

CHAPTER FOUR

FINDING AND ANALYSIS

A. The Political Reform Effect towards the Decentralization

The reform movement in Indonesia that occurred in 1998 has brought many impacts towards the Indonesian government. Although it has happened twenty years ago, the impact still exists, both positive and negative. There are various negative impacts of the 1998 reform. First, the political climate is chaotic because many misunderstand the meaning of democracy. Second, misuse of the freedom of expression which became increasingly unethical. Third, many demonstrations that should be as a means to convey aspirations that cause so many demonstrations which disturb public security. Last, the increasing of chaos in society. That's because the post-reform government still has not been able to implement the law properly that it cannot develop the nation's life in various aspects.¹

However, the reform also has a positive impact on society. First, the people who were restrained to express their aspirations, to criticize the government, after the political reform people are free to express their aspirations and criticism. Second, the degree of the Indonesian nation in the eyes of the world is increasingly elevated, as a result of the effort to escape from a less democratic government to become a more democratic

¹ Himawan Indrajat, 2015, "Dinamika Hubungan Pusat dan Daerah di Indonesia", Bandar Lampung, *Jurnal Ilmu Pemerintahan* Pascasarjana Universitas Lampung, p. 85-86.

government. Last, Indonesia becomes more open to the international world, so that mobility towards various fields grows.²

From the various policies that had been launched since the reform era which began in the late 1990s, decentralization and regional autonomy are some of aspects that become interesting and dynamics issues to be observed. More than three decades under the leadership of the centralized Soeharto regime, Indonesia entered into new era where central and local government were regulated by the enactment of the Local Government Act of 1999 and Financial Balance Act 1999. Many observers have argued that this change in central and local government relations is radical and revolutionary because its fundamental alterations and implications for executing the central government relations which is very centralistic, was heading to the extreme point at the opposite which is very decentralized.³

This is caused by two reasons: first, the Local Government Act of 1999 has significantly reduced central and provincial government powers. In contrast, the power of the district/local government increases significantly as almost all authorities are submitted to this level. In other words, the Local Government Act of 1999 strengthens the autonomy of district/municipality governments and eliminates the hierarchical relationship between provincial and district/local governments. The mandate of the Local Government Act of 1999 and Financial Balance Act

² “Dampak Reformasi”, <https://mohammadgie.wordpress.com/2011/12/30/dampak-reformasi-di-indonesia/> accessed on February ,24, 2018.

³ *Ibid*

of 1999 has strengthened the bargaining power of the districts/municipalities against the central government. Second, the strengthening of the position of the Regional House of Representatives (DPRD)⁴ when dealing with the head of the region. In particular, the Local Government Act of 1999 authorizes the DPRD to elect their head of region and his vice.⁵

Therefore, the heads of a region are responsible towards the DPRD, and the DPRD who are able to dismiss the head of the region only if the DPRD found that the head of the region has committed a violation or misuse of its authority. This arrangement to the strengthening the position of the DPRD and no longer subordinated such as in the New Order regime. This arrangement is based on a thought that the regulation of the DPRD is an embodiment of sovereignty of the people over the implementation of various affairs in the region.⁶

In turn, this arrangement has changed the centralistic system to be decentralized because the regions, especially districts, get broader authority and relatively becomes more autonomous to deal with the central government in managing its affairs in the region. So by strengthening the

⁴ DPRD or The Regional People's Legislative Assembly (abbreviated to the Regional People's Legislative Assembly) is a regional representative body domiciled as an element of local government in provinces / districts / cities) in Indonesia . DPRD is mentioned in the 1945 Constitution article 18 paragraph 3: "Provincial, district, and municipal governments have Regional House of Representatives whose members are elected through general election". DPRD is then further regulated by law, most recently through Law No. 17 of 2014.

⁵Eep Saefulloh Fatah, 2000, *Pengkhianatan Demokrasi ala Orde Baru*, Bandung, Remaja Rosdakarya, p. 13.

⁶ Kacung Marijan, *Op. Cit*, p. 45.

sovereignty of the people in the region along with the strengthening of the position of the regional parliament faced with the head of the region. Thus, it can be stated that the Local Government Act of 1999 is the antithesis of similar laws prevailing during the New Order regime.⁷

At the end of the day, the various problems related to the implementation of the Local Government Act of 1999 became an ammunition for the parties who did not like the presence of the related Act from the beginning and to urge for immediate revision. Exactly one year after the enactment of the Local Government Act of 1999, the proposal of the revisions was submitted. The proponents of the revision of this Act believed that the problems which occurred in the implementation of the Local Government Act of 1999 stem from the construction of a problematic law from the beginning.

On several occasions, President Megawati⁸ said that the Local Government Act of 1999 has posed a threat to the national unity, therefore the government at that time had a plan to immediately revise it. Although opposed by many parties, especially the district/city government, the Ministry of Internal Affairs at that time insisted to make revisions. Finally,

⁷ *Ibid*

⁸ Megawati Soekarno putri or commonly called by "Mbak Mega" (born in Yogyakarta , January 23, 1947 , age 71) is the fifth Indonesian President who served from 23 July 2001 to 20 October 2004 . He was the first Indonesian woman president and daughter of the first Indonesian president, Soekarno , who later followed in the footsteps of his father becoming President of Indonesia . On September 20, 2004 , he lost a voice from Susilo Bambang Yudhoyono in the second presidential election in 2004 .

on October 15, 2004, The DPR and President agreed to amend the law by enacting Local Government Act of 2004 and Financial Balance Act 2004.⁹

The spirit of the re-centralization of the enactment of the Local Government Act of 2004 is particularly concerned with the strengthening of the influence of the province as the central representative and Ministry of Internal Affairs in the implementation of various affairs in the regions. The various arrangements in the Local Government Act of 2004 have essentially weakened the bargaining power of the district government against the central and provincial governments. What is no less concern is the weakening of the DPRD, because the DPRD no longer have a strong position when dealing with the head of the region. Even the DPRD position was "restored" in the same position as when it was still stipulated in the centralized New Order legislation, Law No. 5 of 1974. The DPRD became part of the local government together with the regional head.¹⁰

The regulation of central-regional relations re-entered a new era after a decade of implementation of the Local Government Act of 2004. In 2014 a new law was adopted, Local Government Act of 2014. Responding to this new rule re-emerged issues such as is there a significant normative change in the regulation of the new law? What is the impact expected to occur at the local government level? Whether the law has the potential to

⁹ Ahmad Faizin Karimi, 2010, "Desentralisasi Pasca Reformasi" <https://ahmadfk.wordpress.com/2010/12/01/desentralisasi-pasca-reformasi/> accessed on March, 02, 2018, 6.17 pm

¹⁰ Mudiya Rahmatunnisa, "Jalan Terjal Kebijakan Desentralisasi di Indonesia Pada Era Reformasi", *Padjajaran Jurnal Ilmu Hukum* Volume 2 Nomor 3 Tahun 2015 [ISSN 2460-1543] [e-ISSN 2442-9325]. pp. 37-40

make the process of political process and government in the region more autonomous.

Table No. 1

Comparison of the Principal Content of the Local Government Act of 1999, Local Government Act of 2004, and Local Government Act of 2014

Chapter	Local Government Act of 1999	Local Government Act of 2004	Local Government Act of 2014
1	General Provision	General Provision	General Provision
2	Local Government	Establishment of Region and Special Region	Distribution of State Territory
3	Establishment and Regional Structure	Distribution of Government Authority	Government Power
4	Regional Authority	Governance	Government Affairs
5	Form and Structure of Government	Regional Personnel	Provincial Authority of Sea Region and Provincial Authority of Island Region
6	Regional Regulations and Decisions of the Regional Head	Regional Regulation and Regulation of Regional Head	Regional Structure
7	Regional Personnel	Regional Development Planning	Implementation of Regional Government
8	Regional Finance	Regional Finance	Regional Devices
9	Cooperation and Dispute	Cooperation and Dispute	Local Regulation and Regulation of

	Settlement	Settlement	Regional Head
10	Urban Area	Urban Area	Regional Development
11	Village	Village	Regional Finance
12	Guidance and supervision	Guidance and Supervision	BUMD (Regional owned enterprises)
13	Regional Autonomy Advisory Council	Considerations and Policies of Regional Autonomy	Public Services
14	Other Provision	Other Provision	Society Participation
15	Transitional Provisions	Transitional Provisions	Urban Area
16	Closing	Closing	Special Area and Border Area of Country
17	-	-	Regional Cooperation and Dispute
18	-	-	Village
19	-	-	Guidance and Supervision
20	-	-	Legal action against the Civil Apparatus of State in Regional Agencies
21	-	-	Regional Innovation
22	-	-	Local Government Information

23	-	-	Regional Advisory Council
24	-	-	Criminal Provisions
25	-	-	Other Provision
26	-	-	Transitional Provision
27	-	-	Closing

Source: Local Government Act of 1999, Local Government Act of 2004, and Local Government Act of 2014

From the table above, it can be seen that there are at least eleven (11) chapters containing the arrangements on a various subject matter in the Local Government Act of 2014 didn't exist or not explicitly mentioned in the Local Government Act of 1999 and the Local Government Act of 2004.

Those 11 essential subjects are related to the division of the territory of the state, the power of government, the authority of the provincial regions of the sea and the provincial region characterized by the archipelago, regional arrangement, regional apparatus, regional state-owned enterprises (BUMD),¹¹ public services, special areas and border areas, law on civil state apparatuses in local agencies, regional innovations, and local government information.

¹¹ Regional-owned enterprises (BUMD) are companies established and owned by local governments . The authority of local government to establish and manage BUMD is affirmed in Government Regulation no. 25 of 2000 on the authority of the government and the authority of the province as an autonomous region.

From this perspective, it is difficult not to acknowledge that the most recent Local Government Act does provide a more complete and detailed basis for the various dimensions of local governance. Especially with the second change that is by the enactment of the Local Government Act of 2015 which is published for several reasons. First, to clarify the provision of sustainability of leadership in provinces, districts/municipalities, it is necessary to have a transitional regional leadership mechanism in its democratic tenure to ensure development and service to the community. Second, the provision of duties and authority of provincial, district/municipal assemblies should be made in accordance with the laws governing the election of governors, regents, and mayors.

Table No. 2

Comparison of the Idea of Decentralization which are stipulated in the Local Government Act 2004 and Local Government Act 2014

No	Comparative aspects of Decentralization	Local Government Act of 2004	Local Government Act of 2014
1	Principles of local governance	<ul style="list-style-type: none"> - the principle of legal certainty; - the principle of state organizers; - the principle of public interest; - the principle of openness; - the principle of proportionality; - the principle of 	<ul style="list-style-type: none"> - the principle of legal certainty; - the principle of state organizers; - the principle of public interest; - the principle of openness; - the principle of proportionality; - the principle of

		<p>professionalism;</p> <ul style="list-style-type: none"> - the principle of accountability; - the principle of efficiency; and - the principle of effectiveness. 	<p>professionalism;</p> <ul style="list-style-type: none"> - the principle of accountability; - the principle of efficiency; and - the principle of effectiveness; and - the principle of justice
2	The division of power between the central government and local government	<p>the central government specifies what is the affairs of his government then the rest becomes a regional affair (general competence).</p> <p>The central government takes part:</p> <ul style="list-style-type: none"> a. foreign policy; b. defense; c. security; d. yustisi; e. monetary and fiscal policy; f. religion. 	<p>absolute government affairs, concurrent government affairs, and general government affairs. the central government specifies what the other government affairs become so regional affairs. The central government covers:</p> <ul style="list-style-type: none"> a. foreign policy; b. defense; c. security; d. yustisi; e. monetary and fiscal policy; and f. religion.
3	Provincial and district/city authority	<p>Provincial authority:</p> <ul style="list-style-type: none"> a. planning and control of development; b. planning, utilization, and supervision of spatial planning; c. public order and social security; d. provision of 	<p>Provincial authority:</p> <ul style="list-style-type: none"> a. Government Affairs whose locations cross the regencies/ municipalities; b. Government Affairs whose users cross district/city; c. Government Affairs with benefits or

		<p>public facilities and infrastructure;</p> <p>e. handling of health;</p> <p>f. the provision of education and the allocation of potential human resources;</p> <p>g. overcoming social problems across regency/ municipalities;</p> <p>h. service of labor affairs across regency/ municipalities;</p> <p>i. facilitation of developing cooperatives, small and medium enterprises including regency/city;</p> <p>j. environmental control;</p> <p>k. land services including cross-regency/ municipalities;</p> <p>l. population services, and civil records;</p> <p>m. public administration services;</p> <p>n. investment administration services including regency/ municipalities;</p> <p>o. the provision of other basic services</p>	<p>negative impacts across districts/ municipalities; and/ or</p> <p>d. Government Affairs whose use of resources is more efficient if carried out by the Provincial Region.</p> <p>Regency/municipalities authorities:</p> <p>a. Government Affairs whose location within the regental/ municipal region;</p> <p>b. Government Affairs whose users are in districts / municipalities;</p> <p>c. Government Affairs whose benefits or negative impacts are only within the districts/ municipalities; and/ or</p> <p>d. Government Affairs which use resources more efficiently if done by regency/ municipality.</p>
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		<p>that can not be implemented by the reGENCY/ municipalities; and</p> <p>p. other mandatory business mandated by legislation.</p> <p>Regency/ municipalities authorities:</p> <p>a. planning and control of development;</p> <p>b. planning, utilization, and supervision of spatial planning;</p> <p>c. public order and social security;</p> <p>d. provision of public facilities and infrastructure;</p> <p>e. handling of health;</p> <p>f. education provision;</p> <p>g. tackling social problems;</p> <p>h. services in the field of manpower;</p> <p>i. facilitation of cooperative development, small and medium enterprises;</p> <p>j. environmental control;</p> <p>k. land services;</p> <p>l. population services, and civil records;</p>	
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		<p>m. public administration services;</p> <p>n. investment administration services;</p> <p>o. the provision of other basic services; and</p> <p>p. other mandatory business mandated by legislation.</p> <p>Preferred provincial and reGENCY/municipal government affairs include government affairs that are real can potentially to improve the welfare of the community in accordance with the conditions, specificities and potentials of the related regions.</p>	
4	The relation between Head of Region with the DPRD	<p>Head of Regional Government with the DPRD together determine the local regulations which are:</p> <ol style="list-style-type: none"> 1. related to APBD¹² (Regional revenue and expenditure budget) 2. related to Strategic Plan of Regional Government 3. related to the 	<p>Head of Regional Government with the DPRD together determine the local regulations which are:</p> <ol style="list-style-type: none"> 1. related to APBD (Regional revenue and expenditure budget) 2. preparing and submitting a draft local regulation on RPJPD and the draft local regulation on

¹² Revenue and Expenditure Budget (APBD), is the annual financial plan of local government in Indonesia approved by the Regional House of Representatives. APBD is determined by Regional Regulation. The budget year of the APBD shall cover a period of one year, from 1 January to 31 December.

		appointment and dismissal of the Head of Region.	RPJMD to the DPRD to discuss with DPRD, and compiling and establishing RKPD; 3. related to the appointment and dismissal of the Head of Region.
5	Issues on the Head of Region election	one pair of a candidate which is implemented democratically based on the principle of direct, public, free, confidential, honest and fair.	one pair of a candidate which is implemented democratically based on the principle of direct, public, free, confidential, honest and fair.

Source: Local Government Act of 2004, and Local Government Act of 2014

From the table above, it can be seen that in the enactment of Local Government Act of 2014 there was a degradation in the spirit of regional autonomy which is illustrated by the laying of great authority at the central and provincial level precisely makes the model of regional government further away from idealism to provide services closer to the community. How regency/municipalities will be able to provide services if the resources are controlled by the central and regional Governments. The decreasing spirit of regional autonomy is also marked by the provision in the division of affairs between the central government and local

governments. The Local Government Act also mentioned there are three types of affairs, namely absolute, concurrent and general government.¹³

In the provision of the division of the central government, province, and Regency has shown clearly that region will lose the control upon its resources which is in the “cross-region” position. All of the resources or problems that are “cross-region”, the authority has fully belonged to the upper level of governance. This kind of set looks as an ideal setting but, in the preceding period and now, the region always has to be responsible and has made a judgment which is irresponsible to a problem that is not actually its authority, to be in its territory. This is a consequence of a condition that indicates that there are no matters which are neither districts/municipalities or provinces because the region is the center of the problem.¹⁴

There are some of the most important new arrangements in the Local Government Act of 2014 Government Act, those are: firstly, in relation to government affairs divided into absolute government affairs (*urusan pemerintahan absolut*), concurrent government affairs (*urusan pemerintahan konkuren*), and general government affairs (*urusan pemerintahan umum*). The latest material related to governmental affairs is the existence of general government affairs with the main authority in the

¹³ HAW Widjaja, 2005, “*Penyelenggaraan Otonomi Daerah di Indonesia*”, Jakarta, Raja Grasindo Persada. p. 37.

¹⁴ Ari Darmastuti, 2015, “Arah Politik Pemerintahan UU NO 23 Tahun 2014”, Bandar Lampung, *Jurnal Ilmu Pemerintahan Pascasarjana Universitas Lampung*, p. 7

hands of the president as head of government.¹⁵ The basis of this functional assignment in addition to the criteria of externalities, accountability, and efficiency as regulated in the Local Government Act of 2004, in the Local Government Act of 2014, is supplemented by national strategic interest criteria. This provision is stipulated in the Article 9 of Local Government Act of 2014.

Secondly, in relation to the regulation of the authority of the province at sea which is explicitly regulated in this law as the authority of its decentralization. In addition to the decentralized authority, arrangements for provinces characterized by the archipelago are also assigned by the central government on the basis of the assistance task (*medebewind*). This provision is stipulated in the Article 27 and 28 of Local Government Act of 2014.

Third, related to the regional structuring material that regulates in more detail the formation and adjustment of the region. The most recent strategic arrangement is related to the preparation stage for three years to be able to obtain a full status as an autonomous region. This provision is stipulated in the Article 31 of Local Government Act of 2014.

Fourth, related to the material of the regional apparatus which regulates in more detail the regional devices (*perangkat daerah*) that assist the duties of the regional head and DPRD. This includes setting up the

¹⁵ ELSAM, "Pusat versus Daerah", <http://www.elsam.or.id>, accessed on March, 02, 2018.

formation and duties as well as the recruitment of its staff in detail. This provision is stipulated in the Article 208 of Local Government Act of 2014.

Fifth, related to the regional regulation material that contains in detail the process of the stages of its formation, starting from the planning, preparation, discussion, stipulation, and enactment. This provision is stipulated in the Article 236 of Local Government Act of 2014.

Sixth, related to central and regional financial relations and inter-regional financial relations. For central and regional finance relationships include the dimensions of revenue sources in the form of taxes and user charges, financial balancing funds, special autonomy funds, loans and/or grants, emergency funds and incentives (fiscal). At the same time, inter-regional financial relations include the inter-regional tax-sharing and non-tax sharing dimensions, funding governmental affairs under the jurisdiction of regional administrations, as a consequence of interregional cooperation, inter-regional lending and/or grants, intergovernmental financial assistance regions, and the implementation of special autonomy funds set out in law.¹⁶ This financial relationship-related arrangement also concerns detailed explanations regarding management and accountability, as well as an evaluation of the draft local regulation on tax and retribution

¹⁶ A. G. Karim, 2006, *Kompleksitas Persoalan Otonomi Daerah di Indonesia*, Yogyakarta, Pustaka Pelajar, Yogyakarta, p. 21.

by the Minister. This provision is stipulated in the Article 279 of Local Government Act of 2014.

Seventh, in particular the Local Government Act of 2014 also has set about the public service that becomes the obligation of local governments to organize it in accordance with the affairs that are the responsibility. The Local Government Act of 2014 not only regulates the management of public services but also includes a grievance mechanism that can be done by the community. This provision is stipulated in the Article 344 of Local Government Act of 2014.

Eighth, public participation is also a new material regulated in this law. In addition to the community participation dimension, the law also regulates the various channels that can be used to participate in the local governance. This provision is stipulated in the Article 354 of Local Government Act of 2014.

Ninth, this latest Local Government Act also regulates the special area and the border area of the country. Specific areas are established in the context of carrying out certain government functions that are strategic to national interests within the provincial and/or district/city areas.¹⁷ A proposed determination can come from the central and local government. The arrangement of border areas of the state shall be the full authority of the central government, encompassing all authority on the management

¹⁷ Kementerian Riset Teknologi dan Pendidikan Tinggi, “Pembahasan Revisi UU No. 32 Tahun 2004 tentang Pemerintahan Daerah”, accessed on March, 05, 2018.

and utilization of border areas in accordance with the provisions of the laws on the territory of the state. This provision is stipulated in the Article 360 and 361 of Local Government Act of 2014.

Lastly, related to the apparatus in the regions, the Local Government Act of 2014 also regulates it specifically related to capacity building and also the handling of officers who violate the law in performing their duties.¹⁸ This provision is stipulated in the Article 384 of Local Government Act of 2014.

The implementation of Local Government Act after its enactment in general, Local Government Act of 2014 which consists of 411 articles, if it is compared with the previous three laws (Local Government Act of 1974, Local Government Act of 1999 and Local Government Act of 2004), the Local Government Act of 2014 is much more comprehensive, detailed and there is a new breakthrough in the implementation of the local government.¹⁹ This is picturized with explanation on the regulation of the Relation of Head of Regional Power with DPRD, Authority Distribution, Development Planning Policy, Regional Innovation, Public Access, and Public Government that stipulated.

The development of decentralization in Indonesia after political reform continued to experience the phenomenon of recentralization, started from the existence of Local Government Act of 1974, then there

¹⁸ *Ibid*

¹⁹ Makhya Syarif, 2015, "Penyelenggaraan Pemerintahan Daerah dalam Perspektif UU No. 23 Tahun 2014", Lampung: *Jurnal ilmu Pemerintahan* Pascasarjana Universitas Lampung, p. 13

was a strong regional autonomy effort with the enactment of the Local Government Act of 1999 which became more decentralized and at the minimal level has tried to shift the core of the centralized to the decentralized one. But with the enactment of Local Government Act of 2004 it actually tend to return it to its original position (centralized) and has resulted to a weakening spirit of the regional autonomy which was then revised by the Local Government Act of 2014 which in its implementation create the loss of spirit of regional autonomy. Briefly, here in Table No.3 is the illustration of the development of Decentralization in Indonesia.²⁰

Table No. 3

Periodization of Decentralization Policy in Indonesia

Course of Time (Period)	Autonomy Principle and the Juridical Foundation
1903	Centralization Decentralisatie Wet 1903; Local Radenordonantie No. 181 of 1905
1942-1945	Centralization Osamu Seirei No. 27 of 2602 (1942)
1945-1959	Democratic, Wide Autonomy, Decentralization Law No. 1 of 1945 Law No. 22 of 1948 Law No. 1 of 1957
1959-1966	Authoritarian, Centralistic, Deconcentrated Presidential Decree No 18 of 1959 Law No. 18 of 1965
1966 -1969/1971	Democratic, Wide Autonomy, Decentralization TAP MPRS No. 21 / 1966

²⁰ Bhenyamin Hossein, 2002, "*Perspektif Jangka Panjang Desentralisasi dan Otonomi Daerah.*" Jakarta, Decentralization and Regional Autonomy Policy Discussion Paper. p. 34

1971-1998	Authoritarian, Centralistic, Deconcentrated TAP MPR No. IV / 1973 Law No. 5 of 1974 Law No. 5 of 1979
1998- present	Democratic, Wide Autonomy, Decentralization TAP MPR No. IV / 1998 Law No. 22 of 1999 Law No. 25 of 1999 Law No. 32 of 2004 Law No. 33 of 2004 Law No. 23 of 2014 Law No. 09 of 2015

Source: Hossein, 2002

B. The Design of Decentralization

Indonesia is an unitary state. The form of the state and also all of the state goals has stipulated in the Constitution, while the current Constitution in the Republic of Indonesia is the 1945 Constitution which has been amended four times at the beginning of the reform era. In the preamble of the constitution is what is known as the Vision or the Goal and Purpose of the country that is "*...Negara Indonesia yang merdeka, bersatu, berdaulat, adil dan makmur* (Indonesia is an independent, united, sovereign, just and prosperous states, Indonesia)".²¹

Furthermore, the vision is described in the mission of the Government of the Unitary State of the Republic of Indonesia which stated: "*..Melindungi segenap bangsa Indonesia dan seluruh tumpah darah Indonesia, dan untuk*" (Protect the whole Indonesian nation and the entire blood of Indonesia, and to); (1) *Memajukan Kesejahteraan Umum* (Promote the Public Welfare); (2) *Mencerdaskan Kehidupan Bangsa*

²¹ The Preamble of Indonesian 1945 Constitutions

(Educate the Life of the Nation), and; (3) *Ikut Melaksanakan Ketertiban Dunia berdasarkan Kemerdekaan Perdamaian yang Abadi dan Keadilan Sosial* (Participate in Orderliness World Based on the Eternal Independence of Peace and Social Justice)". By reviewing the framework of strategic management thinking, the preamble of the 1945 Constitution has applied the rules of strategic management.²²

Since the state of Indonesia is a unitary state, since the country was born, the sovereign and power holder is the central government. Basically, it is the central government that has the control of power. But the founders of this country have been looking forward to the country as wide, and as diverse as Indonesia cannot be controlled only from the center.²³ That is why in the Constitution it has been mandated the existence of decentralization which run with the principle of autonomy and assistance. This concept is a manifestation of an attempt to shorten the span of the central government control. In practice, decentralization and centralization are not dichotomous²⁴ but "continuum²⁵". This means there can be no decentralization without any centralization.

Decentralization without coupled with centralization will lead to disintegration. But on the contrary, centralization also results in the lengthening of the span of control. Thus there is no absolute matter or

²² *Ibid*

²³ R.Widodo Triputro and Supardal, 2005, *Pembaharuan Otonomi Daerah*, Yogyakarta, APMD Press, p. 26.

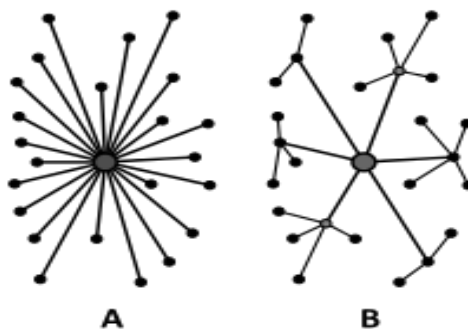
²⁴ Dikotomis is are two contradictory things <https://kbbi.web.id/dikotomi>

²⁵ Continuum is a continuous sequence in which adjacent elements are not perceptibly different from each other, although the extremes are quite distinct. <https://www.merriam-webster.com/dictionary/continuum>

authority to be regional affairs, but rather "concurrent" or done jointly by the center or by the regions.²⁶ The Center should continue to foster and supervise the implementation of regional autonomy and decentralization.

Figure No. 1

Graph of the system of centralization and decentralization.



A: Centralization, B: Decentralization

Source: <https://id.wikipedia.org/wiki/Desentralisasi>

As illustrated above centralization is the regulation of authority from the local government to the central government to take care of its own household affairs based on the initiative and aspirations of its people within the framework of the unitary state of the Republic of Indonesia. Meanwhile, decentralization is the delivery of government affairs by the central government to an autonomous region based on the autonomy principle.²⁷

The main principle of decentralization and regional autonomy is “Bringing the State Closer to the People”, meaning that with decentralization and regional autonomy the government will be closer to the people. The essence of this principle is the improvement of service and

²⁶ R.W. Triputro and Supardal, *Op. Cit*, p. 46.

²⁷ Local Government Act of 2014

accountability, not power. Diagrammatically this provision of the development of the set on Local Government Act of 2004 goes to Local Government Act of 2014 is shown in Figure No. 2 and Figure No.3

Figure No. 2

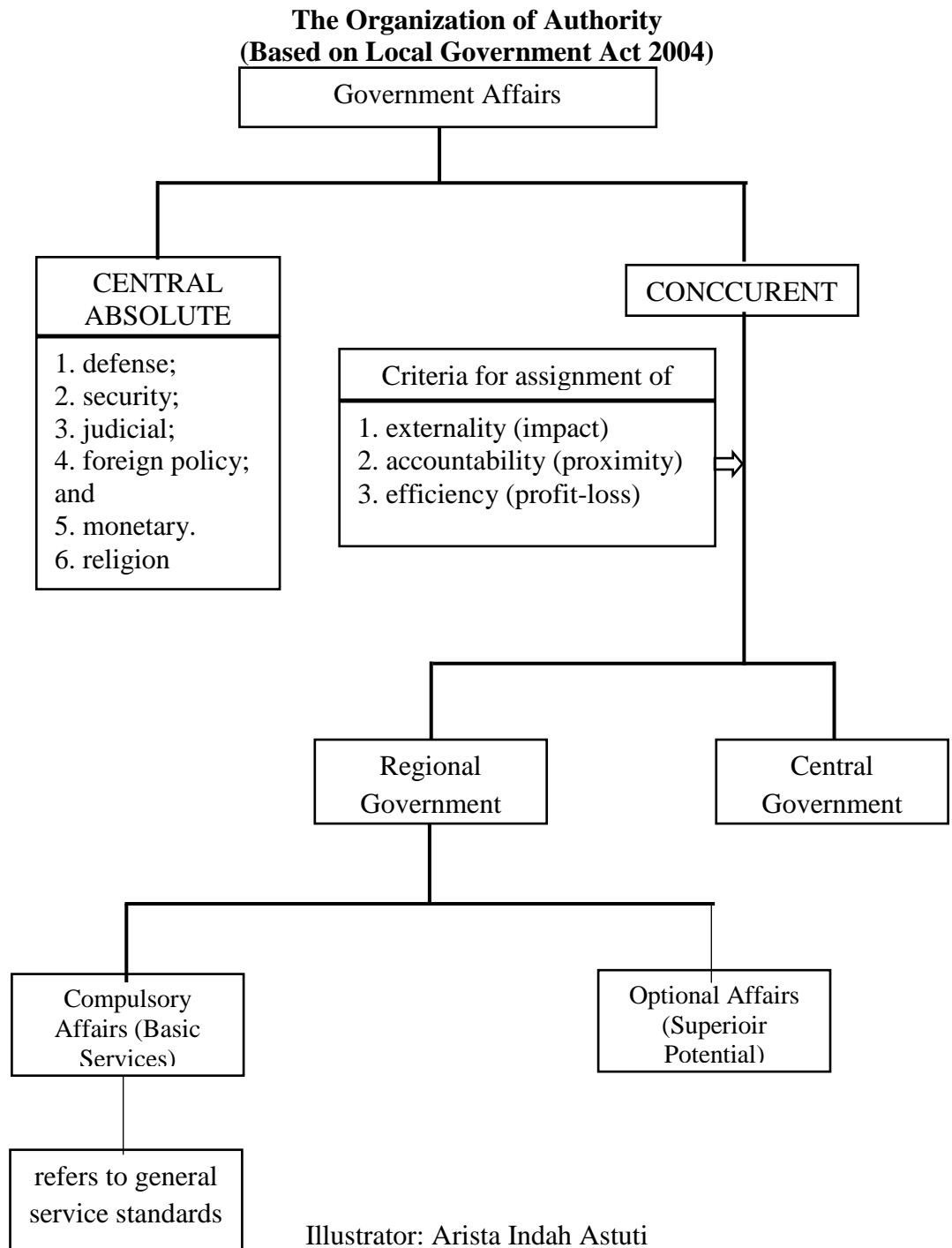
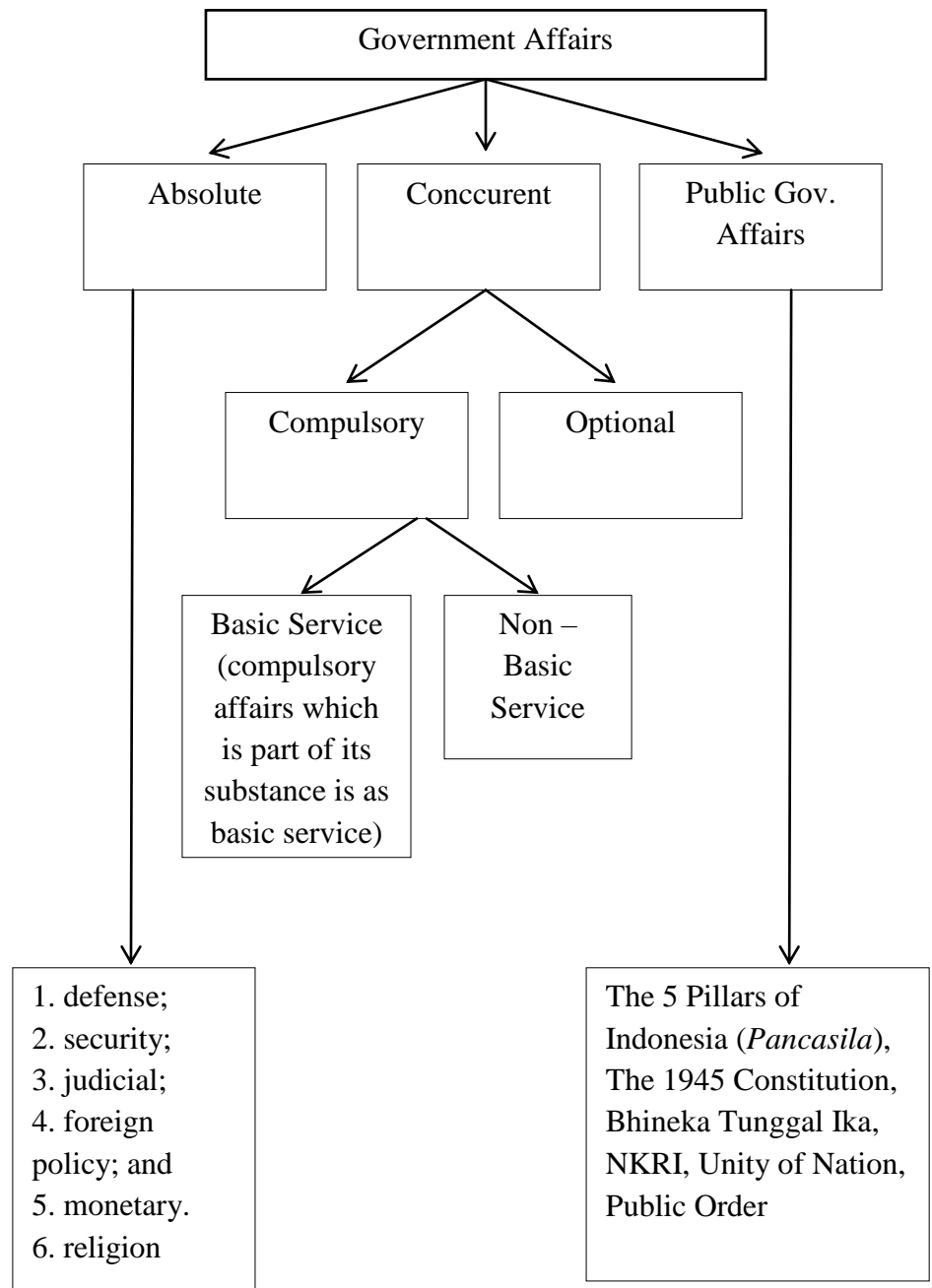


Figure No. 3

**The Organization of Authority
(Based on Local Government Act of 2014)**

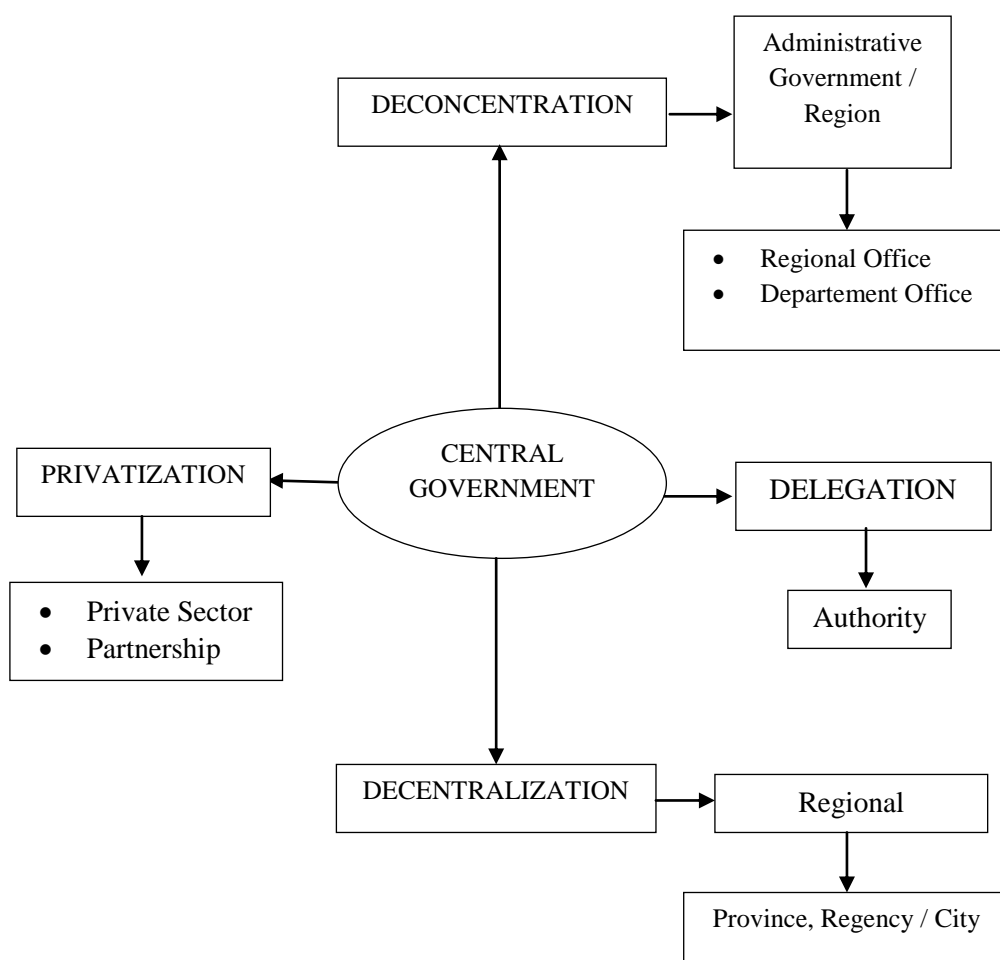


Illustrator: Arista Indah Astuti

Furthermore, the delegation of authority from the center to the regions can be done in various forms: (1) deconcentration, (2) decentralization, (3) delegation, even (4) privatization to the private sector. All of these forms are run by the Indonesian government in the framework of implementing the constitutional mandate. The distribution of government affairs is shown in Figure No. 4.

Figure No. 4

**The Distribution of Government Affairs
(Based on Local Government Act of 2004)**



Illustrator: Arista Indah Astuti

Distribution of Government Affairs based on Article 13 paragraph (1) of Local Government Act 2014, the division of Concurrent Government Affairs between Central Government and Provincial Region and Regency / Municipality Region is based on criteria of accountability, efficiency, and externalities, as well as national strategic interests. The authority of the central government, provincial and regency/municipality governments based on these principles is presented in Table 4. Meanwhile, the criteria for each of the central government, provincial and district/municipality governments are presented in Table 5.

Table No. 4

The Authority of Government Based on The Principle

No	Level of Government	Criteria
1	Central	Government affairs whose locations cross the provincial region or cross country; Government affairs whose users cross the provincial region or cross country; Government affairs that benefit or negatively impact traffic provincial or cross-country area; Government affairs that use more resources efficient if carried out by the central government; and / or Government affairs whose role is strategic for the interests national.
2	Province	Government affairs whose locations cross the regency / municipalities; Government affairs whose users cross the region, regency / municipalities; Government affairs that benefit or negatively

		impact traffic regency / municipalities; and / or Government affairs that use more resources efficient if carried out by the provincial region.
3	Regency / Municipality	Government affairs whose location within the regency / municipalities region; Government affairs whose users are in the Region regency / municipalities; Government affairs whose benefits or negative impacts are only in regency / municipalities; Government affairs that use more resources efficient if undertaken by regency / municipalities.

Source: Local Government Act of 2014

Table No. 5
The Criteria of The Affairs Distribution

No	Level of Government	Criteria
1	Central	Establish norms, standards, procedures and criteria of government affairs which are subject to regional authority; Carry out facilitation in the administration of government affairs which are under the jurisdiction of the regions; Implement supervision, monitoring and evaluation on the administration of government affairs which becomes regional authority; and Carry out the strategic government affairs national and international
2	Province	Arranging and administering governmental affairs that are provincial or cross-regency / municipality level
3	Regency / Municipality	Arranging and administering governmental affairs that are regency / municipality level

Source: Local Government Act of 2014

Based on Table 5, no significant changes are made, as they are in accordance with the provisions set forth in Local Government Act of 2004. However, the new Local Government Act contains a special interest for the forestry and marine sector. This is as set forth in Article 28 paragraph (1), that the government affairs submitted to the region and causing ecological impacts beyond the administrative boundaries of Regencies/Municipalities shall be the authority of the Provincial Governments. The government affairs that can cause ecological impacts, namely forestry and marine (Article 28 paragraph 2).

In more detail, the 1945 Constitution states that the unitary state of the Republic of Indonesia consists of provincial areas, and provinces consist of District and City areas. From this provision, it is clear that in Indonesia constitutionally there is a hierarchical relationship between the Regency and the City with the Province. This provision implies that the province shall be the superior of the Regency and City in the province.

What the founders of our country want to do with the regulation of the division of authority and affairs between the central and regional levels is that people's welfare, people's empowerment, and democratization can be realized quickly. This means that the will of the nation will quickly be realized with decentralization and regional autonomy, as the government becomes closer and accountability becomes more real. The people can

easily convey the wishes and complaints concerning the duties and accountability of the government in serving the community.²⁸

Through decentralization, people's welfare in the regions will be more quickly realized as local governments will be more flexible in acting in response to environmental changes and the needs of local communities. Decentralization also involves more active participation in decision-making than awaiting decisions from the central government so that democratic life is more realized, giving more space to create and innovate, and generate more work morale, commitment, and productivity.²⁹

In addition, population preferences are more accommodated, local level accountability will be better because it is easier to account for local government performance on local parliaments, better fiscal management, and economic growth rates and better market guarantees. In short, quite a lot of literature is very optimistic that the efficiency level will be better, the level of corruption will also decrease, and there will be increased democratization and participation.

C. The Effort to Strengthen Decentralization

The role of the central government in empowering local government is enormous. The narrowness or high degree of decentralization as an indicator of regional independence is also determined by the will of the central government. In other words, the

²⁸ Soetandyo Wignjosubroto, 2005, *Pasang-surut Otonomi Daerah: Sketsa Perjalanan 100 Tahun*, Jakarta, Institute for Local Government in cooperation with Yayasan TIFA, p. 34.

²⁹ *Ibid.*, p. 42.

central government is a dominant factor in general development management as well as local governance.³⁰

The main objective of local government reform by the Local Government Act 2014 is to accelerate the welfare of the people through improving services, empowerment, and community participation, enhancing regional competitiveness by taking into account the principles of government democracy, justice, privilege, and specificity, increasing efficiency and effectiveness by paying attention to the relationship between governments arrangement and between regional government arrangements, regional potentials, and globalization. This law seems to bring together the spirit of the local democracy model with the efficiency model.³¹

If the policy of regional autonomy is not accompanied by the increasing of the people's initiative in the regions in accordance with the demands of democracy, then the practice of oppressive power as experienced in the old centralized system will still emerge in the relationship between the regional government and its people. It even caused concern that the autonomous system of local government can actually lead to the authoritarianism of local government throughout Indonesia. Local officials who previously had little authority in a short time suddenly gained enormous power and opportunity which in no time

³⁰ Riant Nugroho D, 2000, *Otonomi Daerah Desentralisasi Tanpa Revolusi: Kajian dan Kritik atas Kebijakan Desentralisasi di Indonesia*. Jakarta, PT Elex Media Kompetindo, p. 24

³¹ Djohermansyah Djohan, 2010, "Penguatan Demokrasi Lokal", Yogyakarta, Makalah workshop Kurikulum Desentralisasi dan Otonomi Daerah, FISIPOL Universitas Gajahmada, pp. 3-4

was not necessarily controlled properly.³² Therefore, when the central government gives autonomy it need also proper supervision. The data from Indonesian Corruption Eradication Commision (KPK) indicates that after the political reform there are more than 70 Head of Region that were convicted for corruption.³³

In such circumstances, it is fit with the proposition in line with Lord Acton's statement that "power tends to corrupt and absolute power corrupts absolutely", there will be a growing number of insecurities that the climate of oppression and practices of anti-democratic tyranny and the practice of lawlessness and the abuse of authority that has occurred at the central level have instead shifted into the practice of governance in regions throughout Indonesia. Therefore, regional autonomy must be understood as its essence also includes the definition of community autonomy in the regions in the face of local government. The facts in various regions show how decentralization and regional autonomy have provided space for regions to innovate in better public service delivery for the community even though regional autonomy still has various problems.³⁴

Reorganizing Indonesia's decentralization within the framework of the Unitary Republic of Indonesia should encourage the strengthening of regional autonomy. The autonomy that has been given to the region should

³² Antara, "Presiden: Pelaksanaan Otonomi daerah Belum Lancar", accessed on March, 08, 2018.

³³ See further on "Berapa Bupati/Walikota yang Tertangkap KPK?" <https://databoks.kata.data.co.id/datapublish/2018/02/20/berapa-bupati-walikota-yang-tertangkap-kpk/> accessed on April, 24, 2018.

³⁴ Caragata, W., "Autonomy's Losers", Asiaweek Magazine, Volume 27, Nomor 19, 2001, <http://www.asiaweek.com/asiaweek/magazine/naons>, accessed on March, 08, 2018.

not be reduced, even if re-centralization happens. The problem of deviations from the implementation of autonomy is not addressed by withdrawing some decentralized authority. Within that framework, autonomy should encourage the strengthening of the degree of local democracy, without neglecting the structural efficiency within the framework of the Unitary State of the Republic of Indonesia (NKRI) system. Decentralization of authority is not merely administrative decentralization which leads to the bureaucratization of the implementation of autonomy but encourages the adoption of political decentralization.³⁵

The essence of autonomy is the process of community autonomy. Restructuring decentralization should place as the subject of autonomy towards the autonomization of a society. The nature of regional autonomy should be seen as the autonomy of society, not the autonomy of local government or the autonomy of local political elites. Local political elites in local government and DPRD institutions are only local people's mandates (through direct election and local elections) to manage local governance. An important issue in almost all of the laws on autonomy is the issue of the division of authority between levels of government. In fact, this is the essence of a law on autonomy.³⁶ The obstacle of autonomy is largely due to the overlap on the formulation on the division of authority.

³⁵ Robert Endi Jaweng, 2015, "Desentralisasi di Indonesia: Sketsa Masalah pada Sejumlah Elemen Kunci", *Analisis CSIS Kuartal Pertama* Volume 44, Nomor 1, p. 22.

³⁶ Moriwana, "UU 23/2014 Munculkan So Sentralisasi", <http://www.moriwana.com/uu232014-langkah-mundur-reformasi/>, accessed on March, 09, 2018.

The indications are the overlapping authority, the inconsistency of authority rules, and conflicts of authority between levels of government. Therefore, there must be clear rules about the authority. The division of authority should pay attention to the following matters:³⁷

1. Outlining the strengthening of the general competence distribution model, giving to regions their rights and competence by first verifying the rights and competence of autonomous regions.
2. Strengthening the implementation of asymmetric decentralization (different for each region).
3. Clarify authority at each level of government so as not to overlap and lead to a vacuum of responsibility in the development and public services. In such an effort it can be sorted out which is the regulatory authority (making the law / local regulations) and the authority that is taking care (implementing the policy) for each level of government.
4. Clarify interconnection between sectors and make rules of division of authority (affairs) in the Law on Regional Government as a reference. This is after the synchronization and harmonization of the Sectoral Law regulates or coincides with those regulated as the authority of the autonomous regions within the framework of decentralization. Another option, clarifying the obligatory matters of provincial and district/municipal governments is limited to the minimum service standard, while the division of its own affairs is defined in the sectoral

³⁷ *Ibid*

law. These options require harmonization and synchronization with all the sectoral laws that are related. So that the Law on Regional Government is really obeyed and implemented.

5. Improve the regulation on the distribution of government affairs by taking into account the clarity of concepts, the consistency of the application of concepts, and the avoidance of confusion/contradictions in the operationalization of concepts.

Basically, the reconstruction of decentralization is directed not only at the level of regulation but more than that, besides the policy approach through regulatory reform, reconstruction of the concept of decentralization followed by the management of elite behavior and the increase of state capacity. Thus it will be in a system of the local government administration system and the policies that are close to the community.

Beside conducting efforts to decentralize the government by applying and revising the law on local governance, the Government also try balancing the local government and central government. The role is more given to the main areas in the field of community service to be more effective and efficient. As a result of these efforts since 2010, the Government of Indonesia has attempted to start a Provincial Governance Strengthening Program (PGSP) managed by National Development Planning Agency (BAPPENAS) and collaborate with UNDP (United Nations Development Programme).

Provincial Governance Strengthening Programme (PGSP) is a collaborative programme between the United Nations Development Programme (UNDP) and the Government of Indonesia which aims to strengthen the roles and functions of the provincial government through policy development, regional development planning, and the provision of a better public service.³⁸ This program is focused on helping the Indonesian government recognize the challenges associated with decentralization policies.

Discussion and analysis of these issues has enabled a statement to be formulated on the Intended Impact of the Project: Provincial government role and functions strengthened through effective participatory policy making, regional development planning, and public service delivery, leading to a realization of national development objectives and the improvement of the quality of life for the poorest.

In order to achieve the intended Project Impact, three sets of project outputs have been identified: (i) PGSP Output 1: Enhanced Policy and Regulatory Framework that further clarifies and strengthens role and functions of provincial government and council (DPRD); (ii) PGSP Output 2: Strategic regional economic development planning strengthened, effectively link planning and budgeting using HDI/HDR; with participatory decision-making mechanism in place; (iii) PGSP

³⁸ Provincial Governance Strengthening Programme (PGSP) http://www.batukarinfo.com/project/pgsp-0_27_02_2018, accessed on 27 February, 2018.

Output 3: Achievement of better development outcomes at provincial level through governance innovations: implementation of minimum service standards, civil service reform, participatory monitoring and evaluation and sustainable cross province learning.³⁹

The development of decentralization in Indonesia seems to be fluctuate, up and down, it depends on the political will of the central government. Started from the enactment of Local Government Act of 1974, which emphasizes more centralization, then followed by the enactment of Local Government Act of 1999 which gives more decentralized model and at the minimal level has tried to shift the core of centralized to the decentralized one. However with the enactment of Local Government Act of 2004, it seems to return to strengthen re-centralization model. It also happened to Local Government Act of 2014 which also strengthen re-centralization policy. In short, the two laws after Local Government Act of 1999 has returned the regional policy from decentralized policy to centralized policy.

³⁹ Provincial Governance Strengthening Programme United Nations Development Programme Country: Indonesia, Project Document, 2009.