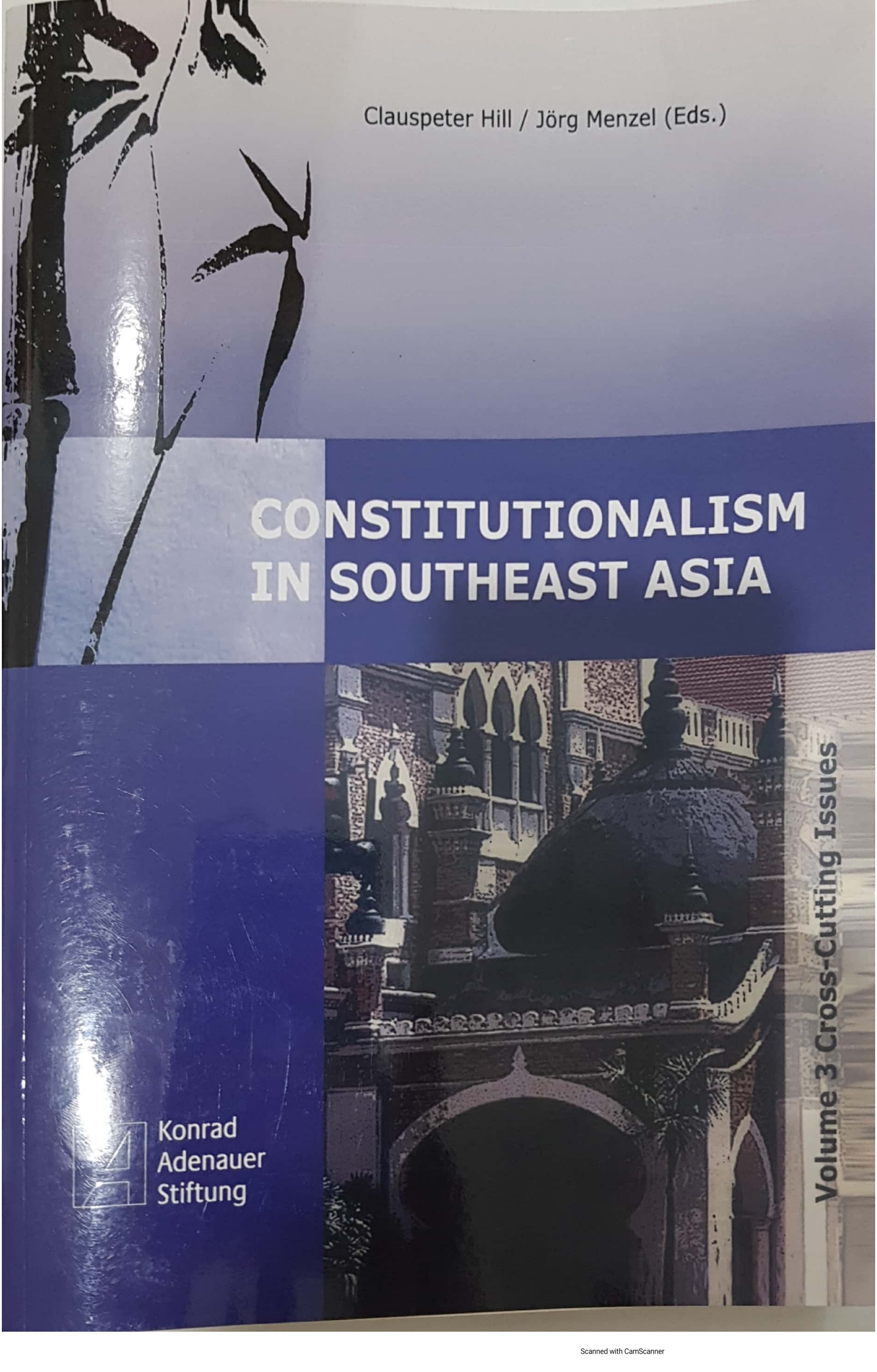

# DECENTRALIZATION AND THE CONSTITUTIONAL SYSTEM OF GOVERNMENT IN INDONESIA

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The reformation era, which has been ensuing for more than ten years in Indonesia, started with the resignation of president Soeharto on May 21 1998 and the appointment as president of the former vice-president B.J. Habibie. During the first two years of Habibie's administration, profound changes in various products of legislation were introduced especially in the form of laws among which there are new rules regarding regional administration, commonly known as regional autonomy laws. Many of the changes were made possible after revoking Law No. 5/1974 concerning principles of regional administration[1] and Law No. 5/1979 about village administration[2] and replacing them with a new regional administration law: Law No. 22/1999.[3]

Based on The Constitution of the Republic of Indonesia of 1945 (hereinafter "the 1945 Constitution"), which had not been changed when the regional administration was legalized in 1999, the division of regions on the basis of big and small, with their types and structures, did not have constitutional hierarchy.[4] In the descriptions of the 1945 Constitution regarding the subject matter, it is stated that:[5]

> "Because Indonesia is an *eenheidsstaat*, it will not have a region in its area that is also a staat. Indonesian regions will be divided into provinces and each province will also be divided into smaller districts. Within autonomous regions (*streek* and *locale rechtsgemeenschappen*) or merely administrative regions, there will be regulations confirmed by laws. In autonomous regions there will be regional representatives; hence, in regions, the government will also be within the frame of deliberation".

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1 Indonesia, Law regarding Aspects of Regional Government, Law No. 5/1974, State Sheet No. 38/1974, State Sheet Addendum No. 3037.

2 Indonesia, Law regarding Village Administration, Law No. 5/1979, State Sheet No. 5/1979, State Sheet No. 56/1979, State Sheet Addendum No. 3153.

3 Indonesia, Law regarding Regional Government, Law No. 22/1999, State Sheet No. 60/1999, State Sheet Addendum No. 3839.

4 See Article 18 of the 1945 Constitution before being amended in the People's Consultative Assembly Republic of Indonesia, The First Amendment of the 1945 Constitution of the Republic of Indonesia (Jakarta: Secretariat General of the People's Consultative Assembly Republic of Indonesia, 1999), p. 6. 6.; See also in People's Consultative Assembly Republic of Indonesia, The 1945 Constitution of the Republic of Indonesia (Jakarta: Secretariat General of the People's Consultative Assembly Republic of Indonesia, 2000), p. 6.

5 Ibid., p. 17.

It is clear how the 1945 Constitution provides a strong foundation for regional autonomy by giving an authority that is extensive, real, and accountable to the regions. Further steps have been taken in order to develop this constitutional principle, as it is made evident by reading the Decision of the Republic of Indonesia's People's Consultative Assembly No. XV/MPR/1998 (hereinafter "decision XV/MPR/1998"). This decision is concerned with the implementation of regional autonomy; co-ordination, distribution, and utilization of national resources that are equitable and; balance of the central and regional finances within the frame of the unitary state of the Republic of Indonesia.[6]

In accordance with the decision XV/MPR/1998, regional autonomy is implemented by proportionally giving an authority that is, again, extensive, real, and accountable to regions. The authority is shaped into co-ordination, distribution, and utilization of national resources that are equitable, balanced with regards of the central and regional finances, and implemented on the basis of democratic, community-participatory, fair and justice principles, taking into account regional potentials and diversities.[7]

The principles of establishing regional autonomy referred to in Law No. 22/1999 follows several conditions: first, the implementation of regional autonomy is carried out by taking into account the aspects of democracy, justice, fairness, and regional potentials and diversities; second, it is based on an extensive, real and accountable autonomy; third, in regencies and municipalities the autonomy is extensive and intact, whereas the autonomy of provinces is limited; fourth, it should raise the self-sufficiency of autonomous regions and, therefore, in regencies and municipalities there should no longer be administrative districts; fifth, it should increase the role and functions of the Local House of Representatives, including the legislative function and the monitory function, as well as budgeting and regional administrative functions; sixth, the implementation of the de-concentration principle is placed on provincial areas in their position as administrative areas to execute certain governmental authorities delegated to governors as the government's representatives and; finally, the law acknowledges that the implementation of delegation principle is possible, not only from the central government to the regional administration, but also from the central and regional administrations to village administration, along with budget, facilities and infrastructures, and human resources responsible for reporting the implementation and accountability to the delegating party.

Law No. 22/1999 regarding regional administration was followed by the promulgation of Law No. 25/1999 regarding financial balance between the central and regional administrations.[8] The latter developed several main objectives to deepen preceding principles, among which we find:[9] empowering and increasing the financial ability of the regions; the creation of a regional financing system that is fair, proportional, rational, transparent, participatory, accountable and firm; the

6 People's Consultative Assembly Republic of Indonesia, Decisions of the People's Consultative Assembly Republic of Indonesia, Results of Extraordinary Summit Year 1998 (Jakarta: Secretariat General of the People's Consultative Assembly Republic of Indonesia, 1998).

7 See Explanation of Law No. 22/1999 regarding Regional Government.

8 Indonesia, Law regarding Financial Balance Between Central and Regional Governments, Law No. 25/1999, State Sheet No. 72/1999, State Sheet Addendum No. 3848.

9 See Explanation of Law No. 25/1999.

realization of a financial balancing system between the central and regional administrations reflecting clear distribution of authority and responsibility, supporting the implementation of regional autonomy through transparent operation of regional administration, taking into account the participation of and responsibility to the community, decreasing the gap among the regions in their capability of financing the autonomy, and ensuring the source of regional finances coming from their own regions; the confirmation of the financial accountability system by regional administration and becoming a reference in the allocation of state income for regions and for regional finances.

Various basic rules and other legislative regulations have followed in the form inter alia of the second amendment of the 1945 Constitution, decisions of the People's Consultative Assembly, laws, government regulations, presidential decisions, ministerial decisions, and circulation letters. Some of these rules will be described in the subsequent sections of this paper.

## I. The Constitutional Foundation

The Indonesian People's Consultative Assembly in its first Annual Summit held in August 2000 produced several basic regulations related to regional autonomy, especially the second amendment of the 1945 Constitution. In the amendment, the old Article 18 was changed and the core principles informing the decentralization in Indonesia are embedded in its text:[10]

Article 18

(1) The Unitary State of the Republic of Indonesia shall be divided into provinces and those provinces shall be divided into regencies (kabupaten) and municipalities (kota), each of which shall have regional authorities regulated by law.
(2) The regional authorities of provinces, regencies and municipalities shall administer and manage their own affairs according to the principles of regional autonomy and the duty of assistance (tugas pembantuan).
(3) The authorities of the provinces, regencies and municipalities shall include for each a Regional People's House of Representatives (DPRD) whose members shall be elected through general elections.
(4) Governors, Regents (bupati) and Mayors (walikota), respectively as head of regional governments of the provinces, regencies and municipalities, shall be elected democratically.
(5) The regional authorities shall exercise wide-ranging autonomy, except in matters specified by law to be the affairs of the central government.
(6) The regional authorities shall have the authority to adopt regional regulations and other regulations to implement autonomy and the duty of assistance.
(7) The structure and administrative mechanisms of regional authorities shall be regulated by law.

10 For the full and updated text of the 1945 Constitution of the Republic of Indonesia see its unofficial translation in Constitutionalism in Asia, Volume 1. Konrad-Adenauer-Stiftung, Singapore (2008) pp. 81-93.

Article 18A

(1) The authority relations between the central government and the regional authorities of the provinces, regencies and municipalities, or between a province and its regencies and municipalities, shall be regulated by law having regard to the particularities and diversity of each region.

(2) The relations between the central government and the regional authorities in finances, public services, and the use of natural and other resources shall be regulated and administered with justice and equity according to law.

Article 18B

(1) The State recognises and respects units of regional authorities that are special and distinct, which shall be regulated by law.

(2) The State recognises and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.

Later decisions of the Indonesia's People's Consultative Assembly have shaped this constitutional basis. Decision No. III/MPR/2000 is one of them, regulating the sources of law and the structure of legislative regulations. This decision sets a clear hierarchy of the sources of law: first, the 1945 Constitution; second, decisions of the Indonesia's People's Consultative Assembly, third, laws; fourth, government regulations substituting laws; fifth, ordinary government regulations; sixth, presidential decisions and; seventh, regional regulations.[11]

This decision also clarified that a lower law, regulation or decision cannot contradict a higher one.[12] Regulations or decisions of the Supreme Court, the Supreme Audit Board, ministers, the Bank of Indonesia, agencies, institutions or commissions at the same level established by the government, cannot contradict the regulations stated in the hierarchy set in the decision.[13]

The Indonesia's People's Consultative Assembly devoted its following decision -No. IV/MPR/2000- to issue policy recommendations for the implementation of regional autonomy. The decision started by describing several fundamental problems encountered in the implementation of regional autonomy:[14] first, there is not a constitutional mandate towards the central government to implement regional autonomy, and that hampers the smooth evolution of the process of decentralization. Secondly, the strong centralization process has made regional authorities highly dependent on the central government, almost destroying the creativity of communities and their regional administrative apparatus. Third, there has been a wide gap between the central government and the regional authorities, as well as among regional authorities, in the ownership

11 See Article 2 Decision of the People Consultative Assembly Republic of Indonesia No. III/MPR/2000, p. 41.

12 See Article 4 Sub-section (1) Decision of the People's Consultative Assembly Republic of Indonesia No. III/MPR/2000, p. 43.

13 See Article 4 Sub-section (2) Decision of the People's Consultative Assembly Republic of Indonesia No. III/MPR/2000.

14 See Chapter II Decision of the People's Consultative Assembly Republic of Indonesia No. IV/MPR/2000, pp. 50-51.

of natural resources, cultural resources, economic infrastructure and quality level of human resources. Finally, there have also been entrenched interests from various political parties that inhibit the implementation of regional autonomy.

Only then does decision No. IV/MPR/2000 address several recommendations to the central government and the House of Representatives.[15] It suggests that by May 1 2001, the laws regarding special autonomy for the special territories of Aceh and Irian Jaya should be issued, taking into account the will of the communities in those regions; the implementation of regional autonomy in the other regions, in accordance with Law No. 22/1999 and Law No. 25/1999, should encompass all the proper regulations by December 2000 and; the regions that are capable of executing a full autonomy could start its implementation effectively on January 1st 2001. On the other hand, those regions that are not ready to implement full autonomy could do so gradually, proportional to their particular capabilities. If the central government failed to issue all regulations by December 2000, regions capable of implementing full autonomy would be given the opportunity to replace them with regional regulations, which should be adjusted to those emanating from the central government once issued.

With regards to recommendations directed to regional authorities, it was advised that each region made a master plan of the decentralization in its own region, by considering implementation stages, institutional limitations, capacity and infrastructure, budget management system and public management.

For regions with limited natural resources, the decision went on to recommend, financial balance should be made by taking into account the possibility of gaining a share from the benefits of State-Owned Enterprises in their regions and a share from the income tax of the operating regions; whereas for regions with abundant natural resources, financial balance between the central and regional administrations was to consider fairness and appropriateness. Special attention should be granted to regions where the education of human resources is limited.

A co-coordinating team was advised to be established in each region to handle problems among institutions and to help both government and non-government institutions function to ensure the unhampered development of the implementation with a clear program.

Finally, and along with the spirit of decentralisation, democracy and equal relationship between the central government and the regional authorities, an initial pioneering effort was recommended to make a fundamental revision on Law No. 22/1999 and Law No. 25/1999. The revision should be aimed at giving a gradual autonomy to provinces, regencies, municipalities and villages.

## II. Some Related Laws and Regulations: an Overview of the First Two and a Half Years Period (1999 – 2001)

As discussed above, the legalization of Law No. 22/1999 and Law No. 25/1999 has been followed by the implementation of various basic regulations and other legislative products. Let us focus in the most essential decentralization regulations, especially during the period between 1999 and 2001, the first two and a half year of the decentralization policy implementation, that

15 See Chapter III Decision of the People's Consultative Assembly Republic of Indonesia No. IV/MPR/2000, pp. 51-52.

have proven to be crucial. Within this period the government issued hundreds of implementing laws and regulations on decentralization.

Among basic and legislative regulations we consider: laws, government regulations, presidential decisions, ministerial decisions and circulation letters. This list is based on two criteria: first, hierarchy, based on the position of basic regulations and legislative regulations in the Indonesian legal system, and second, chronology, based on the time order of the establishment or legalization of basic and legislative regulations.

***Law***

There is a long list of laws, especially enacted within the 1999 – 2001 period, that are related to decentralization. Aside from the two laws that have been discussed above, namely, Law No. 22/1999 and Law No. 25/1999, there are four other laws promulgated during the 1999 -2001 period that will be discussed herein, that is, Law No. 28/1999, Law No. 34/1999, Law No. 41/1999 and Law No. 43/1999.[16]

Law No. 28/1999.

Issued on May 19 1999, its name is "State Operations that are Clean and Free of Corruption, Collusion, and Nepotism Law."[17] Although this law does not directly regulate regional autonomy, some of its parts are related to the regions. For instance, the meaning of "State Operation" in Chapter II includes governors. Besides, in the "membership of the four sub-commissions", one of them is the Sub-Commission on Regional Government-Owned Enterprises. Essentially, the law is aimed at covering the whole state operation, both in the central and regional administrations.

Law No. 34/1999

This law regulates the Provincial Government of Jakarta Indonesian Capital City Administration, established on 31 August 1999.[18] The background of the establishment of the Law is that Jakarta as the capital city of Indonesia is a Province that has unique characteristics, different from other provinces regarding task loads, responsibilities, and more complex challenges. The complexity is also related to its existence as the centre of the state government, limited territory factor, high population and all the impacts on settlement aspects, territorial management, transportation, communication, and other factors. To address such multifaceted challenges it is deemed crucial to provide autonomy to the province to enable the area to develop Jakarta in a unitary plan, implementation, and control. As a consequence, Jakarta is expected to be able

16 For other laws within the 1999 – 2001 period related to decentralization see: Law No. 7/2000, Law No. 8/2000, Law No. 9/2000, Law No. 10/2000, Law No. 11/2000, Law No. 12/2000, Law No. 13/2000, Law No. 14/2000, aw No. 15/2000, Law No. 23/2000, Law No. 27/2000, Law No. 34/2000, Law No. 38/2000, Law No. 5/2001, Law No. 6/2001, Law No. 18/2001 and Law No.21/2001.

17 See Law regarding State Operations that are Clean and Free of Corruption, Collusion, and Nepotism, Law No. 28/1999, State Sheet No. 75/1999, State Sheet Addendum No. 3851.

18 See Law regarding Jakarta Capital City Special Province Administration the Republic of Indonesia Jakarta, Law No. 34/1999, State Sheet No. 146/1999, State Sheet Addendum No. 3878, section on General Explanation.

to provide quick, accurate, and integrated services to the community. Thus, the area of Jakarta Capital City Administration is divided into municipality and administrative regency territories. Each territory is divided into districts, each of which is then divided into sub-districts. The authority of the Provincial Government of Jakarta Capital City Administration includes the authority in all governmental aspects, except the authority of foreign affairs, defense and security, justice, monetary and fiscal, religion, and other divisions, as regulated in legislative regulations. The provincial government of Jakarta delegates an extensive authority to the administrative municipalities and regencies to improve its services to the community.

### Law No. 41/1999

This law regulates forestry and was established on September 30 1999.[19] In line with the running legislative regulations regarding regional administration, the implementation of some operational forest administration is delegated to regional administration at province, regency and municipality levels, while national or macro forest administration remains under the authority of central government. Forest utilization products are part of the state income from natural resources, forestry sector, by considering the balance of their utilization for the interest of both central and regional administrations. Furthermore, due to license holders' responsibility to pay contributions, commissions, and reforestation funds, license holders should also put aside some of their investment budget for the development of human resources, including for research and development, education and training, extension, and forest conservation investment budget. Although central and regional administrations are responsible for monitoring forests, the community also plays a role in the monitoring of forest development implementation, in order to make sure they know the plan for forest establishment, the utilization of forestry products, and the information of forestry.

### Law No. 43/1999

This law, established on September 30 1999, regards personnel affairs.[20] In the context of regional autonomy, this law can be related to the implementation of governmental authority decentralization towards regions. Civil servants' responsibility for maintaining the unity and integrity of the nation is highlighted, and this should be achieved by carrying out their duties professionally and responsibly in implementing governmental and developmental functions, and by being clean and free from corruption, collusion and nepotism. The management of civil servants should be regulated holistically by applying uniform norms, standards, and procedures in determining staff formation, recruitment, development, salary and welfare program, and staff dismissal that become the elements of the management of civil servants. This includes both central and regional civil servants. Aside from making the management of civil servants easier, the uniform management can also create uniform behavior and legal protection for all civil

19 Law regarding Forestry, Law No. 41/ 1999, State Sheet No. 167/1999, State Sheet Addendum No. 3888, section on General Explanation.

20 See Law regarding Amendment of Law No. 8/1974 regarding Personnel Affairs, Law No. 43/1999, State Sheet No. 169/1999, State Sheet Addendum No. 3890, section on General Explanation.

servants. After Law No. 22/1999 decentralization of personnel affairs should be pushed to regions.

### *Government Regulations*

Government regulations have been one of the main engines of decentralization in Indonesia. Particularly directed at developing the principles set in the laws, the structure and financial attributes of the regional authorities, inter alia, have been formulated through this type of regulation. Let us emphasize in some government regulations enacted during the 1999 – 2001 period, categorizing it according to the topics they regulate, namely, structure of regional administrations, regional finances, transfer of capital cities and civil servants.[21]

### *Structure of Regional Administrations*

The shape of the decentralized provinces has been substantially designed through government regulations, largely –although not exclusively- due to the responsibility posed on the Indonesian government's shoulders through Law No. 22/1999.[22] This way, Government Regulation No. 84/2000, issued on 25 September 2000, regulates the guidelines of the regional apparatus organization. This regulation is concerned with six main issues: first, the establishment of a regional apparatus organization; second, the position, duties, and functions of the provincial apparatus; thirdly, with the position, duties, and functions of the regency and the municipality apparatus; fourth, with the position, duties, and functions of the Secretariat of the Regional Consultative Council; fifth, with organizational structures; and lastly with the rank, recruitment, and dismissal rules. The Regional Apparatus Organization is later approved by a regional regulation. The descriptions of the main duties and functions of the regional apparatus are legalized by a decision of the head of the region.

Regional establishment requirements, expansion criteria, elimination, and merger were determined in Government Regulation No. 129/2000, issued on December 13 2000. In line with Law No. 22/1999, the establishment of a new autonomous region is feasible by splitting a region as long as it meets the socio-cultural, socio-political, and demographic requirements, along with the economic capability, regional potentials, scope of the region, and other considerations. Therefore, it is clear that a proposal for the establishment of a new region cannot be processed if it only meets some of the requirements, like the majority of the proposals presented for the establishment of new regions, which are only based on political or historical factors. Establishment of a new region should be advantageous for the national development in general and regional development in particular, aiming at improving public welfare, which in turn can indirectly

21 As a more complete list of government regulations enacted during the 1999 – 2001 period that are related to decentralization see also the following Government Regulations: No. 15/2000; No. 25/2000; No. 47/2000; No. 62/2000; No. 84/2000; No. 96/2000; No. 97/2000; No. 98/2000; No. 99/2000; No. 100/2000; No. 101/2000; No. 104/2000; No. 105/2000; No. 106/2000; No. 107/2000; No. 108/2000; No. 109/2000; No. 129/2000; No. 141/2000; No. 142/2000; No. 151/2000; No. 11/2001; No. 20/2001; No. 39/2001; No. 52/2001; No. 56/2001; No. 65/2001; No. 69/2001 and No. 70/200.

22 See for example Article 12 of the Law No. 22/1999, which states that "further arrangements concerning government and provincial authority shall be regulated by government regulations".

increase regional income. The establishment of a new autonomous region should not make the parent region incapable of implementing regional autonomy. Likewise, provinces, regencies, and municipalities can be eliminated if the regions, based on research, determine that these are no longer capable of implementing their autonomy. Eliminated regions will be merged into one or several neighbouring regions.

The government has also enabled the provincial authorities to supervise regencies and municipalities in different aspects. Government Regulation No. 25/2000 determined that provincial authorities shall police cross regency/municipality services, especially when inter-regional agreements have not been reached; and conflicts of interests among regencies and municipalities will also be settled by provincial authorities.

However, significant political control over the regions is still held by the central government. The implementation of consultation on governor and vice-governor candidates, and legalization and appointment of heads and vice-heads of regions, has also been designed through government regulations, namely Government Regulation No. 47/2000. It decided that the names of governor and vice-governor candidates selected by the head of the Local House of Representatives are to be consulted with the President. The implementation of the consultation is to be delegated to the Minister of Home Affairs on behalf of the President. The approved pair of governor and vice-governor candidates, having gone through a selection process conducted by the House of Representatives, is then approved through a presidential decision.

Seemingly, Government Regulation No. 20/2001 regulates encouragement and supervision of regional governmental authorities. The operation of the governmental administration basically employs the principles of modern management, where managerial functions run simultaneously and proportionally, aiming to achieve the objectives of the organization. To create firmness and consistency in the implementation of a state administration that is efficient and effective for the sake of national development and public welfare, the regional authorities should be guided and supervised, and also to prevent them from becoming sovereign. Regional authorities are, basically, a subsystem of national government. The encouragement and supervision of Regional Government are implicitly an integral part of the system.

Finally, a regional government implementation report has been created and structured through Government Regulation No. 56/2001, issued on July 13 2001. Reports on the implementation of regional autonomy are an important facility that bonds the hierarchical relationship between central and regional governments, protecting the system of the Unitary State. The Heads of Regions are the persons responsible for conducting these reports.

### *Regional Finances*

Although the main principles of the financial engineering of the provinces are found in the Law No. 25/1999, many details of its implementation have been devised through government regulations. The core principle of proportional budget, for instance, was developed in Government Regulation No. 104/2000, "in order to create a system of financial balance that is proportional, democratic, fair, and transparent, based on the distribution of authority between the central and

regional governments."[23] The regulation defines proportional budget as a source of regional income coming from the state and expenditure budget to support the implementation of regional authority within the process of giving autonomy to the region, especially oriented to improve the services and welfare of the community. The concept of proportional budget is comprised of three pillars: first, the regional share from land and building tax income, land and building rights acquisition fee, and income from natural resources; second, the general allocation budget, which is aimed at even distribution by taking into account regional potency, area, geographical condition, population, and the income level of the community, so that the gap between developed Regions and developing Regions can be minimized; and thirdly, the special allocation budget, a flexible pillar designed to help regions with their special needs.

Management and accountability of regional finances is also found in this category, through Government Regulation No. 105/2000. It establishes that the financial management system is basically a subsystem of the governmental system, following the constitutional patterns set in articles 23 and 78 to 86 of the 1945 Constitution. However, particular details of the financial management system and procedures are determined by each region. Diversity of systems is possible as long as it is still in line with this government regulation. It represents an attempt to encourage regions to be able to take creative initiatives in improving and updating their systems and procedures, and to review their systems continuously, aiming at increasing the efficiency and effectiveness on the basis of local condition, needs, and capability.

Regional debts are controlled by Government Regulation No. 107/2000. It develops the principle set in Law No. 25/1999 that considers regional debts as one of the regional income sources for decentralization. Loan budget is an addition to the available regional income sources and aimed at funding the provision of regional infrastructure or other fixed properties that are related to activities that can increase the income, enabling the region to pay its debts and give advantages to public services.

The rules regarding the financial position of the head of region and vice-head of region are found in Government Regulation No. 109/2000. These figures need to be given financial rights for them to execute their duties and functions as state functionaries, which will be provided by the state income and expenditure budget. In implementing their positions as the head of region and vice-head of region, the financial aid they receive is aimed to coordinate social unrest prevention, public protection, and other activities in relations to National Unity and integrity building.

Finally, regional financial information and regional tax have been devised in Government Regulation No. 11/2001 and Government Regulation No. 65/2001, respectively. The financial information of the regions is needed by the central government, especially the Minister of Finance. Regional tax principles are designed so that regional self-sufficiency and development can be achieved.

### *Transfer of Capital Cities*

The rapid growth shown by different regencies have pushed the government to take action in order to canalize it, promoting what they call "even and balanced development among

23 Law No. 25/1999.

regencies."[24] Transferring the capital city of regencies can help alleviate some of the tensions caused by development, especially those related with territorial space management. This practice can help diminish the concentration in the capital city and create new centers of development that will contribute with "various aspects of governmental administration, development, and community affairs."[25] Jayapura Regency and Lombok Barat Regency have both had their capitals transferred to a less developed but more spacious area. The Sentani Area is the new capital in Jayapura Regency, replacing Jayapura City; whereas the Gerung Area serves now as the capital of the Lombok Barat Regency, in place of Mataram City.

### *Civil Servants*

On 10 November 2000 a series of government regulations were issued in order to modernize the way in which civil servants are considered. Government Regulation No. 96/2000 focused on the authority of recruitment, transfer and dismissal of civil servants. In accordance with Law No. 8/1974 regarding Personnel Affairs, as replaced by Law No. 43/1999, civil servants can be moved from one department, institution, province, regency or municipality to another. This means that all civil servants are a unity, but work in different places.

Government Regulation No. 97/2000 versed on the formation of civil servants. Determinations on the formation of civil servants aim at enabling the State Organisational Units (SOU) to have a sufficient number of qualified staff in accordance with its workload and responsibility.

Government Regulation No. 98/2000 was meant to control the recruitment of civil servants, considered as a process to fill vacant formations. Formation vacancy in a SOU is commonly available due to diverse factors. Recruitment should be based on the needs, either in the number and quality of staff needed, or functionary competence required. In relations to that, every citizen of Indonesia that meets the requirements stated in this government regulation has the same opportunity to apply to be recruited as a civil servant.

Government Regulation No. 99/2000 regulates promotion of civil servant. Promotion is hitherto defined as an appreciation given to civil servants for their work performance and dedication for the country and it is aimed at encouraging them to improve. Every superior is responsible for considering the promotion for his/her staff to be given at the right time. All institutions are required to apply the same norms, standards and procedures for the promotion of civil servants.

Government Regulation No. 100/2000 controls the recruitment of civil servants in structural functions, and was intended to increase the professionalism and quality of civil servants, focusing on competitive superiority and bureaucracy ethics. It also contemplated civil servants' functions as unifiers and binders of the Unitary State, taking into account the development and intensity of demands on openness, democratisation, protection to human rights, and the environment.

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24 Government Regulation No. 62/2000; issued on August 7 2000, which regulates the transfer of capital city of Lombok Barat Regency from Mataram City to Gerung Area.

25 Government Regulation No. 15/2000; issued on March 10 2000, regulating the transfer of capital city of Jayapura Regency from Jayapura City to Sentani Area.

Finally, Government Regulation No. 101/2000 established the education and in-service training procedures for civil servants. Improvements were required in the areas of attitudes and spirits of dedication, oriented on the interest of the community, nation, country, and fatherland; technical, managerial, and leadership competence; and efficiency, effectiveness and quality of job implementation.

### *Presidential Decisions or Presidential Decrees*

The Presidential Decision or Presidential Decree is a kind of regulation under the government regulation level. Constitutional law experts in Indonesia have often attributed the basis of this kind of regulation to the disposition in Article 4 paragraph (1) of the 1945 Constitution, which states: "The President of the Republic of Indonesia shall hold the power of government in accordance with the Constitution".[26]

There are several presidential decrees or presidential decisions relating with decentralization issued in this 1999 – 2001 period, and they are herein divided according to the main subjects they raise, namely, ministries, budget, the Regional Autonomy Advisory Council, the coordinating team for the follow up of the implementation of Laws Nos. 22/1999 and 25/1999, the Regional Employment Board and the implementation of the regional administration monitoring procedures.[27]

### *Ministries*

It is by presidential decisions that the position, duties, functions, organisational structure and management of state ministries is regulated. On 10 November 1999 Presidential Decision No. 134/1999 was issued. What is most important in relation to regional autonomy in this decree is the appointment of State Minister of Regional Autonomy, which at that time was occupied by Prof. Dr. Ryaas Rasyid, M.A. The duty of the State Minister of Regional Autonomy is to help the President in implementing administration affairs in the area of regional autonomy. In the frame of executing that duty, State Minister of Regional Autonomy should perform at least five main functions: first, government policy formulation in the aspect of regional autonomy and supervision of its implementation; second, coordination and extension of plan arrangement integration and regional administration improvement programs; third, acceleration of transfer of authority by departments and non-department governmental institutions to provincial, regency and municipality administrations in the frame of optimizing regional autonomy; fourth, evaluation of the implementation of decentralization and regional autonomy; and finally, presentation of reports of evaluation, recommendation, and consideration in each field of duty and function to the President.

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26 See Article 4 paragraph (1) of the 1945 Constitution.

27 As a more complete list of Presidential Decisions enacted during the 1999 – 2001 period that are related to decentralization see also: No. 134/1999; No. 136/1999; No. 17/2000; No. 18/2000; No. 49/2000; No. 52/2000; No. 84/2000; No. 151/2000; No. 157/2000; No. 159/2000; No. 178/2000; No. 181/2000; No. 10/2001; No. 14/2001; No. 17/2001; No. 40/2001; No. 62/2001; No. 74/2001; No. 131/2001; No. 1/2002; No. 2/2002; No. 4/2002; No. 5/2002.

Presidential Decision No. 136/1999 established some of the functions of the Department of Home Affairs, stressing that it is as a body dedicated to help the president in implementing some governmental and developmental general duties in the aspect of domestic administration. In the frame of executing that duty, the Minister of Home Affairs should establish implementation policies, technical policies, state property management, and formulation and preparation of policy on general administration, national integrity, preserving the Unitary State, and community protection on the basis of the existing laws. The implementation of some duties of community empowerment in region and village development is also among its duties.

### *Budget*

In relation to budgetary planning, presidential decrees are quite instrumental. Presidential Decision No. 17/2000, issued on 21 February 2000, focused on the implementation of state income and expenditure budget, confirming that its implementation must be executed in line with the existing laws, especially Law No. 22/1999 regarding regional administration and Law No. 25/1999 regarding financial balance between central and regional governments. Further presidential decrees versed on the provincial, regency and municipal General Allocation Fund. In the budget of the year 2000 Presidential Decision No. 181/2000 determined the General Allocation Fund establishment and estimation. The amount of the General Allocation Fund for budgeting year 2001 was set at twenty five per cent of the domestic income after a subtraction of the portion to be distributed to the regions. The amount of the General Allocation Fund for provincial areas was set at ten per cent, whereas for regency and municipality areas it was set at ninety per cent. The need of General Allocation Fund for a particular Region is estimated by taking into account the 'balancing factor' to anticipate decrease of regional capability in funding expenditures that become the region's responsibility. That balancing factor is set up by taking into account the expenditure burden of each region predicted on the basis of the amount of the Regional Routine Fund and the Regional Development Fund of an ongoing year, adding the prediction of the personal expenditure burden transferred from the vertical authority to regional staff. Presidential Decision No. 131/2001, issued on 31 December 2001, ratified the same formula and allocation percentage for the budgeting year of 2002.

## *The Regional Autonomy Advisory Council*

The Regional Autonomy Advisory Council is a consultation forum at the Central level that is responsible to the President. It has a duty to give considerations to the President regarding the establishment, elimination, merger and expansion of regions; central and regional financial balance; and the capability of regencies and municipalities to implement certain authorities.[28] Through Presidential Decision No. 49/2000, issued on 7 April 2000, the functions of this body were clearly determined. It was given a mandate to conduct research on the recommendation of establishment, elimination, merger and expansion of provinces, regencies and municipalities; provide considerations on the making of regional autonomy policy and financial balance between central and regional governments; and monitor and evaluate the implementation of regional

[28] See Article 11 Law No. 22/1999.

autonomy policy. The Council was formed by the Minister of Home Affairs as the head, the Minister of Finance and the State Minister of Regional Autonomy as the vice-heads, the Minister of Defence, the Minister of State Apparatus Empowerment, Secretary of State, Representatives of the Regional Government Association, and Regional Representatives. An amendment was presented through Presidential Decision No. 84/2000, issued on 7 June 2000, mainly adding the Head of the National Development Planning Board as a member of the Council; besides some changes in the organizational structure of the Secretariat of the Council. More fundamental changes were presented in Presidential Decision No. 151/2000, issued on 26 October 2000. With the incorporation of the State Minister of Regional Autonomy in the Department of Home Affairs, his role as vice-head is removed. Another novelty is the inclusion of regional government association representatives, including the Governor of West Java Province as Provincial Government Association Representative; the Head of Kutai Regency as Regency Government Association Representative; and the Mayor of Surabaya City as City Government Association Representative. Seemingly, regional representatives are included, namely, Prof. Dr. Tabrani Rab, from Riau Province, as Provincial Representative; Drs. H.M. Parawansa, from South Sulawesi Province, as Provincial Representative; H. Karimuddin Hasybullah, S.E., from North Aceh Regency, as Regency Representative; Ir. H.M Said, from South Hulu Sungai, as Regency Representative; Drs. Eliazer Mayor, from Sorong City, as City Representative; and H. Bachtiar Djafar, from Medan City, as City Representative.

### *The Coordinating Team for the Follow up of the Implementation of Laws Nos. 22/1999 and 25/1999*

Presidential Decision No. 52/2000, issued on 7 April 2000, later amended by Presidential Decision No. 157/2000, issued on 10 November 2000, sets the framework of the Central Working Team for the implementation of Law No. 22/1999 regarding regional administration and Law No. 25/1999 regarding financial balance between central and regional governments. Its main duties consist of formulating and arranging strategy, policy and concept of the implementation of the laws; establish phases and priority arrangement for the follow up implementation of the laws; supervise and facilitate the regulation arrangement of the implementation of the laws by the authorities concerned; socialize the laws and their implementation regulations; formulate and establish steps needed to be taken by the government to accelerate and smoothen the implementation and realisation of regional autonomy; and report the result of duty implementation to the President periodically and anytime required.

### *Regional Employment Board*

The Regional Employment Board has a principle duty help Regional Employment Officials implement the management of Regional Civil Servants. It was organizes by Presidential Decision No. 159/2000, issued on 10 November 2000. In implementing its principle duty as meant in Article 3, the Regional Employment Board has shall prepare the arrangement of regional regulation in the aspect of employment in accordance with norms, standards and procedures regulated by the government; plan and develop regional employment; prepare technical policy for regional employment development; prepare and executing the appointment, promotion,

transfer and dismissal of regional civil servants in accordance with norms, standards, and procedures regulated by the Law; prepare and establish Regional Civil Servant retirement; prepare the establishment of salary, extra allowance, and welfare of regional civil servants; implement regional civil servant administration; manage the regional employment information system; and report regional employment information to the State Employment Board.

### *Implementation of the Regional Administration Monitoring Procedures*

The regional administration monitoring procedures are implemented in accordance to Presidential Decision No. 74/2001, issued on 18 June 2001. It consists of functional, legislative, and community monitoring. It includes all regional authorities on the basis of decentralisation, de-concentration and task assistance principles. Based on the result of monitoring, heads of working units of provincial, regency and municipal governments can take diverse follow-up actions, such as administrative action in accordance with existing regulations; compensation claims; civil prosecution; criminal offence report; and improvement of institutional, personnel and management affairs. It is stressed in the decree that those who execute the supervision on the implementation of the follow-up actions are the ministers head of non-department governmental institutions, the governors, the head of regencies and the mayors.

### *Ministerial Decisions*

In the implementation of regional autonomy policy, from the legal point of view there is a fundamental problem regarding the position of ministerial decisions in the regulation order of the Republic of Indonesia. As commented above, one of the products of the annual session of the Republic of Indonesia's People's Consultative Assembly in August 2000 was the Decision of Republic of Indonesia's People's Consultative Assembly No. III/MPR/2000, regarding legal sources and regulation order.[29] Underlying the composition of that decision was a judgement claiming that the legal sources described on the Decision of the Temporary People's Consultative Assembly No. XX/MPRS/1966 had caused misunderstanding; hence it could not be used as a basis of regulation composition anymore.[30] This judgement evidences how Decision No. III/MPR/2000 was long overdue.

However, Decision No. III/MPR/2000 turned out to contain problems as well, just like the decision it replaced. One of the issues it raised was related to the position of ministerial decisions, the implementation of which had caused heated debates. Many people, especially at the regional administration level, questioned whether such decisions are a legitimate legal source.

The question from those within the regional administration takes more relevance when contrasted with the above discussed Decision of the Republic of Indonesia's People's Consultative Assembly No. IV/MPR/2000, which was a policy recommendation in the implementation of regional autonomy. According to it, "[i]f all government regulations have not been issued yet by the end

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29 People's Consultative Assembly Republic of Indonesia, Annual Summit MPR RI 7-18 August 2000, op.cit., pp. 37-44.

30 Ibid., section on Consideration, Item e.

of December 2000, regions which already have full capability to implement regional autonomy are given the opportunity to issue regional regulations that stipulates its implementation. If government regulations have been issued, regional regulations that are concerned have to be adjusted to the related government regulation."[31]

Several regional authorities considered that this recommendation is a clear evidence that the implementation of regional autonomy only 'obeys' laws and government regulations, hence it disregards presidential and ministerial decisions.

In a meeting held by "Across Indonesia Regency Administration Association" with some ministers of the National Unity Cabinet in the administration of President Abdurrahman Wahid whose duties are related to regional autonomy, some heads of regencies brought forward a claim towards the existence of some ministerial decisions the content of which were claimed to contradict Law No. 22/1999 and Law No. 35/1999.

Dissatisfied, the heads of regencies questioned the legitimacy of ministerial decisions as legal sources. By referring to Article 2 of the Decision of the Republic of Indonesia's People's Consultative Assembly No. II/MPR/2000, some of them argued that a form of regulation called 'Ministerial Decision' did not exist anymore. Therefore, according to them, all ministerial decisions issued since 18 August 2001 were invalid and did not have any binding power.[32]

The central government did not remain silent before the question. On 23 February 2001 the Minister of Justice and Human Rights issued a Letter No. M.UM.01.06-27 regarding the position of ministerial decisions, signed by the late Baharuddin Lopa. The essence of the letter stated that the stipulation in Article 4 (2) of the Decision of the Republic of Indonesia's People's Consultative Assembly No. III/MPR/2000 indicates that Ministerial Decision is part and parcel of regulations able to be issued by every minister as the president's assistants. The material content of all ministerial decision is a substance delegated to the minister by law, government regulation and presidential decision. The substance can directly be delegated by ministerial decision if the content is technical, in accordance with the authority of the concerned minister. In relation to Law No. 22/1999, it is confirmed that ministerial decisions as a type of regulation issued by the central government and valid in all areas throughout the Republic of Indonesia are higher in the hierarchy than regional regulations. Thus, if a regional regulation which has a regulative characteristic contradicts a ministerial decision, the former can be declared invalid by the central government on the basis of the stipulation of Articles 113 and 114 of Law No. 22/1999. Regulative authority that has been substantially transferred to regions in accordance with Government Regulation No. 25/2000 also has to take due regard to ministerial decisions the subject of which is delegated from a higher regulation.

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31 See the Decision of the Republic of Indonesia's People's Consultative Assembly No. IV/MPR/2000.

32 For further information on the legitimacy of ministerial decisions as legal souces in Indonesia see Satya Arinanto, "Jurisdictional Position of Ministerial Decision in Decision of the Republic of Indonesia's People's Consultative Assembly No. III/MPR/2000: Jurisdictional Problems Encountered by Central Government and Regional Government" (This Paper was presented in the Co-ordinating Meeting of Initiative Recommendation Composition held by the Directorate General of Regulation of the Department of Justice and Human Rights in Jakarta, 6 December 2001), p. 4.

This letter has given a particular strategic direction regarding the existence of ministerial decision in the regulation order of the Republic of Indonesia. However, the fact that the letter was written by a minister undermines its weight, according to the view of many regional authorities. They questioned whether a minister has a right to give an explanation towards material content of a decision of the People's Consultative Assembly, and therefore did not consider the letter to have any legal force.

Consequently, the Republic of Indonesia's People's Consultative Assembly should pay attention to this matter. In its upcoming sessions –be it general, extraordinary or annual– improvement towards the Decision No. III/MPR/2000 is expected. The decision contains some other problems besides the one related to the legitimacy of ministerial decisions. One of them is related to the position of a government regulation that replaces a law. According to the 1945 Constitution, government regulations and laws are equal in the hierarchy.

The People's Consultative Assembly had not issued any regulation in this matter by November 2001. However, it issued a decision to establish a Constitution Judicature[33] as an institution intended to, inter alia, settle disputes between central and regional governments, including those related to the contradiction of the material content of a lower regulation and a higher one.

Despite the controversy, several ministerial decisions have been issued to regulate regional autonomy. Some of the most relevant ones are discussed below, divided according to the minister who dictated them.[34]

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33 See the Third Amendment of the 1945 Constitution.

34 An extensive list of all the ministerial decisions enacted during the 1999 – 2001 period is provided herein: Decision of the Minister of Home Affairs No. 61/1999; Decision of Minister of Home Affairs No. 63/1999; Decision of Minister of Home Affairs No. 64/1999; Decision of the Minister of Home Affairs No. 65/1999; Decision of the Minister of Finance No. 82/KMK.04/2000; Decision of the Minister of Finance No. 83/KMK.04/2000; Decision of the Minister of Finance No. 84/KMK.04/2000; Decision of the Minister of Finance No. 112/KMK.04/2000; Decision of the Minister of Home Affairs No. 16 Year 2000; Decision of the Minister of Home Affairs No. 118-281/2000; Decision of the Minister of Home Affairs No. 19/2000; Decision of the Minister of Home Affair No. 118.05-336/2000; Decision of the Minister of Home Affairs and Regional Autonomy No. 188-2-198; Decision of the Minister of Energy and Mineral Resources No. 1451/K/10/ MEM/2000; Decision of the Minister of Energy and Mineral Resources No. 1452K/10/ MEM/2000; Decision of the Minister of Energy and Mineral Resources No. 1453 K/29/MEM/2000; Decision of the Minister of Energy and Mineral Resources No. 1454 K/30/MEM/2000; Decision of the Minister of Energy and Mineral Resources No. 1455 K/40/MEM/2000; Decision of the Minister of Forestry No. 05. 1/Kpts-II/2000; Decision of the Minister of Forestry No. 06. 1/Kpts-II/2000; Decision of the Minister of Forestry No. 07. 1/Kpts-II/2000; Decision of the Minister of Forestry No. 08. 1/Kpts-II/2000; Decision of the Minister of Forestry No. 09. 1/Kpts-II/2000; Decision of the Minister of Forestry No. 10. 1/Kpts-II/2000; Decision of the Minister of Forestry No. 11. 1/Kpts-II/2000; Decision of Minister of Forestry No. 12. 1/Kpts-II/2000; Decision of the Minister of Forestry No. 13. 1/Kpts-II/2000 ; Decision of the Minister of Forestry No. 14. 1/Kpts-II/2000; Decision of the Minister of Finance No. 514/KMK.04/2000; Decision of the Minister of Finance No. 515/KMK.04/2000; Decision of the Minister of Finance No. 516/KMK.04/2000; Decision of the Minister of Finance No. 517/KMK.04/2000; Decision of the Minister of Finance No. 518/KMK.04/2000; Decision of Minister of Finance No. 519/KMK.04/2000, Decision of the Minister of Health and Social Welfare No. 1747/MenkesKesos/SK/XII/2000; Decision of the Minister of Finance No. 523/KMK.03/2000; Decision of the Minister of Finance No. 556/KMK.03/2000; Decision of the Minister of Finance No. 6/KMK.04/2001; Decision of the Minister of Forestry No. 20/Kpts-II/2001; Decision of the Minister of Forestry No. 21/Kpts-II/2001; Decision of the Minister of Home Affairs and Regional Autonomy No. 13/2001; Decision of the Minister of Finance No. 344/KMK.06/2001; Decision of the Minister of Home Affairs and Regional Autonomy No. 22/2001; Decision of the Minister of Home Affairs and Regional Autonomy No. 23/2001 and; Decision of the Minister of Home Affairs No. 41/2001.

### *Minister of Home Affairs*

Technical decisions related to decentralization are regularly taken by the Minister of Home Affairs. The guides and term adjustment in the implementation of village and district administrations is an example issued on 6 September 1999 under the Ministerial Decision No. 63/1999.[35] This decision enables socio-cultural conditions and customs of the local community to be taken into account when deciding village terms adjustment. It also designates the head of regency to conduct the adjustments, after getting considerations from the Head of Local House of Representatives.

The general guidelines regarding the establishment of villages[36] and districts[37] were issued on 6 September 1999 under Ministerial Decisions No. 64/1999 and 65/1999, respectively. They covered, inter alia, the establishment, elimination, and merger of villages and districts; the form and structure of village administration; village financial affairs; inter-village collaboration; and the procedure for the transformation of village into district. The Local House of Representatives is given a substantive role since most of the procedures covered by these decisions require its approval.

The guidelines for the establishment of regional government association and the appointment of its representatives as members of the Regional Autonomy Advisory Council are defined in the Ministerial Decision 16/2000, issued on 24 May 2000. The Regional Government Association is regarded as an independent organisation established by the regional governments with the objective of increasing inter-region collaboration. It is composed of the Provincial Government Association, the Regency Government Association, and the Municipality Government Association.

The Secretariat of the Regional Autonomy Advisory Council was established due to the Ministerial Decision No.118-281/2000, issued on 16 June 2000. This Secretariat is divided in two: the first half focuses on regional autonomy aspects, which shall research policy making of establishment, elimination, merger and expansion of regions, besides the capacity of regencies and municipalities to exert autonomy. The second part of the Secretariat verses on central and regional finance balance aspects, therefore it prepares material on financial balance and the amount of the General Allocation Fund. The guidelines for the appointment of the regional representatives before the Regional Autonomy Advisory Council were issued the same day under Ministerial Decision No. 19/2000.[38] The Council has a total of six regional representatives coming from provinces, regencies and municipalities, two of each. The procedure to select the

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35 The Department of Home Affair, Decision of the Minister of Home Affairs Regarding the Implementation Guides and Terms Adjustment in the Implementation of Village and District Administrations, Ministerial Decision No. 63/1999, Article 2.

36 The Department of Home Affair, Decision of the Minister of Home Affair Regarding General Regulating Guidelines for District, Ministerial Decision No. 64/1999.

37 The Department of Home Affair, Decision of the Minister of Home Affair Regarding General Arrangement Guidelines for the Establishment of District, Ministerial Decision No. 65/1999.

38 The Department of Home Affairs, Decision of the Minister of Home Affairs Regarding Guidelines of the Appointment of Regional Representatives as Members of the Regional Autonomy Advisory Council, Ministerial Decision No. 19/2000.

additional members of the Council was not issued until 24 July 2000, under Ministerial Decision 118.05-336/2000, but it was given retroactive force.[39]

Ministerial Decision No. 118.05-336/2000 regulates that Additional Members of the Regional Autonomy Advisory Council in the field of Regional Autonomy and Central and Regional Financial Balance are Expert Staff of the Department of National Education as a Member of the Regional Autonomy Secretariat and the Directorate General of the Department of Finance as a Member of the Central and Regional Financial Secretariat.[40] The rules make sure that the additional representatives and their successors come from different regions of Indonesia, and two years is set as their office period.

Finally, the Minister of Home Affairs is responsible as well for regulating the regional law products and their arrangement procedures. Ministerial Decisions No. 22/2001 and 23/2001 establish how it is the Heads of Working Units of the Regional Secretary the ones entitled to initiate regional law products, and the methodology is clearly set. The law product plan proposals must determine the aims and objectives of the arrangement, the legal basis, the subjects to be arranged and the connection with other regulations.

### *Minister of Finance*

Ministerial Decision No. 82/KMK.04/2000, issued on 21 March 2000, regulates the Distribution of Income from Land and Building Taxes between Central and Regional Governments. In this Ministerial Decision some matters are regulated as follows:[41] Income from Land and Building is State Income and fully deposited into State account. Ten per cent of that income is the Central Government's share, whereas ninety per cent of it is the Regional Government's share, which is later divided in sixteen point two per cent for Provincial Area, sixty four point eight per cent for regency and municipality areas, and nine per cent is for Collecting Fee, which is distributed to the Directorate General of Tax and Region.

Ministerial Decision No. 83/KMK.04/2000, issued on 21 March 2000, regulates the Distribution and Utilisation of Collecting Fee of Land and Building Taxes. Which is a fund spent for funding the operational activities of the collecting of Land and Building Taxes.[42]

Ministerial Decision No. 516/KMK.04/2000, issued on 14 December 2000, states that the amount of the value acquisition of tax objects free from tax is decided by every region and municipality,[43] setting maximum amounts of three hundred million rupiahs for those in kinship

39 The Department of Home Affairs, Decision of the Minister of Home Affairs Regarding Additional Member of the Regional Autonomy Advisory Council Secretariat, Ministerial Decision No. 118.05-336/2000, Article 3.

40 Ibid., Item 1.

41 The Department of Finance, Decision of the Minister of Finance Regarding Division of Income between Central and Regional Governments, Decision of the Minister of Finance No. 82/KMK.04/2000, Article 1 Sub-sections (1), (2), and (3).

42 The Department of Finance, Decision of the Minister of Finance Regarding Distribution and Utilisation of Collecting Fee of Land and Building Taxes. Ministerial Decision No.83/KMK.04/2000, Article 1.

43 The Department of Finance, Decision of the Minister of Finance Regarding the Amount of Value of the Acquisition Formulation Procedure of Tax Objects Free of Tax and the Acquisition Tax Fee upon Land and Buildings, Ministerial Decision No. 516/KMK.04/2000, Article 1.

relation of direct blood line in one degree of the person who leaves the legacy grant, and only sixty million rupiahs for all others.

Ministerial Decision 519/KMK.04/2000, issued on 14 December 2000, states that the revenue from the right acquisition fee upon land and buildings is shared by central and regional governments with twenty percent for the central government and eighty percent for the regional government.[44] Furthermore, the eighty percent of the local share is divided in sixteen percent for provincial area, sixty four percent for the manufacturing regency and municipality area.

Ministerial Decision No. 6/KMK.04/2001, issued on 9 January 2001, regulates the Implementation of Domestic Individual Income Tax Revenue Sharing Profit and Income Tax Between Central and Regional Governments Article 21, as mentioned in Article 2 Government Regulation No. 115/2000 is shared between central and regional governments with eighty percent for the central government and twenty percent for the provincial government. Meanwhile, the share for the Regional Government is divided in forty percent for provincial area and sixty percent for regency and municipality area. Furthermore, it is also decided that allocation of the regional government share to each regency and municipality is regulated on the basis of the governor's recommendation, taking into consideration factors such as total population, area space, and other relevant factors in the frame of even distribution.

### *Minister of Forestry*

Ministerial Decisions Nos. 06, 07, 08, 09 and 10 1/Kpts-II/2000 were issued on 6 November 2000, and regulate the criteria and standard in natural production forests for the license of forest products utilization and forest harvesting products; the area, environmental service and forest products utilization and regulates the sustainable production forest management. Several guidelines are set for governors, heads of regencies and mayors. A Reforestation Fund Tariff is created in Ministerial Decision No. 11. 1/Kpts-II/2000, reaffirming that reforestation fund is non-tax state income. Forest products circulation and marketing rules are covered in Ministerial Decision No. 13. 1/Kpts-II/2000.

Ministerial Decision No. 20/Kpts-II/2001, issued on 31 January 2001, regulates the general and standard patterns and criteria of area and forest rehabilitation, which are guidelines in the frame of area and forest rehabilitation for central and regional governments, as well as for the people.[45] The objective of area and forest rehabilitation is to recover damaged areas and forest resources so that they can function optimally and can give benefits to all stakeholders, guarantee environmental balance and water system of river flow area, supporting the sustainability of forestry development.

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44 The Department of Finance, Decision of the Minister of Finance Regarding the Profit Revenue Sharing Arrangement of the Right Acquisition Fee upon Land and Buildings Between Central and Regional Governments, Ministerial Decision No. 519/KMK.04/2000, Article 2 Sub-section (1).

45 The Department of Forestry, Decision of the Minister of Forestry Regarding General and Standard Patterns and Criteria of Area and Forest Rehabilitation, Ministerial Decision No. 20/Kpts-II/2001, Article 2.

## Current Development: Some Frame of Thinking

As stated in the Elucidation of Law No. 32/2004 on regional administration[46] with regards to what is mandated in the 1945 Constitution, the regional administration shall be authorized to regulate and take care of its own government affairs according to the principles of autonomy and assisting assistance. The granting of such broad autonomy to the regions is directed to accelerate the public welfare efforts through the improvement of the service, empowerment and the role of the public. In addition, through such broad autonomy, the regions are expected to enable themselves to increase their competitiveness in view of the principles of democracy, equal distribution of wealth, justice, special characteristics, uniqueness, potentials and diversities of the regions under the unitary state of the Republic of Indonesia.

The aspects corresponding to finance, public service, utilization of natural resources and other resources must be carried out fairly and harmoniously. Apart from that, it is essential to view the opportunities and challenges in the global competition by making use of the developments of science and technology. In order to make sure that such role is exercised, the regions shall be given broad opportunities along with the rights and obligations in implementing the regional autonomy within the integrated system of running the state administration.

Any amendment of laws must view the existing laws related to political affairs, among others Law Number 12 of 2003 regarding the general elections for members of the House of Representatives, Regional Representative Council, and the Regional House of Representatives; Law Number 22 of 2003 regarding the Structure and Position of the People's Consultative Assembly the House of Representatives, Regional Representative Council, and the Regional House of Representatives; Law Number 23 of 2003 regarding the Election of the President and The President. Aside from that, it imperative to observe the other laws related to state finance affairs, namely Law Number 17 of 2003 regarding the State Finance, Law Number 1 of 2004 regarding State Treasury, and Law Number 15 of 2004 regarding the Audit of State Finance Management and Accountability.

The regional economic principles apply the broad economic principles in the context that regions shall be given the opportunity to manage and take care of all government affairs themselves apart from the ones handled by the central government as stipulated in the law. The regions shall have the power to draft their regional laws to provide services, step up the public participation, initiatives and empowerment aimed to improve the public welfare.

In line with such principles, the real and accountable autonomy principle is also applied. The real autonomy principle implies that management of government affairs shall be implemented in accordance to the actual and existing duties, authorities and obligations that have the potential to grow, live and develop according to the regional particularities. Thus, the content and type of autonomy across regions may not be homogeneous.

On the other hand, the autonomy granting aims to empower the regions, including improving the public welfare as the main goal of the national development. The development of regional

[46] See section on General Elucidation of Indonesia, Law regarding Regional Administration, Law No. 32/2004, State Sheet No. 125/2004, State Sheet Addendum No. 4437.

autonomy must be constantly oriented to the improvement of public welfare by
considering the interests and aspirations from the communities. In addition, the
the regional autonomy must ensure the harmonious relationship among the regions,
cooperation rather than producing disparities among the regions. It cannot be
regional autonomy must also guarantee a harmonious relationship between the
central government in the sense that both must ensure that the unitary state of the
Indonesia shall remain intact.

Indonesia is leaving the reformation era behind and entering the post-reformation
To implement the decentralization policy in this new era, the government has
basic principles called "The Principal Idea of Grand Design on the Structuring of
Autonomy" which is prepared by the Department of Home Affairs. In order to
the regional autonomy may be implemented in line with the goals expected to be
central government must provide the support and enhancement that comprise
research, development, planning and supervision. In addition, it must also provide
directions, guidance, training, supervision, control, coordination, monitoring and
Simultaneously, the central government must help the regional governments by
necessary facilities, assistance, and encouragement so that the autonomy may be
efficiently and effectively according to the laws and regulations.