach see also the Implementation Report (Report WD04), which can be downloaded at <www.gtzsfdm.or.id>.

account in the formulation of appropriate policies at the local level. Regional autonomy is a long-term policy concept involving multiple risks, but also offering huge potential gains. Supporting good local governance requires both GOI and donor agencies to cover the relevant issues in a comprehensive and integrated manner, and to work together with the communities in focusing on those issues which are regarded as priorities by the communities themselves.

The paper has three parts: Chapter 1 addresses the wide-ranging scope of issues in local governance. Chapter 2 looks at the two laws which form the backbone of the decentralisation policy, i.e. Law No. 22 (1999) and Law No. 25 (1999). Chapter 3 assesses the implementation of the decentralisation process so far, the public debate surrounding decentralisation, and the necessary policy agenda that the Government has to address in order to make decentralisation succeed. The paper was prepared by Rainer Rohdewohld. Luc Spyckerelle commented on an earlier version and provided valuable inputs.

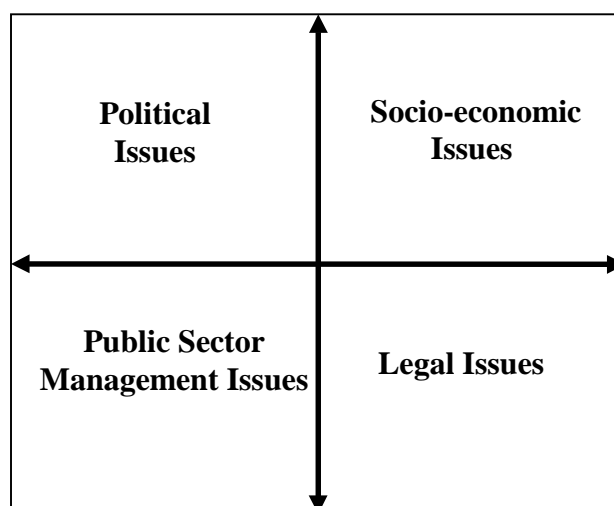
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Capacity Building Needs Assessment
for Local Governments and Legislatures

1. Governance, Democracy and Decentralisation in Indonesia

Decentralisation and the empowerment of the sub-national levels of government are key building blocks in the continuing process of political and economic transformation in Indonesia. President Abdulrahman Wahid has put his political support behind the two decentralisation laws which his predecessor, Prof. B.J. Habibie, pushed through parliament in May 1999 in an effort to build up credibility and legitimacy as a political reformer. Despite all their shortcomings, the two laws - Law No. 22 (1999) on Regional Governance and Law No. 25 (1999) on Fiscal Balance between the Central Government and the Regions - constitute the so far most determined effort to break the centralistic grip of the Jakarta-based government administration on the regions, and to develop a more balanced distribution of power and influence between the levels of government, and between Jakarta and the rest of the country.

However, other factors will shape the future of local governance in conjunction with both laws. While Laws No. 22 and 25 (1999) form the skeleton of local governance (providing the legal basis - the bones and joints- of local governance, and of the interaction between levels of government and between executive and legislative branches), other factors put flesh on this legal structure and thus determine the shape of the body. These factors include political issues, socio-economic issues, legal issues and issues of public sector management which will continue to have a bearing on public sector activities in Indonesia (see Fig. 1).

Fig. 1 Factors influencing Local Governance



a) Political Issues

Decentralisation and regional autonomy comes at a time where the Indonesian political landscape experiences fundamental changes. Law No. 3 (1999) opened up the way for a multi-party system where different parties compete for votes and influence.

The General Elections of June 1999 are regarded as the first free and fair elections in more than four decades. The elected bodies on central and local level demand their fair and appropriate share in the political decision-making process and attempt to get rid of their previous rubber stamp image, thus building up a more balanced system of power sharing. The end of the Suharto-era brought also an end to the censoring of the mass media, allowing for a free (and at times cacophonous) public debate covering a wide range of issues. The influence of the military is slowly reduced to give priority to elected politicians who are accountable to their communities via the local, provincial and national parliaments.

The fall of Suharto and his centralistic system resulted in a "regional awakening" where provinces and regional communities - based on common culture, history, religion, and traditions - demand a greater share in determining their destiny and are keen to limit the influence of the central government (up to the point of demands for independence from the Indonesian state).

Fighting corruption has become a key issue in the public debate, and the previous silent acceptance of senior officials enriching themselves from public funds has been replaced by a critical examination of the behaviour of such officials and a more open coverage of corruption cases in the media. Law No. 28 (1999) has declared the fighting of "*Korupsi, Kolusi, Nepotisme*" (KKN) a key issue of public policy and stipulated the establishment of a commission to audit the income and wealth of public officials. Senior politicians, like the MPR Speaker Amien Rais, have called for the establishment of an independent Anti-Corruption Commission based on the example of Hongkong to fight rampant corruption in the public sector.

However, the establishment of a multi-party system, free general elections, free mass media and the debate on corruption have not yet resulted in a mature political system. Political parties in most cases still resemble election vehicles geared towards fostering individuals rather than political platforms based on shared principles and policy objectives. Especially on the local level, parliamentarians have still to learn how to deal with an old-style administration and how to impose themselves on the local decision-making process³. Money politics is still reported to be widespread on provincial and local level where public positions (Governors, *Bupati* and *Walikota*) are reportedly still often earned on the basis of well-filled war chests rather than on the basis of personal and political merits. The free press often lacks the qualification, skills and infrastructure for investigative journalism and too often resorts to reporting as matters of facts rumours and politically influenced opinions.

The further development of a mature political system on central and regional levels becomes an essential element of making Law No. 22 and Law No. 25 (1999) succeed. There is much concern that empowering the regional governments will lead to more corruption and misuse of power on the local level ("*korrupsi pindah ke daerah*") and will result in the formation of local fiefdoms run by the local political elite⁴. Such development will certainly come true unless local accountability and control are enforced. Democratisation and empowerment of communities have to

³ See Report IR-1 of the study team.

⁴ See "Otonomi Daerah Ciptakan Raja Kecil", KOMPAS 19/2/1000.

support the decentralisation policy. Accountability and social control are required both inside the political and administrative system, in the interaction between administrative and executive branch of the local government, and in the interface between the local community and the local government. Transparency of decisions for the allocation of funds, involvement of local civil society-based organisations (like professional organisations, interest groups, advocacy groups, user groups) in the process of formulating and preparing local policies, accountability of elected representatives towards their constituency and an active constituency demanding such accountability from elected representatives are key ingredients for a local democratic system. The development and consolidation of such features have a longer time horizon than the immediate implementation of Laws No. 22 and 25 (1999).

b) Socio-economic Issues

Decentralisation comes at a time where the economic and financial crisis continues to hit most segments of the Indonesian society. With a slow recovery of industrial activities, unemployment is still high, especially in the urban areas. The demographic situation is characterised by a high proportion of the younger generation requiring the creation of millions of additional jobs every year. Only in agriculture positive growth could be recorded in the last year, mainly because of more favourable weather conditions. However, even here successes in some areas (increase of rice harvests) do not always benefit the communities as farmers complain about the drop in rice prices (and therefore farming income) because of cheap rice imports and oversupply on the domestic market.

The economic crisis had pointed effects on both revenue and expenditure sides of public finance. The crisis of the banking sector and the need to refinance banks will continue to drain the state budget and to limit the availability of funds to finance investment and development programmes. Regional economic disparities continue to exist while the latitude of the government for equalisation measures remains restrained because of limited revenue.

Parallel to efforts to handle the economic crisis and its effects, a continuing restructuring of the economy can be observed, intended to create a more open market situation by reducing monopolies and price distortions. Such restructuring is driven by international agreements (like the WTO treaty and ASEAN trade regulations) and by internal efforts to put aside the negative effects of the cronies' economy which characterised the last decade of the Suharto presidency.

c) Legal issues

The more balanced system of power distribution envisaged by Law No. 22 (1999) is based on the assumption of a clear separation of the roles and functions of the levels of government. Whether this can be achieved in the forthcoming Government Regulations remains to be seen. Taking into account the tradition of the Indonesian administrative system favouring less clear demarcations of influence and power (because of the inherent determination of rent-seeking opportunities) chances are high that disagreement and overlap will continue between levels of government. Law No. 22 (1999) provides for a mechanism to repel local government regulations by the

central government, and for a legal appeal mechanism. Whether this mechanism will function effectively depends to a large extent on the capability of the judiciary system, especially the Administrative Courts, to handle legal conflicts between government levels and to build up a common body of legal opinions and decisions from which to draw. As a follow-up to both laws, a multitude of existing provincial and local regulations have to be modified or new ones have to be formulated. There is a risk that in the transition period government agencies will use existing laws and regulations to obstruct the process of regional autonomy if contradictions with the new laws are not clarified as soon as possible.

There is also a constitutional element in the current debate on regional autonomy: the demand for a federal state (during the New Order period an absolute taboo) shows clearly the existing dissatisfaction with the way the Indonesian state has been managed. Including a guarantee for local autonomy in the constitution, and outlining the allocation of functions between levels of government in the constitution might help to avoid unnecessary and lengthy disputes between levels of government, and could pacify the distrust of the regions regarding the policy of the central government (see Policy Note 1999).

d) Public Sector Management Issues

The international debate on public sector management will continue to have an impact on the Indonesian public sector, on the balance of private and public sector activities, and on the ways public agencies are providing services to the community. Elements of the debate (like the “executing agency” concept, contracting out, Public-Private Partnerships) have been introduced in the Indonesian public sector. Output based budgeting and performance orientation are key strategies to be found in public sector policy documents. While privatisation has not been as extensive as in other countries, it continues to be a core element of the economic recovery programme of the government and takes a prominent place in the Letter of Intent with the IMF⁵. The separation of economic organisations from the administrative and political sphere and their hands-off management based on corporate plans and agreed-upon performance indicators are important building-blocks for achieving an efficient local public sector (see Fig. 2). For local governments, **privatisation** of public enterprises on the local level (BUMD) (most of which are in the water and market sector), the involvement of the private sector in the delivery of services, and performance orientation should be necessary and relevant policy options. As long as local officials and politician regards local economic enterprises (like the PDAM) as milk cows providing extra-budgetary sources of revenue, little performance improvement can be expected and services to the community will continue to fall short of expectations and needs.

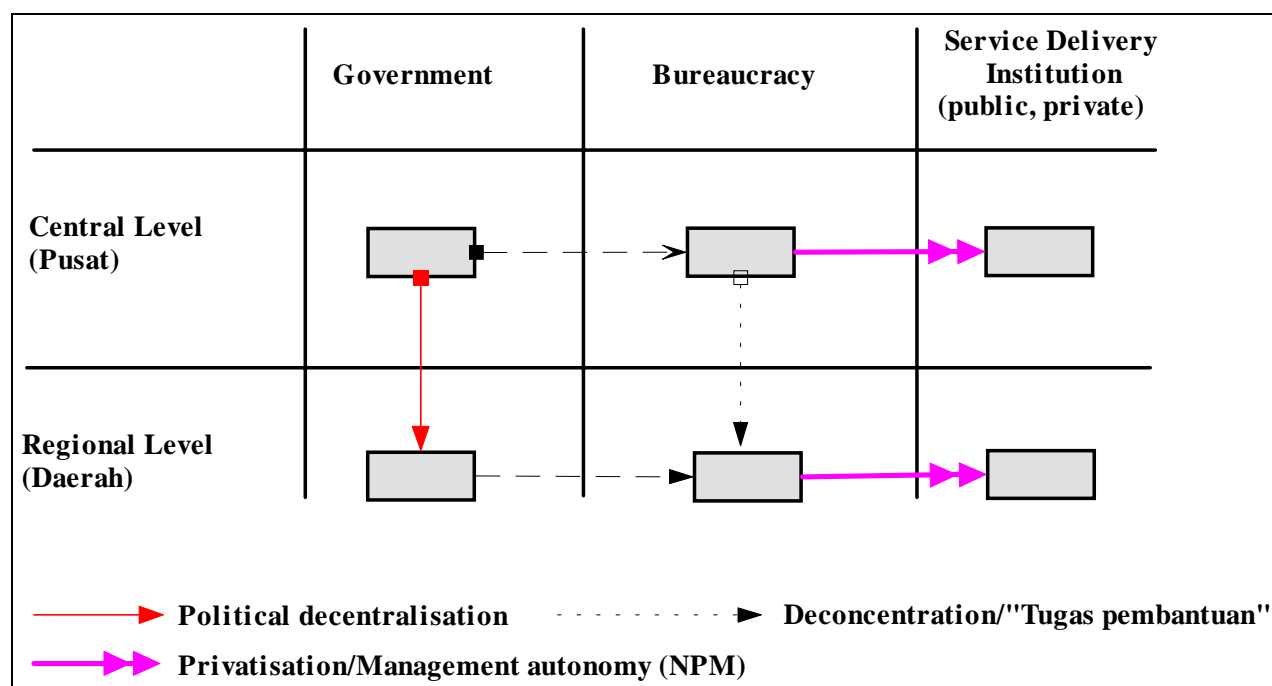
Political decentralisation - as codified in Law No. 22 (1999) - coincides with a trend towards more community and stakeholder involvement in the management of local public services, especially in the health and education sector (**de-**

⁵ In the January 2000 LoI to the IMF, the GOI envisages a privatisation revenue of Rp. 8.6 trillion for the FY 1999/2000, and another Rp. 5.9 trillion for the FY 2000. Among the state-owned enterprises slated for privatisation are PT Telkom and PT Indosat (further sale of GOI-owned shares), PT Krakatau Steel, PT Jasa Marga and others.

bureaucratisation, empowerment of the civil society). There is a general trend to give management autonomy to organisations and units providing direct services to local communities, based on agreed-upon performance indicators (**managerial decentralisation**).⁶ Both are closely connected with the political decentralisation as the responsibility for determining quantities and qualities of public services is shifted towards the local level and the local communities.

In the education sector, the aspect of managerial decentralisation can especially be seen in primary and tertiary education, while it seems to receive less attention in the secondary education sector. In the primary education sector “school-based management” has become a popular catchword (see BAPPENAS 1999). In higher education, managerial autonomy of higher education institutions is a strong current in the government's policy (MOEC 1999), and a recent Government Regulation (PP) (No. 61/1999) bestowed upon state-run tertiary education institutions (*perguruan tinggi negeri*) legal personality in order to increase accountability and autonomy based on five-year strategic plans.

Fig. 2 Concepts of Decentralisation In Service Delivery



These three trends of political decentralisation, de-bureaucratisation/empowerment and managerial decentralisation coincide at the present stage, and are frequently captured jointly in the term "decentralisation policy". However, such coincidence is by no means a must, in other words the policy of giving greater managerial autonomy to service delivery institution does not necessarily require a political decentralisation in the sense of devolving government responsibilities to

⁶ For instance the *unit swadana*-concept which gives certain service delivery institutions the right to accumulate revenues (e.g. from user fees) and to retain them in order to improve their services.

lower levels of government. Vice versa, the political decentralisation law is silent about means and mechanisms to increase managerial and financial autonomy of local government institutions providing services.

For local governance, this means that local communities, the administration and the decision-makers need knowledge and skills how to make decisions on the way the local public services should be organised and managed. There is a wide range of options, and one tasks of both GOI and donor agencies will be to support efforts in making the best choices.

2. Law No. 22 and Law No. 25 (1999) - A Brief Assessment

The extra-ordinary session of Indonesia's highest legislative body, the People's Consultative Assembly (MPR), in October 1998 opened the door for a revision of the antiquated Law No. 5 (1974) On the Principles of Regional Government⁷ by means of the MPR Decree No. XV/MPR/1998.⁸ Based on the MPR decision, the Ministry of Home Affairs put together a team of academics to formulate the Law No. 22 (1999), while the Ministry of Finance formulated Law No. 25 (1999). The formulation of the two laws was not a best practice case study in policy formulation as has been described in great detail elsewhere (Buentjen/Ferrazzi 2000). Nor were the intentions behind them without second thoughts since the Habibie government intended to use them to build up political credibility as a reform-minded administration. In great haste and without much public debate, both laws were pushed through parliament and approved in May 1999.

The MPR session in October 1999 (which was to select Abdulrahman Wahid as President) confirmed the decentralisation policy in the 1999-2004 GBHN, criticising the centralistic and bureaucratic development policy of the past. The GBHN section on Regional Development (BAB IV.G) calls for developing a wide regional autonomy (including the decentralisation of licensing [*perizinan*], investment and resource management), for a speedy regional development which empowers local economic actors, and for a stronger role of the regional parliaments. The GBHN also provides for special autonomy for Aceh and Irian Jaya (now called "Papua") to be regulated in a special autonomy law. While Law No. 22 (1999) does not envisage a sequenced approach to decentralisation (see below), the GBHN (BAB IV.H3) calls for a sequenced delegation of responsibilities in natural resource management.

Despite all shortcomings, both laws open up a unique window of opportunity to forge new power structures in Indonesia based on democratic multi-party elections, accountability, local participation and a fairer distribution of public revenue.

a) Law No. 22 (1999) on Regional Governance

What are the key features of the new law compared to Law No. 5 (1974)?

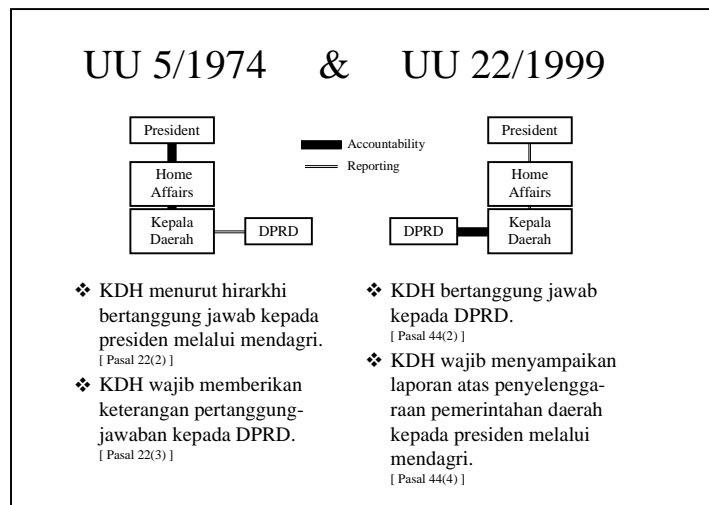
- The law places regional autonomy on five fundamentals: democracy, people's participation and empowerment, equity and justice, recognition of the potential and diversity of regions, and the need to strengthen the regional legislatures. These principles are broadly worded, however, they provide guidance for the interpretation of the law's stipulations and for the formulation of implementing regulations needed to operationalise the law.

⁷ Undang-Undang Republik Indonesia Nomor 5 Tahun 1974 Tentang Pokok-Pokok Pemerintahan di Daerah.

⁸ "Regarding the Implementation of Regional Autonomy, a Just Regulation, Division and Utilisation of Natural Resources and the Balancing of Centre-Regional Finances within the framework of the Unitary Republic of Indonesia".

- The law determines the local level (*kabupaten/kota*) as the level of government which is to have broad and wide-ranging autonomy ("*otonomi yang luas*"). Para 7.1 stipulates that the local level has responsibility for all governmental matters (*kewenangan dalam seluruh bidang pemerintahan*) except in the five areas of foreign affairs, defence and security, justice, monetary and fiscal affairs, religion and other matters. These "other matters" are listed in Para 7.2 as "macro-level planning, fiscal equalisation, public administration, economic institutions, human resource development, natural resource utilisation, strategic technologies, conservation, and national standardisation". Para 11 again provides a positive list of local responsibilities which local governments have to fulfil (*bidang pemerintahan yang wajib dilaksanakan oleh Daerah Kabupaten/Kota*), these include public works, health, education and culture, agriculture, transport, industry and trade, investment, environment, land matters, co-operatives and manpower.
- Responsibility for such matters includes planning, financing, implementation, monitoring and evaluation, and maintenance (see Elucidation to Para 8).
- Regions can re-transfer their functions to the provinces if they are not capable of handling them (Para 9.2).
- Regions can be given additional tasks as "*tugas pembantuan*" (co-administration), such transfer has to be accompanied by the provision of means to carry out such tasks (like funds, infrastructure, staff) (Para 13.1).
- Regions are to be given control over their finances, their civil services and their organisational set-up.
- While regional autonomy on the local level is defined as "wide" (*luas*), regional autonomy on the provincial level is defined as "limited" (*terbatas*). Provinces continue to have a double status as autonomous regions and as administrative regions under the command of the president (via the Ministry of Home Affairs). Para 9 defines as the main functions of the provinces cross-regional functions (*kewenangan pemerintahan yang bersifat lintas kabupaten dan kota*), and functions in regional macro-planning, human resource development and research, the management of regional ports, environmental protection, trade and tourism promotion, pest control/quarantine and spatial planning.
- The *kabupaten/kota* level is removed from the line of command that under the *Orde Baru* government ran from the President down to the village level (see Fig. 3). The election of *Bupati* and *Walikota* does not require the clearance from higher levels of government any more. They are accountable only to their respective local parliaments (DPRD).

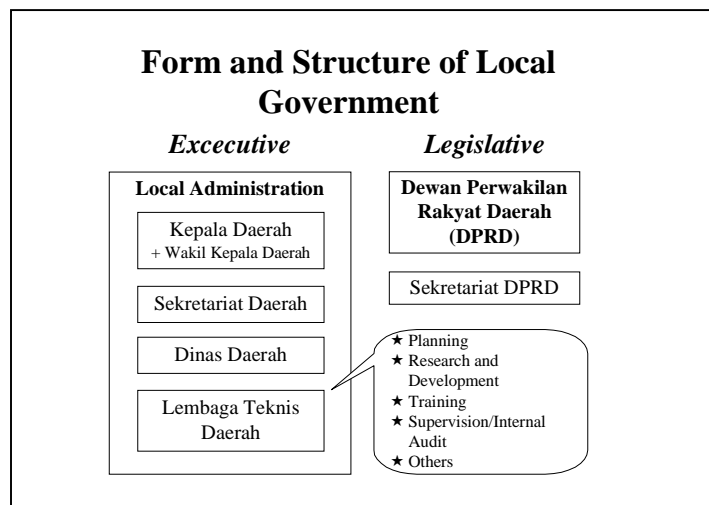
Fig. 3 Changes between Law No. 5(1974) and Law No. 22 (1999)



(Source: SfDM/GTZ)

- While Law No. 5 (1974) included both the legislative and the executive branch in the term “local government”, Law No. 22 (1999) draws a clearer distinction between the DPRD as local legislative body, and the administration as the executive branch (see Fig. 4).

Fig. 4 Executive and Legislative on the Local Level



Source: GTZ/SfDM

- The deconcentrated offices (*instansi vertikal*) of central government agencies at regional level will be merged with the respective agencies of the regional governments. Staff and assets must be transferred to the regions (Para 129). Exceptions are in those areas where the central government retains responsibility (like religion). Deconcentrated functions, i.e. central government functions to be discharged by the provinces, will be handled by the provincial agencies. Deconcentrated functions must be accompanied by appropriate funding from the central government (Para 8.2), an important stipulation to ensure that the central government does not transfer so-called "unfunded mandates" to the local level.

- The *kecamatan* (sub-districts) will become deconcentrated units of the local government. At the village level, the communities elect a village council and a village head; such local institutions can be fashioned in accordance with local traditions (*adat*) and needs.
- All revenues and expenditures of the local government must be reflected in the local budget (APBD). Local governments can borrow from capital markets, however, foreign borrowing requires previous approval by the central government.
- For delivering services and for other purposes, regional governments can establish interregional cooperation (Para 87).
- Supervision and development (*pengawasan, pembinaan*) by central government agencies are defined as “facilitating” the activities and the capacities of regional governments (Para 112).
- Para 114 codifies the mechanism how regional decisions (like regional regulations) can be nullified by the central government, and the appeal mechanism for regional governments against such decisions.

b) Law No. 25 (1999) on Fiscal Balance between the Centre and the Regions

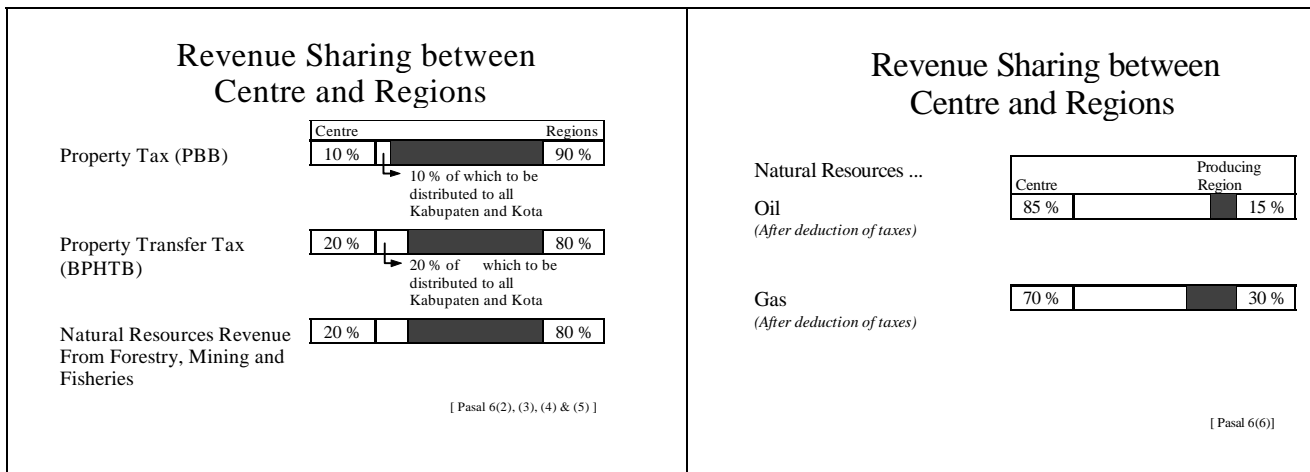
The law aims at empowering and raising regional economic capabilities, generating a financing system for the regions which is “just, proportional, rational, transparent, participatory, accountable and provides certainty”, and at realising a funding system that reflects the division of functions (between levels of government) and reduced regional funding gaps. Key stipulations of the law are as follows:

- Own revenue of regional governments (*Pendapatan Asli Daerah - PAD*) are local taxes, local charges and fees, revenue from local enterprises. Other sources of local revenue are equalisation funds (*dana perimbangan*), borrowing and others.
- Regional finances are to reflect resource revenue generation and needs.
- Equalisation funds consists of the regional share of the property tax (PBB) and property transfer tax (BPHTB), of the regional share of natural resources revenue, of a general grant (*dana alokasi umum*) and of specific grants (*dana alokasi khusus*). The law furthermore specifies the sharing formula for such taxes and natural resources revenue (see Fig. 5).
- From central government funds (APBN), a floor of 25 percent of domestic revenues is earmarked for the general transfer grant (*dana alokasi umum*). 22.5 percent of which will be transferred to the local level, and 2.5 percent to the provincial level. An allocation formula for such transfer has still to be worked out.
- Under the Regional Autonomy Advisory Council (*Dewan Pertimbangan Otonomi Daerah - DPOD*), of which the Minister of Finance is the vice-chairman, a grants administration (*Sekretariat Bidang Perimbangan Keuangan Pusat dan Daerah*)

will be established to advise the DPOD on grants formula and fiscal equalisation issues.

It is expected that after full implementation of both laws, the regional share of general government spending will more than double to over 40 percent, and that some 60 percent of the development budget will be managed at sub-national levels (Ahmad/Hofman 2000:7).

Fig. 5 Sharing formula for property taxes and natural resources revenue



Source: GTZ/SfDM

Both laws envisage a two-year implementation time: implementing regulations (like Government Regulations) have to be ready by May 2000, and full implementation of the decentralised system will start by May 2001.

c) Brief Assessment

An assessment of both laws should distinguish between two aspects: the process of law-making and the substance of the laws.

- **The process of law-making**

Both laws were prepared in a great hurry and without any substantial consultation with the regions, with the sector departments or with the society. In some quarters the legitimacy of the previous parliament to pass laws with such wide-ranging implications has therefore been questioned⁹, and the new Government has been asked to redraft the laws based on sufficient consultations with the society. Political actors involved in the drafting process have however strongly defended the need to have both laws approved without further delay, saying there had been no alternative to address the increasing unrest in the regions (Rasyid 2000). Both laws are a

⁹ E.g. the DPR member Aberson Marle Sihalohe has been reported as saying that "we have no obligation to follow the law [No. 22/1999]" because it is a product of the Suharto/Habibie New Order regime ("Govt urged to issue decree on regional autonomy", Indonesian Observer, 9/11/1999).

typical example of policy-making in developing countries where the search for policy consensus comes only in the implementation phase instead of in the drafting phase (Grindle/Thomas 1991).

Because of the rush of legal drafting, many stipulations in the laws (especially in Law No. 22) need further clarification by implementing regulations. This leaves the door open for modifications in their operationalisation. It makes it also more likely that stipulations of the law are being interpreted in accordance with the political spirit of the time, which not necessarily must coincide with the intentions of the original law.¹⁰

- ***The content***

Both laws, especially Law No. 22 (1999) have been criticised because their stipulations are often quite vague and lack operational clarity. The positive list of local government functions (Para 11.2) for instance does not clarify which responsibilities in the sectors mentioned should be handled on the local level (e.g. in education and transport).

Because of their vagueness both laws require a multitude of implementing regulations. In January 2000, the State Minister for Regional Autonomy referred to eight 8 laws, about 50 national Government Regulations and Decrees, nearly 1600 regulations on the provincial level and several thousand of local regulations which have to be formulated or modified (Rasyid 2000).

There is an increasing degree of criticism regarding the decision to focus regional autonomy on the local level. This has partly political reasons because of the increasing debate on federalism, but is also driven by considerations whether the local level is indeed the most appropriate level for a wide range of government services.

Because both laws were prepared by different teams, there is a lack of synchronisation. Especially the link between expenditure assignment and revenue assignment is not clear, and while Law No. 25 (1999) gives some flexibility, observers felt that costing transferred functions before designing the fiscal equalisation system would have brought more sustainable results.

Law No. 22 (1999) envisages a “big-bang” approach for decentralisation in the sense that all functions are transferred in one step. Observers have cautioned such an approach and expressed preference for a more sequenced approach where functions are transferred in several steps, with key functions like health and education being the first to be handed over to the local governments (Policy Note 1999, Ahmad/Hofman 2000).

¹⁰ A point here is the tendency to formulate the PP Kewenangan in such a way that a substantial number of responsibilities is still left with the provincial governments, despite the clear stipulation of the law which limits provincial autonomy.

The design of a grants system with a general allocation supplemented by special grants is a positive change to the present system of fiscal transfers. However, a number of shortcomings of the Law No. 25 (1999) have been identified as follows¹¹:

- There are no significant own-source revenues since all major taxes are still kept by the central government. The tax which in most countries is the main tax revenue for local governments, viz. the tax on property, is stipulated as a shared tax, weakening the link between local government revenue and local government performance.
- The property taxes are defined as shared taxes with an in-built equalisation mechanisms, which according to the World Bank is redundant because of the existence of the much larger general allocation transfer which also contains equalisation elements.
- Natural resources revenue form a substantial part of regional government revenue in the resource-rich regions. According to Ahmad/Hofman (2000), this will “actually widen regional disparities, prove difficult to administer...as volatile prices lead to a divergence between budgets and realised revenues, ..may provide more revenues to non-producing districts in a province than producing districts, and complicate the functioning of a grants system.” (ibid:6).
- Apart from the issue of increased regional imbalance, there is also serious concern that making natural resources one of the main sources of revenue for local governments will lead to over-exploitation with negative impacts on the preservation and protection of natural resources.¹²

¹¹ Ahmad/Hofman 2000:6ff.

¹² See e.g. "Autonomy threatens mangrove forests" (Indonesian Observer 20/11/1999).

3. Managing the decentralisation process

The formation of the new government in November 1999 and the subsequent establishment of new ministries caused a serious disruption of the process to prepare for the implementation of Laws No. 22 and 25 (1999). The former Coordinating Ministry for State Administration and Development Supervision (MenkoWasbangPAN), which under the Presidential Decree No. 67/1999 had the authority to coordinate this process and which had established several working groups involving the main stakeholders from the central government, was effectively abolished and the responsibility for decentralisation issues was handed over to the newly established State Ministry for Regional Autonomy (MenegOD). However, it was not before early 2000 that the new ministry became operational¹³, and that serious efforts were initiated to follow up on the previous work of MenkoWasbangPAN. Driven by the political imperative to have regulations ready as soon as possible in order to proof the government's readiness for regional autonomy, MenegOD opted for a unilateral preparation of the key implementing regulations with only nominal involvement of the regions, and only very limited involvement of the sector departments.¹⁴ Like in the formulation process of the two laws proper, such lack of public participation does not help to build up public support and political consensus within the political-administrative system. There is expressed dissatisfaction from the regions with such a process, and the intention of having regulations ready as soon as possible in order to pacify "rebellious" regions might well backfire if the regions are not satisfied with the results of MenegOD's preparations.

It was not before 7 April 2000 that a new Presidential Decree was issued (KEPPRES No. 52/2000)¹⁵ which re-established a formal coordination mechanism for the central government agencies for the implementation of the two laws. Under the leadership of the State Minister for Regional Autonomy, the *Tim Koordinasi* consists of 16 members representing the Cabinet Secretariat, the Ministries of Finance, Home Affairs and Administrative Reform, three Coordinating Ministries, the National Agency for State Administration (LAN), the Civil Service Agency (BKN), and the National Planning Agency (BAPPENAS). While the Minister of Finance is the Vice-Chairman of the team, the Ministry of Home Affairs is only represented with *Eselon I* officials. The tasks of the coordinating team are:

- to draft a strategy for the implementation of the Laws No. 22 and 25 (1999), including proposals for the institutional structure of central and regional government
- to phase and prioritise the implementing regulations
- to monitor and facilitate the drafting of implementing regulations between the central government agencies involved

¹³ The senior management level (Eselon I) was appointed 12 January, the Eselon II level on 27 January 2000. Budget funds became available only with the new fiscal year starting 1 April.

¹⁴ MenkoWasbangPAN had involved the sector departments in a round of bilateral discussions and negotiations, see Buentjen/Ferrazzi 2000.

¹⁵ Keputusan Presiden No. 52 Tahun 2000 tentang Pembentukan Tim Koordinasi Tindak Lanjut Pelaksanaan UU 22 Tahun 1999 tentang Pemerintahan Daerah dan UU 25 Tahun 1999 tentang Perimbangan Keuangan Antara Pemerintah Pusat dan Daerah.

- to socialize the laws and the implementing regulations
- to assist the State Minister for Regional Autonomy in the drafting process and in coordinating the discussions of the implementing regulations
- to formulate the steps which have to be taken by the government in order to facilitate the implementation of regional autonomy, this includes efforts to increase the capacity of regional governments, the DPRD's and the resources of the administration.

The KEPPRES¹⁶ also envisages the establishment of working groups. Details will be regulated by a follow-up decree of the State Minister for Regional Autonomy.

What are the issues to be clarified by the *Tim Koordinasi*?

- ***Finalisation of Implementing Regulations - Setting the Framework***

One key implementing Government Regulation (PP) finalised recently is the *PP Kewenangan* outlining in detail the tasks and functions of both central and provincial governments.¹⁷ All functions not allocated to either the central or the provincial government will by default become a function of local governments. Whether there will be an additional regulation stipulating a positive list of local government functions remains to be seen; Law No. 22/1999 does not require such a positive list. This *PP Kewenangan* is a crucial input for the formulation of the Government Regulations dealing with the fiscal and finance management issues, like the PP establishing the formula for the *Dana Alokasi Umum*.

Once these regulations are in place, regional governments and the society at large will have a clearer picture what regional autonomy means in practice, and can start to prepare for the implementation.

- ***Clarifying open issues***

Further dialogue will be required for the clarification of issues which are yet vague in the law. One issue is the management of natural resources, where on the one hand the law transfers responsibility for natural resources management to the regions (Para 10), but on the other hand retains the central government's function for natural resource utilisation (Para 7.2). Transfer to the local government level also raises additional problems where resource utilisation (like in mining and fisheries) runs across several jurisdictions and affects several local governments.¹⁸ Especially the mining and the forestry industry has raised concern to what extent regional governments will honour existing concessions approved by the central government,¹⁹ and ways have to be

¹⁶ The Indonesian text of the Presidential Decree can be downloaded at <www.gtzsfm.or.id>.

¹⁷ PP No. 25/2000. See <www.gtzsfm.or.id>.

¹⁸ Because of such overlap the Indonesian Association of Mining Professionals has called for a revision of Law No. 22/1999 ("Perhapi calls for revision of regional autonomy law", Indonesian Observer 2/3/2000).

¹⁹ The Jakarta Post reported that the South Kalimantan provincial parliament has imposed additional charges on mining companies in order to raise the provincial revenue; these charges are not covered by the existing mining concessions ("Autonomy holds bumpy ride for mining industry", 29/11/1999). Another case fuelling the concern of the international mining companies was the Newmont gold-mining

found how to harmonise existing contracts and concessions with the new decentralisation framework.

- ***Managing the transition***

One of the key issues for the central government is to clarify the time table for implementing the decentralisation policy. Laws No. 22 and 25 (1999) envisage that all necessary regulations are in place by May 2000, and that the new system becomes effective starting in May 2001. However, again conflicting statements and policy documents exist as to when exactly decentralisation will come into effect. In the January 20, 2000 Letter of Intent (LoI) to the IMF, the government outlined the time schedule as follows:

- Establishment of the Consultative Council for Regional Autonomy (*Dewan Pertimbangan Otonomi Daerah - DPOD*) February 2000
- Consultations with regional governments and civil society February 2000
- Issuance of regulations (Functional divisions, restructuring of central and local governments, transfer of civil servants, financial management, fiscal balance fund) September 2000
- Transfer of the payroll from central government to local governments for civil servants already working in their jurisdiction October 2000

The DPOD (and its two secretariats) have been established in April 2000²⁰. A dialogue (in the form of one-day meetings) with regional governments to discuss the *PP Kewenangan* has likewise been conducted in April 2000.

The establishment of both the *Tim Koordinasi* (under the chairmanship of the State Minister for Regional Autonomy) and the DPOD provides the formal framework for managing the transition period by bringing together the main stakeholder of the central government. Whether these institutions can successfully overcome the "legacy of distrust between central government agencies" (Buentjen/Ferrazzi 2000) remains to be seen. The kind of political leadership applied will certainly be a main factor here.

The concern of many refers to the required link between the allocation of functions and the allocation of funds (expenditure assignments and revenue assignments). Since there has been very limited attempt to calculate the real cost of government services, scarce empirical evidence is available whether local government revenue will be sufficient to fund the continuation of transferred government services with the same quantity and quality. The government will have to make sure that regional autonomy does not lead to an initial break-down or disruption of public services. A sound

activity in Minahasa (Sulawesi): the local government tried to get the company to pay IDR 61 billion for 'Galian C' taxes (removal and use of the top soil) which is not stipulated in the mining concession issued by the central government. The local court followed the argumentation of the local government and issued a closing order of the mine. In the end the issue was settled because of the intervention from the central government, and the company agreed to pay some additional taxes voluntarily.

²⁰ KEPPRES No. 49/2000 tentang Dewan Pertimbangan Otonomi Daerah. Download from <www.gtzsfdm.or.id/public/OUTPUT-SfDM/2000/keppres_49_2000.zip>

management of the transition process furthermore requires that technical, financial and human resources are transferred to regional governments in an orderly fashion (like having proper arrangements to transfer central government civil servants to regional governments and to cover the costs of such transfers).

- ***Strengthening local government capacities***

There is a widespread concern whether or not the local governments (or at least the majority of them) are ready and capable (“*mampu*”) for decentralisation. Such argument misses the political dimension of decentralisation as a building block for more participation of local communities and for more rigorous accountability. However, there is without doubt the need for medium-term initiatives to build up and/or strengthen the capacity of local government institutions. As can be seen from the thematic interim reports of the study team, such capacity-building initiatives have to target the three dimensions of capacity (system’s level, institutional level, individual level) in an concerted and integrated approach. It is also obvious that in numerous policy fields changes at the central government level (like organisational changes, procedural changes, changes of attitudes and role perceptions) are a key precondition for local governments to become more effective by introducing locally adapted innovations.²¹ A crucial aspect in this field is to establish proper monitoring mechanisms for the work of the local parliaments, to realign the relationship between DPRD and local administration, and to set into motion a process of determining local priorities which involves stakeholders from all facets of the local community.

- ***Adjusting the institutional landscape***

Regional autonomy will result in major changes of the organisational landscape of government administration at central and regional level. The merger of deconcentrated offices of central government agencies with the respective agencies of the regional governments is just one aspect. According to the law, regional governments have a greater latitude to decide on their institutional set-up based on their respective needs and the available resources. There will be a process of trial and error where local and provincial governments experiment with different institutional set-ups, including the establishment of inter-regional agencies to deliver joint public services. Central government agencies (like the Ministry of Home Affairs) still try to regulate the institutional set-up of regional governments in the old-fashioned *Orde Baru* style by decree, however, the real and immediate need is to make available to regional governments a pragmatic "tool kit" how to analyse organisational needs and how to make rational decisions on the number and structure of administrative institutions.

Mirroring organisational change on the regional level, the central government has to adjust its administrative structure. Central government personnel will be moved to the regional level. Transferring a multitude of government tasks to the regions will make some central government agencies redundant, or will reduce their scope of responsibility to such an extent that their further independent existence can not be justified any longer, requiring the merger with other institutions. Structure and working procedures of central government agencies will have to reflect the focus of

²¹ See for instance the report No. IR4 on local development planning.

the central government tasks on policy making and determining norms and standards. Monitoring the compliance with such norms and standards will become a main function of central government agencies. The relationship with regional governments will have to assume the facilitating role demanded by Law No. 22/1999, requiring also an attitudinal change from the paternalistic working style of the past to the support function needed in the future. The Indonesian administration has been discussing concepts of "lean management" for quite a while²² - regional autonomy provides the opportunity (and the imperative) to streamline the central government and the regional government administration, to reduce cost and to increase efficiency.

The need for such adjustments on the central level has been recognised by some²³, however serious efforts to streamline the administration have been lacking. The size of the cabinet and the related number of ministries does not yet reflect the policy of regional autonomy, and some central government departments (like the Ministry for Agriculture) were even able to secure a considerable expansion of their organisational structure despite the massive transfer of tasks to the regions. The Presidential Decree No. 49/2000 provides the *Tim Koordinasi* with the basis to push for more concerted efforts to reform the oversized and less appropriate central government structure.

Between the regional and central government level, a whole range of new inter-regional cooperation bodies could and should emerge. Law No. 22 (1999) provides the legal basis for the joint delivery of public services, and single- or multi-purpose association could be established in the future to assume a service delivery function for several local governments. Inter-regional cooperation can become a new mode of delivery for civil service training and planning. Political local government associations on central and provincial level are needed to ensure that the local governments have a voice in the political decision making process.

- ***Decentralisation, Federalism and Regional Autonomy - Building a Consensus***

Since the two laws have been approved in May 1999, little concerted effort has been undertaken by the government to socialise content and intention of the law with the regions, with the society at large and with relevant interest groups. Also the process of preparing the above mentioned regulations allowed only for a marginal participation of the regions, civil society organisations, or the public at large. As a consequence, there is not only widespread lack of knowledge, but also serious misunderstandings and misconceptions regarding the laws' stipulations. The observable confusion is compounded by the fact that the central government itself does not have a uniform position regarding decentralisation and does not speak with one language. For instance while Law No. 22 (1999) assumes the transfer of responsibilities to the regions irrespective of their financial and administrative capacities, ministers and even the Vice President in public still speak about asymmetric decentralisation where the scope of transferred responsibilities would differ between the regions.²⁴ The demand

²² See for instance MENPAN 1997.

²³ See e.g. "Ryaas Rasyid Proyeksikan Perampangan Pemerintah Pusat" (KOMPAS 11/11/1999).

²⁴ The Vice President, Megawati Soekarnoputri was reported as saying that "otonomi daerah harus dilakukan secara bertahap sesuai dengan potensi daerah masing-masing" ("Pikiran Otonomi Daerah Secara Rasional-Obyektif", KOMPAS 31/1/2000). Even the State Minister for Regional Autonomy, Prof. Ryaas Rasyid, was reported as saying that "there is no single standard for every region...the type

for special autonomy (based on cultural/religious reasons) has been raised by Bali,²⁵ however, according to the GBHN 1999-2004 only the provinces of Aceh and Irian Jaya will receive special autonomy.²⁶ There will be a need for a continuing dialogue between the levels of government, between the administration and the society, to discuss the meaning and intention of regional autonomy in order to arrive at a common understanding.

There will be a need for further dialogue with interest groups, organisations and the public to ensure that the process of policy formulation takes into account key principles of the autonomy law, i.e. democracy, people's participation and empowerment.

Regional autonomy, if implemented as intended, will create a new system for policy formulation and implementation. Central and regional governments will have to learn the new "rules of the game". Local administration and local parliaments will have to develop mechanisms of interactions which safeguard the political function of the DPRD without compromising the technical role of the administration. Local politicians, members of the DPRD, and local communities will have to establish a pattern of communication and dialogue which ensures that community priorities are taken into account and which prevent the establishment of local fiefdoms where local elites misuse regional autonomy to foster their own interests. To avoid the potential fragmentation of the political process, a general consensus is required what the intentions (and the limits) of regional autonomy are, and what role the respective levels of government have to play. Such consensus can not be decreed by the government but has to emerge from the dialogue between the stakeholders involved. The ongoing debate on federalism and the demands for establishing new provinces²⁷ underline the need for forging a new societal consensus on the Indonesian polity where local identities can be maintained without putting at risk national unity. In this context, the debate on regional autonomy also serves the need for a much wider political debate which became possible only after the end of the centralistic *Orde Baru* regime.

- ***Educating the public***

Building a political consensus on regional autonomy involves educating the public about the meaning and the intention of decentralisation, explaining the mechanisms of the democratic local government system, and making the people aware of their rights and obligations. Preventing the formation of local fiefdoms run by a closely-knit local elite requires that communities, local groups and the local media observe the decision-making process, take an interest in the work of the local parliaments, demand

of autonomy for each region will be different depending on the negotiations" (between the central government and the provincial government) ("Government says autonomy law ready in 2000", Jakarta Post 23/11/1999). Law No. 22/1999 does not give a legal basis for such statements.

²⁵ See e.g. "Bali Tuntut Diberi Otonomi Khusus", KOMPAS 8/2/2000.

²⁶ The laws effecting such special autonomy have not yet been prepared.

²⁷ Stimulated by the political reform process, demands for the establishment of a total of 14 new provinces have been raised by various groups ("Hasrat Kuat, Lobi Kurang" KOMPAS 7/2/2000). Economic reasons (control of regional natural resources), but also cultural-ethnic considerations are behind these demands.

information and held local officials accountable. Political education is a long-term process and should involve a wide range of actors from the government side, but even more so from non-governmental organisations on the local level.

Making the decentralisation laws work and realising their benefits will require medium to long-term efforts of all levels of government, and of many segments of the Indonesian society. Political leadership and political advocacy supporting decentralisation and regional autonomy are crucial preconditions. However, for a diverse country like Indonesia which is characterised by an increasing complexity of issues and problems, regional autonomy offers a wider range of options for problem and conflict solutions which are not necessarily available for a centralistic governance approach. Managing the decentralisation process properly and making sure that the benefits of decentralisation are being realised to the full extent possible is therefore one of the most demanding tasks facing the government of President Abdulrahman Wahid.

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