HISTORY AND IMPLICATION OF DECENTRALIZATION POLICY IN INDONESIA

Oleh : Tri Widodo W. Utomo, SH., MA.*)

Makalah ini memaparkan perkembangan otonomi daerah dari perspektif kesejarahan, sejak jaman penjajahan Belanda hingga masa reformasi yang ditandai lahirnya paket UU Otonomi Daerah tahun 1999. Meskipun demikian, sedikit analisis difokuskan pada masa peralihan dari UU No. 5/1974 ke UU No. 22/1999 yang diharapkan dapat menumbuhkan iklim demokrasi di daerah, disamping memacu pembangunan social ekonomi..

Preface

The history and development of local autonomy and decentralization have gone through up and down based on the growth and development of constitution and political situations in Indonesia. One important note concerning local autonomy and decentralization in Indonesia is the formulation and composition of local government and those of the central government that have, in practice, shifted based on the growth and development of the formulation and interpretation of the constitution.

The Genesis of Indonesian Decentralization (Colonial Period)

The evolution of local government in Indonesia can be traced back to the era of Dutch Colonialism. The history of local autonomy started during the Dutch colonial period in 1899 when the movement called *Etische politiek* led by Van Deventer was born. The pioneers of this movement suggested that the Dutch administration ease the tax burden of the people and develop their education. This movement was widely supported by intellectuals affected by the existing political situations, i.e. the development of democracy in Europe.

The *Etische politiek* movement in 1903 was the starting point of the decentralization history in Indonesia which gave birth to Law of 23 July 1903 concerning Decentralization of Government in the Netherlands Indies or *Decentralisatie van het Bestuur in Nederlandsch-Indie*, known as "Decentralisatie Wet". Consequently, the state administration had changed from the centralistic to a decentralized government. The Dutch Decentralization Law of 1903 created local councils for the autonomous Residencies and Municipalities. As the implementation of the decentralization laws, the Dutch Kingdom administration issued a decision on decentralization called *Decentralisatie Besluit* which stipulated the principles of the formation, the arrangement, the position and the authority of a council who would manage the finance which had been split. Based on that decision, the Governor General who had confiscated the

*) *Peneliti pada PKDA I LAN dan Mahasiswi Ph.D. Public Management Universitas Nagoya Jepang*

East Hindi territory issued *Locale Raden Ordonantie* (the ordinance of local councils) (LAN, 2003: 121).

Through the ordinance in 1905, *Stadelike Gemeente Batavia*, *Meester Cornelis* dan *Buitenzorg* (Bogor) were established. Then in1906 *Delische Cultuuraad* was issued. During 1907-1908 all the Karesidenan (regional) territories in Java dan Madura were declared the regions with autonomy rights (decentralized). These regions were administered by the officials from the Ministry of Home Affairs (LAN, 2003: 121).

Then with the *Bestuurshervormingswet* of 1922 the area of the country was divided into *gouvernementen* or provinces. In 1925 the Council for Residencies was abolished and replaced with the Council for Districts. In addition to that the Council for Provinces was created. The first province established was the West Java in 1926, East Java in 1929 and Central Java in 1930. The Governor chaired the council of a province while the Regent chaired the Councils of the Regency (similar to a County). Meanwhile, the council of a Cities was to be chaired by a Mayor. Under this act there were 76 Districts and 32 Cities on Java and 13 Cities outside of Java (UNESCAP, no year).

Meanwhile, during the Japanese government that occupied Indonesia for three and a half years, there were barely references that show the change in the government system. Consequently up to the early period of Indonesia's independence, the effect of Dutch administration system has prevailed as the system of the administration of Republic of Indonesia reflected by the dominance of ex-Dutch laws currently practiced. The Japanese military did not alter the existing government structure in Java immediately. By Law 1 issued on 7 March 1942, the Japanese transferred all official powers of the former Netherlands Indies Governor-General to the Chief Commander of the 16th Army Division (Niessen, 1999: 55-56).

Subsequently, in August 1942, the Japanese military administration tried to manage the Java and Madura territory by laying down the first regulation concerning reform of the government structure, namely Law 27 and Law 28. On the basis of Law 28, the Japanese did away with the late colonial division of Java into three Provinces by dividing the area into 17 Residencies or *Syuu (Karesidenan)*. On the basis of Law 28, the former Regencies (*regentschap*) and Municipalities (*staadsgemeente*) were renamed *Shi (Kota)* and *Ken (Kabupaten)*. Meanwhile, administrative subdivisions of the former Regency and Municipality were named *Gun (Kawedanan)*, *Son (Kecamatan)*, and *Ku (Desa)* (Niessen, 1999: 56; LAN, 2003: 124; Dwidjowijoto, 2000: 56).

From Independence to New Order Era (1945-1974)

The 1945 proclamation brought a new system of local government in Indonesia. The Constitution of 1945 provides for a local government system and makes it clear that local autonomy is one of the principles of governance in Indonesia. The article provides for the basic principle of the local government system: "With regards to the principle of deliberation and consensus in administration and with regards to the traditional rights of the regions that have a special character".

The issuance of Law No. 1/1945 and then Law No. 22/1948 which based the formation of autonomous region of province, district, big city and small city, and special region which can be interpreted as the steps of realizing the message in the article 18 of the 1945 Constitution which states: *The division of Indonesian region is categorized as big and small region with the formation and arrangement of government set up by laws by referring and considering the deliberation in the state administration system, and the rights, the origins in the regions with specific characteristics.* Further description of the 1945 Constitution states that "Since Indonesia is *eindheidstaat* (a unitary state), it never has within it a *staat* (state)". Based on the law, the following laws on local government were issued (Gie, 1993, vol. 1: 204-205):

- Law No. 2/1950 on the East Java Province;
- Law No. 3/1950 on Special Region of Yogyakarta;
- Law No. 10/1950 on Central Java Province;
- Law No. 11/1950 on West Java Province;
- Law No. 12/1950 on Autonomous Districts in East Java Province;
- Law No. 13/1950 on Autonomous Districts in Central Java Province;
- Law No. 14/1950 on Autonomous Districts in West Java Province;
- Law No. 15/1950 on Autonomous Districts in Yogyakarta;
- Law No. 16/1950 on Big Cities (*Kota Besar*) in East Java, Central Java, West Java, and Yogyakarta;
- Law No. 16/1950 on Towns (*Kota Kecil*) in East Java, Central Java, and West Java Province.

It continues till the new provinces were established in Sumatra and Kalimantan based on the law of Law No. 22/1948. Based on article 1 Law No. 22/1948, the regions that have been able to manage and take care of their own households can be put into three levels: provinces, regencies/big cities and villages/small cities. The divisions are hierarchical in manner where province is superior to district/big city and district/big city is superior to village/small city. Principally, each region has two authorities, i.e. *autonomy* and *medebewind* (co-governance). Autonomy is the right to manage and take care of their own households in the region, whereas *medebewind* is the right to execute the laws from Central Government or the regions superior to them based on their superior's instructions (LAN, 2003: 162). Since Republic of Indonesia changed into the United States of Republic of Indonesia (RIS) in 1949, there were practically no more laws that could establish provinces, regencies, big cities and small cities in other regions.

In the context of local autonomy and autonomous regions, Law No. 1/1957, the product of House of Representatives as the result of general election 1955 is categorized as liberal because it was born under the law of UUDS 1950. The post of governor, regent /mayor as apparatus separated from the post of the head of first and second level region. This case is viewed as a reflection of autonomous regions and the implementation of local autonomy. But the delivery of central affair in public government was implemented based on Law No. 6/1959 and its issuance was not done at once but in stages based on Government Regulation No. 50/1963.

Based on article 1 Law No. 1/1957, regions are divided into two kinds, i.e. *swatantra* and *special* region. *Swatantra Region* is a territorial unit formed to become the region with the right to manage its own household, while *Special Region* is a swapraja region stated in Article 132 UUDS stipulated as a region with the right to manage its own household. There is no difference in terms of division, level, government structure, authority, tasks and responsibility. The only difference lies in the post of its leader (Gie, 1993, vol. 2: 119).

Furthermore, based on Article 2, a region can be divided into three levels, i.e. the First Level Region including Kotapraja The Great Jakarta, Second Level Region including Kotapraja, and the Third Level Region. The First Level Region consists of Second Level Regions and Kotapraja. Each Second Level Region consists of the Third Level Regions. Those that can be formed as Kotapraja are the territorial units which are inhabited by at least 50.000 people (Chapter 4, article 1).

For the New Order Regime, which had, since its birth, been fully aware of the important meaning of national stability, the traumatic experience of parliamentary democracy (UUDS 1950) and during the guided democracy era in 1959 –1965 required the issuance of new strategies for implementing government in the regions. Then, the Law No. 18/1965 was issued. This law reflected the decentralization principles with the concept: "the widest possible freedom of autonomy" which had become blurred in the implementation level. The positions of governor, regent/mayor were embedded with the territorial/regional (second and third level) leadership.

If we observe more profoundly, the implementation of Law No. 18/1965 had been materially effective at least by the general election 1971. However, after the general election 1971, Law No. 18/1965 was eliminated and Law No 5/1974 was issued. This law states that regional government works under the regulation, which have lower degree than *Undang-undang* (Law).

Based on the law on the structure of autonomous regions, Law No. 18/1965 regulates that the whole Indonesian territory is fully divided into regions with full authority to manage and take care of their own households. These regions comprise three levels: Province and/or Kotaraya as the First Level Region, District and/or City as the Second Level Region, Sub-district and/or Kotapraja as the third Level Region.

The birth of Law No. 5/1974, which was officially issued on 23 July 1974, is the momentum of reengineering on how the government in the regions should be run so that national stability can be maintained and the development program be implemented.

Actually Law No. 5/1974 not only rules out the autonomous regions but also territorial government. Therefore, Law No. 5/1974 adopts three principles of authority in the regions, which actually consists of four. The three principles are decentralization, deconcentration and assisting duties (Medebewind). Another principle which can be included is *vrijbestuur* (the freedom given to the territorial leaders to act on their own wisdom, in which The United States calls it *discretion*).

In the divisions of the regions, article 2, 3 and 72 Law No. 5/1974 stipulates that Indonesian territory is divided into:

- Autonomous regions, consisting of The First Level and The Second Level Regions.
- Administrative regions, consisting of Provincial and Capital of the State, District and City, Sub-district, and administrative region (if necessary).

Based on Law No. 5/1974, government affairs which have been delivered to the regions in the implementation of decentralization principle is basically the full authority and responsibility of the regions. In this case, the full initiatives are fully given to the regions, which both concern the policy-making, planning, implementation and costing. All of these affairs are implemented by the local apparatus, i.e. the local agencies.

Since not all government affairs can be handed over fully to the regions based on the decentralization principles, the implementation of all government affairs should be delivered to the region and implemented by its government apparatus on the basis of deconcentration. All the affairs assigned by the government to its officials in the region based on the deconcentration principles are still under the responsibility of the central government in terms of planning, implementation and costing. The implementers of these affairs are the vertical institutions, coordinated by the head of local government functioning as the central government apparatus, but the policy for the implementation of the deconcentration affairs are entirely determined by the central.

For twenty years of its implementation, Law No. 5/1974 could not optimally maintain its ideal balance among the principles of the three: decentralization, deconcentration and assistance. This is due to the fact that there was a wide variety of interpretation concerning the substance of the Chapter 18 of the 1945 Constitution. Prof. Soepomo as one of the lawmakers of the Constitution who also formulated Law No. 22/1948 states that Chapter 18 of the 1945 Constitution only provides the basis for implementing autonomous government. However, the lawmakers of Law No. 5/1974 during The New Order Reign had different interpretation that Chapter 18 of the 1945 Constitution not only serves as the basis for regulating autonomous government, but also regulating the central government in the regions.

Besides, if Tap No. XXI/MPRS/1966 and Tap No. XXI/MPRS/1966 still serve to as the laws to provide the widest possible autonomy for the region, Tap No. V/MPRS/1973 states that Tap No. XXI/MPRS/1966 was not in order because the content was already covered in Tap No. V/MPRS/1973 which serves as the basis for the issuance of Tap No.5/MPRS/1974. Unfortunately, the spirit inherent within both laws (Tap MPRS 1966) was not accommodated within Tap No.5/MPRS/1974. The delivery of the widest possible autonomy for the region was completely ignored by Tap No.5/MPRS/1974. Even more the emphasis on deconcentration was more prevalent than the practice of government implementation in the region.

The development of local government in Indonesia from 1945 to the New Order era can be illustrated in a more simple way in the following Table

Table 1
Summary of Local Government Provisions (1945-1974)

Regulations	Provisions
Law No. 1/1945	• In each region a Local Board of the People's Representatives (BPRD) was formed; • The BPRD elects a Chief Executive of the local government; • The Chief Executive is both a central government officer as well as a leader of the local government; • Three levels of local government were created: Residency, County and Municipality.
Law No. 22/1948	• Local government consisted of the House of Representatives and the Local Advisory Board (LAB); • The Local Advisory Board was headed by the Chief Executive; • The Local Advisory Board was responsible to the House of Representatives; • The Chief Executive was both a central government representative as well as a leader of the local government; • Three levels of autonomous local government were created: Province, County or Municipality and Village or Governor.
Law No. 1/1957	• Local government consisted of the House of Representatives and the Local Advisory Board; • The local Chief Executive was the leader of the Local Advisory Board; • Three levels of autonomous local government were created: first, second and third.
Presidential Decree No. 6/1959	• The local Chief Executive was both a local leader and a central government representative; • The local Chief Executive was not responsible to the local House of Representatives; • The local Chief Executive was to be assisted by the Daily Executive Board (DEB).
Presidential Decree No. 5/1960	• The Chief Executive was also the chairman of the local House of Representatives; • The local government secretary was elected and appointed by the local House of Representatives.
Law No. 18/1965	• Local autonomy was to be executed as extensively as possible; • The Chief Executive was the leader of the local House of Representatives; • The local Chief Executive was responsible to the President through the Minister of home affairs; • Three levels of local government were established: Province, County or Municipality and District or Governor. *Note*: This act was never implemented because of a change in national government in September-October 1965 that changed the policies of the central government on local government.
Law No. 5/1974	• Local autonomy was to be real and responsible local autonomy; • Local autonomy was focused on the local government level rather than on the regional government level; • Local autonomy should give priority to aspects of both harmony and democracy; • Local autonomy was aimed at increasing efficiency and productivity, especially in the execution of development process, providing public services and maintaining political stability as well as national integrity; • Both the decentralization and deconcentration principle were to be applied.

Source: UNESCAP (no year, see at http://www.unescap.org/huset/lgstudy/country/indonesia/indonesia.html)

Policy Alteration from Law 5 (1974) to Law 22 (1999): Bridge From *Developmental State* To *Democratic State*

The implementation of government in the region based on Law No. 5/1974 has many weaknesses which have prevented the smooth implementation of the government in the region. Those weaknesses generally derive from three aspects: the spirit, the implementation and the system required in that law. What is meant by system is those related to local legal aspect and regulations, institutional structures, local finance, facilities and infrastructure for the implementation of local government.

1. The substance of Law No. 5/1974 reflected the emphasis of the central interest (centralization politics) than promoting the effort of empowerment of the potential and self-reliance of the local government and society (autonomous politics)
2. The system of local government organization tends to become bigger without considering the principles of organizational *development*. Consequently, hierarchical structure with longer *span of control* was formed, which in turn made the local government in implementing autonomy become more burdensome and less efficient.
3. The articles in Law No. 5/1974 which was already 25 years old have in fact not been operational because it they required laws on implementation in the form of UU or Law, PP or Government Regulation, Kepres or Presidential Decree, etc. In other words, the existence and function of Law No. 5/1974 so far have been no more than just relatively a malfunctioned legal product. That's why when the idea of reforming the local government was proposed some parties chose to optimize the implementation efforts rather than making total changes (LAN and Local Autonomy Bureau, 1999/2000: 1-2).

These three problems have so far contributed to the less effective and orderly implementation of local autonomy. Therefore, it quite makes sense if the system and mechanism of implementing government in the region require some changes more appropriate to the demands for democratization and the delivery of wider and more realistic autonomy to the region.

Based on the issue above, a new legal product, i.e. Ketetapan MPR RI No. XV/MPR/1998 concerning the implementation of local autonomy has been issued. The arrangement, the division and the exploitation of national resources which are fair and local-central financial balance within the context of the Unitary State of Indonesia. TAP MPR RI No. XV/MPR/1998 states the following:

- The implementation of local autonomy by delivering wide, realistic and responsible authority to the region, which is proportionally realized by management, division and the making use of national resources based on just and financially balanced principles between central and local government (article 1).
- The implementation of local autonomy in the region is carried out based on

democratic principles and the heterogeneity of the regions (article 2).

- The implementation of local autonomy; management, division and the making use of national resources based on just, financially balanced principles between central and local government in the context of maintaining and strengthening Unitary State of Indonesia is carried out on the principles of strong social deliberation and sustainability under the supervision of Local Councils and society (article 6).

Based on the spirit above, the paradigm of local government which will be developed according to Law No. 22/1999 refers to the values of *democratization*, *people empowerment* and *excellent public service*. That is to say that the local government has freedom to make the best decision within its authority in order to develop the whole potential in promoting quality public service to its people.

By these three paradigms, it is expected that local government has better readiness in facing any changes which will happen in the future. Democratic value will allow bigger room for civil society in determining their choices and express themselves rationally so the domination of the nation power should have become less, including that of the nation building.

In this case, government apparatus should not carry out the government affairs by themselves, but play the directing role, *steering rather than rowing*, or the two roles combine more optimally *doing* and *directing*. It means that if one affair has already done by the society, the government is not necessary to do the same, but exercise the empowering role with the spirit of providing the best possible service to the society. It means that the decision to choose this action is based on the bigger interest, i.e. the interest and quality service to the society.

Principally, Law No. 22/1999 has the soul, spirit and substances, which are quite different from Law No. 5/1974. Some of the main differences are among other things as follows (LAN and Local Autonomy Bureau, 1999/2000: 16-17):

1. Based on Decentralization Principles in the form of autonomy which (is):
   - Wide and holistic. It means that the local authority in exercising certain authorities is not limited only on certain material or substance (wide) as long as it is capable of doing and it is not beyond the competence of central and provincial government.
   - Realistic, which reflects the existence of local freedom to exercise its authority to decide what is required based on the existing reality that develops in the given region.
   - Accountable/responsible. This implies that responsibility should be materialized as consequence of the right and authority delivered to them in the forms of tasks and duties which should be carried out by region in achieving its goals of local autonomy, i.e. improving the quality of public service and social welfare, developing democratic lives, promoting justice and equal distribution and maintaining harmonious relationship between

central and locals, and that of local with other locals.

2. Concerns with and encourages local democratic aspects; justice and equal distribution especially in terms of financial balance between central and locals; local potential and diversity, participation empowerment, social creativity and initiative, local independence, the improvement of the role and function of local councils.

3. The effort of promoting good governance and the development of civil society.

Of the above paradigms, Law No. 22/1999 also contains and or regulates the principles of the Authority Relationship between Central Government – Province – District/City. The relationship, at least, can be reflected in the four following aspects:

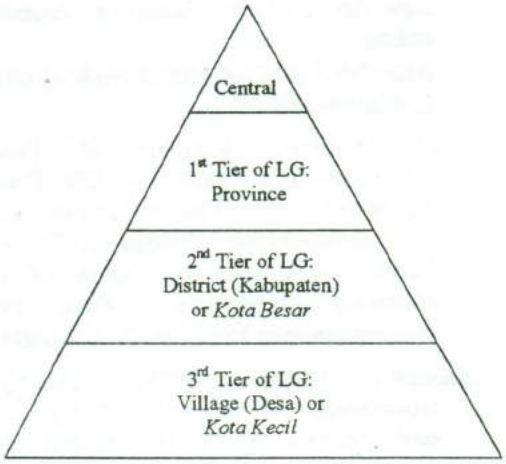
1. There is no hierarchical relationship between Province and district/city, but coordination relationship, cooperation and supervision, counseling and control. The impact is that institutions and apparatus in the region should be strengthened including the aspect of accountability relationship where the head of the region is responsible to the local council, but is only required to submit reports to central government.

2. There is no monopoly principle in administrative authority (the principle is based on sharing among the three central, province and district/city). The importance of this principle is to ensure the strong and harmonious relationship among the three element of government: central, province and district/city.

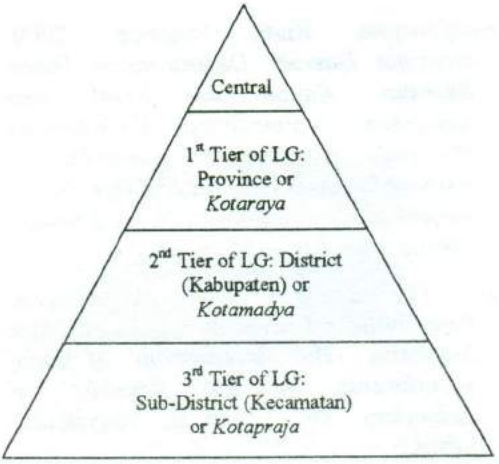
3. Authority is not always identical with the formation of agencies. This should be strongly emphasized in order to prevent precedence of excessive organization formation which can simply result in establishing constraints for exercising the authority. Therefore, the authority exercised by the region can also be exercised by other non-agency bodies such as technical institutions and local secretariat elements. When an agency is going to be formed, the following consideration should be kept in mind that that agency cannot simply exercise one particular authority but it can be imposed with some authorities of the same/similar kinds.

4. The execution of authority should not always done by government but it be carried out by partnership, privatization, etc.

From the discussion above, it can be concluded that there is a process of evolution in the local government. The evolution process can be illustrated as follows:

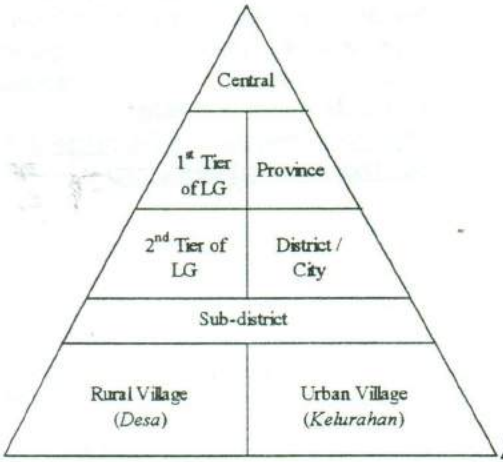


Local Government Structure according to Law No. 22/1948



Local Government Structure according to Law No. 18/1965

(*note*: no explicit provisions on village government)



Local Government Structure according to Law No. 5/1974

(*note*: province, district/city, and sub-district are not autonomous region, but administrative unity)

Local Government Structure according to Law No. 22/1999

Figure 1.
Evolution of Local Government in Indonesia (1948-1999)

References:

Dwidjowijoto, Riant Nugroho, 2000, *Otonomi Daerah, Desentralisasi Tanpa Revolusi: Kajian dan Kritik atas Kebijakan Desentralisasi di Indonesia (Regional Autonomy, Decentralization Without Revolution: Study and Critique on Decentralization Policy in Indonesia)*, Jakarta: Elex Media Komputindo.

Gie, The Liang, 1993, *Pertumbuhan Pemerintahan Daerah di Negara Republik Indonesia (The development of local governments in the Republic of Indonesia)*, Vol. I and II, Yogyakarta: Liberty

LAN and Local Autonomy Bureau, 1999/2000, *Persiapan Daerah Dalam Menghadapi Pelaksanaan UU No. 22/1999 tentang Pemerintahan Daerah dan UU No. 25/1999 tentang Perimbangan Keuangan antara Pemerintah Pusat dan Daerah (The Policy Preparations of Local Governments in Facing the Implementation of Law No. 22/1999 and Law No. 25/1999)*, Bandung. Available online at http://www.geocities:com/triwidodowu/lap_birootda.doc

LAN (National Institute of Public Administration), 2003, *SANKRI Dalam Perspektif Perkembangan Sejarah: Dari Pra Kemerdekaan Hingga 1965 (The Public Administration System of RI, Historical Perspective: From Pre-Independence to 1965)*, Book II, Jakarta.

Niessen, Nicole, 1999, *Municipal Government in Indonesia: Policy, Law, and Practice of Decentralization and Urban Spatial Planning*, Universiteit Leiden

UN ESCAP (United Nations Economic and Social Commission for Asia and the Pacific), no year, *Local Government in Asia and the Pacific: A Comparative Study*, Country Paper: Indonesia. Available online at http://www.unescap.org/huset/lgstudy/country/indonesia/indonesia.html