

DECENTRALIZATION 2006

Stock Taking on Indonesia's Recent Decentralization Reforms

- Main Report -

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS	iv
ABBREVIATIONS	v
Introduction.....	1
I. LEGAL ASPECTS OF THE DECENTRALIZATION/ LOCAL GOVERNANCE FRAMEWORK.....	13
II. INTERGOVERNMENTAL RELATIONS	23
Territorial Reform.....	23
Functional Assignment	30
Role of the Governor and Province.....	35
Intergovernmental Fiscal Relations: Own Regional Revenue	40
Intergovernmental Fiscal Relations: General Allocation Grant	43
Intergovernmental Fiscal Relations: Special Allocation Grant.....	48
Intergovernmental Fiscal Relations: Shared Taxes and Revenues	54
Intergovernmental Fiscal Relations: Regional Borrowing	57
Oversight and Supervision	59
III. CIVIL SERVICE REFORM IN THE CONTEXT OF DECENTRALIZATION	64
Organizational Structure of Regional Government	67
Personnel Management	71
IV. REGIONAL GOVERNANCE REFORM.....	84
Regional Government Service Provision	84
Regional Government Planning and Budgeting/ Financial Management.....	98
Political Accountability: Regional Government Heads.....	107
Political Accountability: Regional Houses of Representatives (DPRD).....	115
Political Accountability: Political Parties	124
Political Accountability: Regional House of Representatives (DPRD) Elections	129
Opportunities for Civic Engagement	135
Village Governance Reform.....	148
V. THIRD PARTY SUPPORT	164
Role of CSO and Universities as Intermediaries in Decentralized Governance.....	164
Role of Regional Government Associations.....	171
Donor Coordination in Support of Decentralization/Local Governance.....	179
REFERENCES.....	191

Appendix 1:	Summary of Terms of Reference for Stock Taking Study	206
Appendix 2:	Schedule of key activities in the study	208
Appendix 3:	List of Researchers.....	209
Appendix 4:	List of Main Resource Persons	210
Appendix 5:	Details on Informants from Interviews and Participants of Focus Group Discussions	211
Appendix 6:	List of Regions Visited by Researchers.....	212
Appendix 7:	Readers who provided Feedback on Early Drafts	213
Appendix 8:	Anticipated role of Governor (2002)	214
Appendix 9:	Functional responsibilities of national actors for RG regulation and support	215
Appendix 10:	Echelon Structure	216
Appendix 11:	Matrix of Laws and Regulations	217
Appendix 12:	List of personnel related innovations in the regions	218
Appendix 13:	Examples of Improvements/Innovations related to service delivery	220
Appendix 14:	Examples of funded activities under Village Funds (APBDes).....	222
Appendix 15:	University and other research centers relating to decentralized governance	223
Appendix 16:	Diagnostic agenda for Intermediary Organizations (GTZ-ASSD-GLGL project preparation).....	224
Appendix 17:	Donor support to the RGAs	226
Appendix 18:	International good practices regarding LGAs	229
Appendix 19:	Key donor supported projects in Decentralization/Local Governance at national and regional level	230
Appendix 20:	Topics requiring more intensive discussion in the JWGD	231

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ABBREVIATIONS

ABK	Anggaran Berbasis Kinerja (Performance Based Budget)
ADB	Asian Development Bank
ADD	Alokasi Dana Desa (Block Grant from District to Villages)
APBD	Anggaran Pendapatan dan Belanja Daerah (Regional Government Budget)
APBN	Anggaran Pendapatan dan Belanja Negara (State Budget)
APEKSI	Asosiasi Pemerintah Kota Seluruh Indonesia (Association of Heads of Municipalities)
APKASI	Asosiasi Pemerintah Kabupaten Seluruh Indonesia (Indonesia Association of Heads of Districts changed to BKKSI)
APPSI	Asosiasi Pemerintah Propinsi Seluruh Indonesia (Association of Heads of Provinces)
BAPPEDA	Badan Perencanaan Pembangunan Daerah (Regional Development Planning Board)
BAPPENAS	Badan Perencanaan Pembangunan Nasional (National Development Planning Board)
BAU	Belanja Administrasi Umum (General Administrative Expenditure)
BAWASDA	Badan Pengawasan Daerah (Regional Controlling Board)
BIPPRAM	Biro Penataan dan Pemantauan Program (Adjusting and Controlling Bureau)
BKN	Badan Kepegawaian Negara (Civil Service Agency)
BKKSI	Badan Kerja Sama Kabupten Seluruh Indonesia (Indonesia Association of Heads of Districts former APKASI)
BOP	Belanja Operasional Pemeliharaan (Operational Maintenance Expenditure)
BOS	Biaya Operasional Sekolah (School Operational Cost)
BPD	Badan Perwakilan Desa (Village Representative Council)
BPK	Badan Pemeriksa Keuangan (Finance Auditing Board)
BPKD	Badan Pengawasan Keuangan dan Pembangunan Daerah (Regional Financial and Development Board)
BPKP	Badan Pemeriksa Keuangan dan Pembangunan (Financial and Development Audit Board)
BUMD	Badan Usaha Milik Daerah (Municipal Corporation)
Bupati	Kepala Daerah Kabupaten (District Head)
CB-SDAS	Capacity Building to Support Decentralized Administrative Systems
CCER	Cost Collection Efficiency Ratio
CG	Central Government
CIDA	Canadian International Development Agency
CSO	Civil Society Organization

CSR	Civil Service Reform
CSR	Corporate Social Responsibility
DAK	Dana Alokasi Khusus (Special Allocation Fund)
DAU	Dana Alokasi Umum (General Allocation Fund)
DEKON	Dana Dekonsentrasi (Deconcentration Fund)
DG	Directorate General
DIP	Daftar Isian Proyek (Central Government Development Expenditure)
DIY	Daerah Istimewa Yogyakarta (Special Region of Yogyakarta)
DKA	Dokumen Kerja dan Anggaran (Document Plan and Budget)
DPOD	Regional Autonomy Advisory Board
DPR	Dewan Perwakilan Rakyat (House of Representatives or Parliament)
DPRD	Dewan Perwakilan Rakyat Daerah (Regional House of Representatives or Local Parliament)
DPD	Dewan Perwakilan Daerah (Regional Representatives Council)
DP3	Daftar Penilaian Pelaksanaan Pekerjaan (Individual Performance Appraisal)
DSF	Decentralization Support Facility
FGD	Focus Group Discussion
FPPM	Forum Pengembangan Partisipasi Masyarakat (Forum for Popular Participation)
FY	Fiscal Year
GR	Government Regulation
GTZ	Gesellschaft Fuer Technische Zusammenarbeit
HR	Human Resources
INPRES	Presidential Instructions (Earmarked Capital Grant before decentralization)
IPGI	Indonesian Partnership for Governance Initiatives
IRDA	Indonesian Rapid Decentralization Appraisal
JARING ASMAR	Penjaringan Aspirasi Masyarakat (Collection of Community Aspirations)
JUKLAK	Petunjuk Pelaksanaan (Operational Guidance)
JUKNIS	Petunjuk Teknis (Technical Guidance)
JWGD	Joint Working Group on Decentralization
KABUPATEN	District
KANWIL	Kantor Wilayah (De-concentrated regional branch offices of national ministries)
KEPMEN	Keputusan Menteri (Ministerial Decree)
KEPMENDAGRI	Keputusan Menteri Dalam Negeri (Decree of Ministry of Home Affairs)
KEPPRES	Keputusan Presiden (Presidential Decree)

KKN	Kolusi, Korupsi, Nepotisme (Collusion, Corruption, and Nepotism)
KKP	Koalisi Kebijakan Publik (Coalition for Public Policy)
KOAK	Komite Organisasi Anti Korupsi (Committee Organization Anti Corruption)
KPU	Komisi Pemilihan Umum (General Election Commission)
KPMM	Konsorsium Pengembangan Masyarakat Madani (Consortium for Civil Society Development)
KPUD	Komisi Pemilihan Umum Daerah (Regional General Election Commission)
KUA	Kebijakan Umum Anggaran (General Budget Policy)
KUKAIP	Koalisi Untuk Kebebasan dan Akses Informasi Public (Coalition for Freedom of Information Law)
LAN	Lembaga Administrasi Negara (Institute for State Administration)
LAN	Local Area Network
LG	Local Government (International term for subnational government)
LGSP	Local Governance Support Project
LKMD	Lembaga Ketahanan Masyarakat Desa (Village Social Activities Group)
LPJ	Laporan Pertanggung Jawaban (Accountability Report)
LSM	Lembaga Swadaya Masyarakat (Self-help Organization)
MenPAN	Kementerian Pendayagunaan Aparatur Negara (State Ministry for State Apparatus Reform)
MoF	Ministry of Finance
MoHA	Ministry of Home Affairs
MPR	Majelis Permusyawaratan Rakyat (People's Consultative Assembly)
MTDP	Medium Term Development Plan
MTEF	Medium Term Expenditure Framework (Kerangka Pengeluaran Jangka Menengah)
MUSRENBANG	Musyawahar Perencanaan Pembangunan (Development Planning Deliberation)
MUSRENBANGDES	Musyawahar Perencanaan Pembangunan Desa (Development Planning Deliberation at Village Level)
MUSRENBANGDUS	Musyawahar Perencanaan Pembangunan Dusun (Development Planning Deliberation at Hamlet Level)
NGO	Non-Governmental Organization (Lembaga Swadaya Masyarakat or LSM)
NKRI	Negara Kesatuan Republik Indonesia (The Unitary State of the Republic of Indonesia)
NTB	Nusa Tenggara Barat (West Nusa Tenggara)
ORMAS	Organisasi Massa (Mass Organization)
PAD	Pendapatan Asli Daerah (Regional Own Revenue)
PAN	Partai Amanat Nasional

PAPSDA	Agrarian and Natural Resources Management Pengelolaan Agraria dan Pengelolaan Sumber Daya Alam
PARPOL	Partai Politik (Political Parties)
PEMDA	Pemerintah Daerah (Regional Government)
PERDA	Peraturan Daerah (Regional Regulation)
PERDES	Peraturan Desa (Village Regulation)
PDRB	Produk Domestik Regional Bruto (Gross Regional Domestic Product)
PKS	Partai Keadilan Sejahtera (Welfare Equity Party)
PKB	Partai Kebangkitan Bangsa (Nation Development Party)
PLOD	Politik Lokal dan Otonomi Daerah (Local Politics and Regional Autonomy – Master degree program at University of Gadjah Mada, Yogyakarta)
PMD	Pemberdayaan Masyarakat dan Desa (Community and Village Development)
PP	Peraturan Pemerintah (Government Regulation)
PROLEGDA	Program Legislasi Daerah (Regional Legislation Program)
PROLEGNAS	Program Legislasi Nasional (National Legislation Program)
PUSBIK	Pusat Studi dan Strategi Kebijakan Publik (The Center of Study and Public Policy)
RASKIN	Beras Miskin (Rice for Poor)
RENJA-SKPD	Rencana Kerja Satuan Kerja Perangkat Daerah (Regional Government Work Unit Workplan)
RENSTRA-SKPD	Rencana Strategis Satuan Kerja Perangkat Daerah (Regional Work Unit Strategic Plan)
RENSTRADA	Rencana Strategik Daerah (Regional Strategic Plan)
RR	Regional Regulations
RKA	Rencana Kerja dan Anggaran (Workplan and Budget)
RKPD	Rencana Kerja Pemerintah Daerah (Annual Local Government Workplan)
RPJM	Rencana Pembangunan Jangka Menengah (Medium Term Development Plan)
RPJMD	Rencana Pembangunan Jangka Menengah (Regional Mid Term Development Plan)
RPJPD	Rencana Pembangunan Jangka Panjang Daerah (Regional Long Term Development Plan)
RUU	Rancangan Undang-undang (Draft Law)
SAB	Standard Analisa Belanja (Standard Spending Assessment)
SATKER/DINAS	Satuan Kerja (Work Unit/Institution)
SDA	Sumber Daya Alam (Natural Resources)
SDO	Subsidi Daerah Otonom (Subsidy for Autonomous Region – before Decentralization)
SEB	Surat Edaran Bersama (Joint Circular Letter)

SFDM	Support for Decentralization Measures
SIKAD	Sistem Informasi Akutansi Keuangan Daerah (Information System for Regional Financial Accounting)
SIKD	Sistem Informasi Keuangan Daerah (Regional Financial Information System)
SKPD	Satuan Kerja Perangkat Daerah (Regional Work Unit)
SOP	Standard Operating Procedure
STARSDP	State Audit Reform Sector Development Program
TCP3	Tata Cara Pembuatan Perundang-undangan (Legislation Making Processes)
TPR	Tempat Pemungutan Retribusi (Location of Retribution Payment)
UDKP	Unit Daerah Kerja Perencanaan (Development Planning Deliberation at Kecamatan Level)
USAID	United States Agency for International Development
UU	Undang-undang (Act/Law)
UUD	Undang-undang Dasar (Constitution)
VAT	Value Added Tax
WALIKOTA	Kepala Daerah Kota (Municipal Head/Mayor)
WB	World Bank

INTRODUCTION

Study Context

Indonesia has made significant strides in democratic decentralization over the last five years, when reforms were first felt on the ground. It is widely acknowledged that Indonesia made a bold break from its centralized past through political reforms in regional elections, capped lately by direct elections of regional heads; devolution of key public services to the district/city level; the reassignment of 2.5 million staff; and a substantial transfer of funds to regional government. These changes have empowered the regional government, providing the discretion and means to pursue service delivery and development that are more attuned to local needs and preferences. This study on recent decentralization reforms acknowledges the progress made to date and takes stock of actions and reforms still required to meet the decentralization agenda that Indonesia has set for itself.

The Study

The Stock Taking Study was lead by the U.S. Agency for International Development (USAID) Democratic Reform Support Program (DRSP), with DSF, USAID and AUSAID funding. It was implemented largely by local Indonesian researchers (NGOs members, academics, and consultants). Working within a common methodological framework, the researchers reviewed previous analysis of key reforms, obtained a fresh regional and civil society perspective on issues of decentralization/local governance, reviewed prior assessments of performance of regional government, tracked ongoing efforts to shape new or revised policies/legal instruments in the regions and on central level, and examined the role of third party support (donors and others). Researchers made a determined effort to tap the Government of Indonesia (GoI) agencies concerned with guidance and reform efforts, as well as the donor technical assistance advisors already working to support the reforms. Focus groups were used where possible to elicit information and views and to obtain feedback on the analysis, conclusions, and recommendations offered by the researchers. Readers from various organizations provided comments on initial drafts of the report. The report provides information, analysis, and practical recommendations.

Findings

The findings of this stock taking study echo and amplify many stakeholders' voices, who note that decentralization reforms have been progressive in principle, but incomplete and not sufficiently realized on the ground. These general sentiments are not surprising; reform progress is not always linear, rapid, or sustained. However, the mixed feelings about decentralization need to be seen against the widespread expectations that the 2004 revisions would truly "consolidate" decentralization, curbing excesses and addressing impediments, and position central and regional actors to make further progress over the next few years. These hopes have not been fulfilled in the main. Advances seen in the revised framework (still under development) are offset by regressive steps or poorly conceived fixes. As a result, the reform progress that might have been anticipated over the next few years may not have the sound foundation that it needs.

The complete analysis and findings are contained in this main report. Given the length of the main report, the condensed findings are bound separately for ease of use. The findings are grouped by topical subsets of the overall study sections (the legal framework; intergovernmental relations; civil service reform; regional governance reform; and third party support). Each section below starts with the stock taking findings followed by options for moving forward, with particular emphasis on recommendations for donors. The emphasis on donor actions is a reflection of the primary target audience of this study while recognizing the importance of Indonesian ownership and leadership to any program's success. Indeed, donors must increasingly integrate their coordination and implementation efforts within Indonesian structures if national objectives are to be met.

Rationale for the Stock Taking Study

After more than 30 years of centralization, Indonesia made a break with the past in 1999, with a set of radical decentralization reforms. These reforms wrought significant changes in central regional relations and in local political life. After a few years of implementation, it became evident that some aspects of decentralization were not unfolding as expected, and that some safeguards had been neglected in the rush to enlarge regional autonomy. Revisions were made to the key laws concerned with regional government and its finances in 2004, and other legislation/regulations were introduced to renew and expand the framework for regional governance. This process is still ongoing and has been dubbed a period of "consolidation" by the GoI.

To guide the consolidation of decentralization, the GoI has prepared a Grand Strategy for Decentralization and a National Action Plan for Fiscal Decentralization (NAPFD). It has also established a Permanent Secretariat for the Joint Working Group on Decentralization (JWGD)¹, and is making efforts to align donor support with its reform priorities. Donors are eager to support this effort, and are bolstered in this regard by the broad donor commitment given to the 2005 Paris Declaration on aid effectiveness.

To support the strategies of the GoI, donors launched a "stock taking study" on decentralization, centered on assessing the progress of reforms and achieving the following outcomes:

- Increased awareness among key stakeholders of the progress of decentralization and the reform challenges that remain to be tackled.
- Increased consensus among key government officials in the relevant ministries/agencies on the specific reforms objectives, priorities, and approaches to effecting key reforms.
- Elaborated Grand Strategy for Decentralization and NAPFD, providing effective guidance to the various reforms to be undertaken over the next five years.
- Renewed commitment and action of government and donors to adjust coordination and support structures to harmonize and align donor support for decentralization/local governance.

¹ The JWGD is a body encompassing GoI and donors.

The stock taking study is being funded by the multi-donor Decentralization Support Facility, USAID, and Australian AID. The management of the study is conducted by the USAID-DRSP. Donors believe that the GoI has made important strides in decentralization, and, in this consolidation stage, faces the challenge of moving forward with unfinished reforms and refining existing ones on the basis of field experience. The results of the study can help the GoI enrich and elaborate its strategies and ensure that the ensuing donor support will be productive, both in terms of the national policy dialogue and regional capacity development.

Methodology of the Study

The DRSP contracted local Indonesian researchers (NGOs members, academics, and consultants) in the first round of fact-finding and analysis. These researchers were provided with a common framework for the study. For each substantive field, the researcher was to complete the following activities:

- Activity #1. Collect and review previous analysis of key reforms conducted through the support of various organizations active in the government's decentralization efforts.
- Activity #2. Where relevant, obtain a fresh regional and civil society perspective on issues of decentralization/local governance.
- Activity #3. Incorporate extant assessments of performance of regional government.
- Activity #4. Acknowledge (and if possible assess) the general features and process of policies/legal instruments currently being drafted.
- Activity #5. Examine the role of third party support (donors and others) and coordination in decentralization.

The emphasis between these activities varied considerably by issue. All researchers made a determined effort to tap the GoI agencies concerned with guidance and reform efforts, as well as the donor technical assistance (TA) advisors already working to support the reforms. Focus groups were used where possible to elicit information and views, and to obtain the feedback on the analysis, conclusions, and recommendations offered by the researchers. Readers from various organizations were used to obtain feedback on initial drafts.

The progress made by Indonesian actors in the reform process has been recognized, and the value of locally grown models has been given its due. To varying degrees, the researchers and final report writers made use of international good practices as a reference.

The original reports of the researchers became the main source for this study report. The study report was prepared by a USAID-DRSP team². Highlights of the draft report were presented to the donor community on June 1, 2006, at a gathering of the Donor Working Group for Decentralization.

Structure of the Study Report

Any study of this broad scope faces the difficulty of choosing a division for topics that is in line with analytical frameworks, is useful to policy makers, and is inviting to the reader. This report seeks to fulfill all three measures, and is therefore a combination of clusters with

² This team was composed of Elke Rapp, Gabriele Ferrazzi, Frank Feulner, Jups Kluyskens, and Sebastian Eckardt.

headings and sub-headings that are commonly applied, without unduly searching for uniformity in formulation; reflecting government processes, functions, or typical “reform” topics. The report is given overall structure by treating related topics under the following five clusters: Policy/Legal Framework for Decentralization/Local Governance, Inter-governmental Relations, Civil Service Reform in the Context of Decentralization, Regional Governance Reform, and Third Party Support.

The stock taking is a snapshot in time of a moving target. While broad in its coverage, it is not entirely comprehensive. It does, however, try to triangulate, by bringing together the voices of government, regional government and other stakeholders and donor technical assistance. Where relevant, the regulatory drafting currently underway is described, noting the support being obtained from third parties (NGOs, donors, and regional government associations) where this is evident. An effort is made to find the most promising avenues for reform in view of the current situation.

The stock taking study is not meant to be exhaustively prescriptive, but it is intended to be a guide to what is most promising and merits actual or increased effort. Some sections discuss reform options, providing a recommended path. Others discuss reform avenues with the explicit or implicit understanding that these are all necessary to make progress. Additionally, some concrete suggestions for how to move forward in the short to long term are also provided; these are strongly tied to the reform option in most cases, but are meant to indicate the time frame, responsibility, and approach required to increase the chance of success.

Connection of the Study to Grand Strategy and NAPFP

The Ministry of Home Affairs-led Grand Design³ (2005) and the Bappenas-led National Action Plan for Fiscal Decentralization (NAPFD)⁴ (2005) have been constructed to guide the government in charting the course of decentralization reform. Because their preparation and content preceded this study, and their scope and approach differ are only partly compatible with this study, combining the findings and recommendations of the three papers is not a straightforward matter.

The authors have been able to use the Grand Strategy to some extent in this report to underscore the state/government reform objectives, especially where these have not been easily found in laws, regulations, or Ministerial instruments. The analysis and conclusions of some sections of the Grand Strategy should, however, be open to discussion, within the frame of the contributions of this report and other voices. In particular, the Grand Strategy does not address important issues covered in this report (covering 7 of the 20 topics reported in the study; see table below).

Similarly, the NAPFD is only one aspect of decentralization, covering mainly fiscal issues (with spillover into functional assignment and services). It places the DPOD front and centre in terms of its strategies for bringing about reforms. Several of the actions called for in the NAPFD have already been achieved (even before the NAPFD has been finalized), requiring

³ See version of July 15, 2005, prepared by the Ministry of Home Affairs. This was presented to Cabinet and MoHA hoped that it would be turned into a Presidential Regulation.

⁴ Version accompanying letter signed by Sri Mulyani, Minister for National Development Planning to Asian Development Bank, 10 October, 2005.

clarification and additional review. It is recommended that the NAPFD remain open for discussion in select areas.

Given the different stress and coverage among the three documents, they might best serve as required readings rather than fully complementary documents. For some topics, this report provides additional analysis and recommendations that draw attention to some of the issues covered briefly in the Grand Strategy and NAPFD. The preferred outcome of absorbing the content of all three documents would be a unified GoI strategy that reflected depth and consensus within the GoI principally, but also among stakeholders and donors.

Chart 1: Comparison of Strategic Documents on Decentralization

	Grand Design	National Action Plan For Fiscal Decentralization	Decentralization Stock Taking Study
1. Legal framework	Not addressed	Not applicable	Illustrates inconsistencies, poor choice of products, lack of clarity, closed drafting process. Suggests improvements in process, assistance to MoHA clearinghouse and role for Ministry of Justice and Human Rights, State Secretary. Suggest sectoral harmonization via constitutional amendment.
2. Territorial reform	Calls for revision of GR. Analysis to identify ideal no. of provinces, districts and cities. Need for supervision and intensive support to new regions	Not applicable	Suggests moratorium, review of new regions, revision of GR with overhaul in methodology, and dialogue on nature of regional government autonomy desired
3. Functional assignment	Empirical material is unclear. Focus of action is on finishing the GR, its socialization, monitoring and support to regions. Includes directive for Presidential instruction to central ministries to adapt legal instruments	Acknowledges MOHA effort to revise the GR on functional assignments (25/2000) reflecting fully the principle of subsidiarity, and clarifying the relative roles and obligatory functions and sub-functions of national, provincial and local governments. Calls for exploration of feasible solutions to eliminate inconsistencies between the regional autonomy laws and regulations and the relevant sector laws. “The Government, through DPOD, to adopt a clear time-table for the implementation of delegation of authorities between sector ministries (at least in health,	Supports a presidential regulation directing the ministers/head of agencies to prepare laws and regulation (or changes in these) within a set time to align sectoral legal instruments. Stresses role of MSS Consultation Team (Tim Konsultasi SPM). Enjoins donor supported projects active in relevant sectoral ministries to support counterparts so that MSS are properly formulated, costed, trackable, and feasible. Alerts to need to make MSS benchmarks if GoI seems unwilling to attain consistency across policy fields crucial to MSS. Suggests a fundamental review of the policy/legal foundations for regional autonomy, to eventually place agreed principles and provisions in a constitutional amendment that can guide future legislative improvements. Suggests eventual fixes on distinction between obligatory functions and discretionary

	Grand Design	National Action Plan For Fiscal Decentralization	Decentralization Stock Taking Study
		education and basic infrastructure sectors) to the provincial and local governments..."	functions; emerging concept of "remaining functions" (urusan sisa); rules of the game for discretionary functions.
4. Role of the Governor and province	see "supervision"	Not applicable	Suggests GR will enhance Governor's role and allows provincial administration to be decon implementing units. Encourage in-depth comparative study of international practice in the role of meso level governments in multi-level governments (in unitary states).
5. Inter-governmental fiscal relations	<p>Calls for preparation of follow-up regulations in synchronized way (for Laws 17/2003, 32/2004, 33/2004, 1/2004, 25/2004, 15/2004)</p> <p>Revision of Kepmendagri No.29 Tahun 2002.</p> <p>Increase RG capacities in performance based budgeting, with MSS, achieving efficiencies etc.</p> <p>Shift of decon funds to DAK.</p>	<p>Calls for sound simulation models, to achieve efficient and equitable distribution of resources. The review would focus on: (i) balancing between fiscal needs and fiscal capacities; (ii) the feasibility of gradually expediting removal of the "hold harmless" provision until 2007; and (iii) balancing between different sources of financing, including shared revenues (DBH), general allocation grant (DAU); special allocation grant (DAK); Deconcentrated Funds; and special assistance funds.</p> <p>"MoF in coordination with the DPOD, to submit the recommendations to the Cabinet to ensure the transparency improvement of the DAU system...adopt a timetable for the transfer of deconcentrated expenditures for decentralized activities to DAK...submit recommendations to the Cabinet to</p>	<p>Suggest GoI should hold the course in phasing out the hold harmless provision of the DAU, revise the DAU to include all revenue sources if feasible, make it more equalizing via inclusion of MSS expenditure norms, and reduce the wage bill component. Suggests the DAK be a transition mechanism to compensate for the equalizing limitations of the DAU, with an enhanced role of the Governor/province, combining a top-down with bottom-up mechanism that rewards service delivery and governance results (performance –based grants). Performance based grants could be modeled early on with the income tax portion directed to districts/cities by the province. Suggests MoF use GR on functions to set out a clear time frame and mechanism for sectoral ministries to make the shift from DIP/tugas pembantuan funds (that relate to functions of the regional government) to the sectoral DAK grants. Suggests clarification of DAU vs. DAK Suggests increase in transparency in municipal credit markets, and introduction of default regulations, and attention to fiscally weak regions in terms of access to other sources of funds.</p>

	Grand Design	National Action Plan For Fiscal Decentralization	Decentralization Stock Taking Study
		strengthen the DAK framework to improve accountability with greater devolution of authority at the regional levels to fulfill national priorities. “Draft revisions to the Law on Regional Taxes and Charges (34/2000) to enhance discretion in setting rates as well as to extend the tax base and charges which are stipulated as positive lists (closed lists) submitted to the Parliament.” “MoF to finalize a clear policy and mechanism on intercept of these transfers [DAU – for borrowing]”	
6. Supervision	Notes existence of “hierarchy.” Notes lack of coordination, and lack of follow through. Calls for GR on Guidance and Supervision, sanctions, coordination, enhanced role of Governor as rep. of centre.	Calls for plans for improving financial reporting. Effective enforcement of sanctions for failure to report financial information on a timely basis to higher authorities. More regulations submitted to MoF. Revoking of inconsistent regulations by MoHA.	Suggests a review/refinement of the existing regulations framing intergovernmental supervision, to ensure clarity in concepts, roles and organizations, and incentives/sanctions for lack of compliance with reporting requirements. Also a significant effort to enhance the capacity of oversight and supervisory institutions, in particular at the provincial level.
7. DPOD	Not addressed	“MoHA to ensure that the DPOD is (i) adequately resourced to coordinate the implementation of decentralization, with the attendant tasks of in depth assessments of issues and stakeholder consultations; (ii) empowered to carry out its tasks efficiently; (iii) meets as a full Ministerial	Treated (lightly) under oversight/supervision

	Grand Design	National Action Plan For Fiscal Decentralization	Decentralization Stock Taking Study
		Body at least once every quarter; and (iv) tasked as well as provided with adequate resources to monitor and evaluate progress achieved under National Action Plan for Fiscal Decentralization (NAPFD) and submit reports on a quarterly basis to the DPOD.”	
8. Regional organizational structures	Assumes widespread abuse (“heavy” organizations), a need for uniformity and reflection of central structures. Calls for issuing of revision to GR 8/2003 and other regulations for kecamatan, desa. Piloting of approaches in some regions.	“Adopt a sound regulatory framework to provide clear and adequate incentives and flexibility for local governments on the administrative structures, the number of civil servants, their qualifications and the rewards/incentive system.”	Suggests: freedom to innovate be ensured and more emphasis on disseminating lessons learned, and integrating these into regulations, guidelines, and training; increasing piloting and forming a forum to stay abreast of their development; framework redesign to make clear roles of actors; rules on RGs’ organization to be based on broad criteria including; reforms in personnel have to be compatible with the organizational needs of RGs; new personnel policies and instruments which address and overcome the current ineffective policies and instruments. Suggests a transitional period to facilitate moving from the “old system to the new system”, with pilots to test emerging practices (from Indonesia or elsewhere) and building confidence that models can work.
9. Personnel management	Notes problems of mobility and parochialism, and heavy administration. Calls for GR on qualifications, better HRM, more functional positions, rightsizing, and mobility vertically and horizontally.	See above	
10. Service provision	Notes the low front-line expenditure level (30%) of budgets, lack of clarity in procedures, lack of MSS legal basis, and low capacities. Calls for GR on MSS, more funds for	“DPOD to formulate a system of policy mandates and priorities to benchmark the delivery of public services in health,	Suggests: attention to harmonizing the developing legal framework affecting service delivery; a concerted effort in applying minimum service standards, with donor support to the relevant central

	Grand Design	National Action Plan For Fiscal Decentralization	Decentralization Stock Taking Study
	basic services and shift to front-line expenditures, one stop service, complaint mechanisms, improvements in evaluation and reporting, sticks and carrots.	education, and basic infrastructure sectors, with clear sector-level milestones and indicators. The system of policy mandates will be an interim step in the development of MSS in these sectors, which is likely to be phased in over a period of 6-8 years, in line with national commitment to the achievement of MDG.” “Formulate methodologies and costing for MSS in at least 3 sectors (Health; Education; and Basic Infrastructure).”	level sectoral agencies and a nation wide capacity development effort for regional government; a screening mechanism to validate innovations, and how these can best be packaged for dissemination; examine the role of good practices/innovation disseminating organizations in service delivery to note where cooperation can increase and duplication can be reduced; explore peer-to-peer mechanisms; encourage development and dissemination of good practices/innovations through recognition/awards; spur regional government investment in basic services through performance based grants that recognize efforts to close service gaps.
11. Planning and budgeting/ financial management	Not addressed	Calls for regulatory reforms and capacity development measures instituted to strengthen regional financial management, including effective management of local government assets.	Suggests: further “synchronization” in drafting current draft GR on Regional Planning; provide concrete guidance (e.g. manuals/training on MTEF, gender analysis, pro-poor budgeting) to regional planners and financial administration staff in a larger capacity development strategy (stress, sequence) that can ensure national coverage and sustainability of the capacity development effort; monitor regional government practices in planning, budgeting, and other aspects of financial management that will yield feedback to central level policy makers; harmonize, simplify and elaborate the policy, legal and guidance framework on regional planning and budgeting/financial administration.
12. DPRD	Collusion between DPRD and regional head is noted, as well as antagonism, their stronger ties to party vs. electorate, and money influence in elections. Calls for the GR on Information on	Not applicable	Suggests: making the Council Secretary independent from the influence of the local government; professional staff for Council Secretariats recruited from inside or outside local government; end practice of rotating Council Secretary with

	Grand Design	National Action Plan For Fiscal Decentralization	Decentralization Stock Taking Study
	Implementation of Regional Government, capacity raising; technical staff seconded to DPRD.		other district office heads; expand CB on Perda drafting and draft evaluation for the executive, the council secretariat, and council members, esp. on protection and promotion of constitutional rights; support communication strategies for councils/members on budget, policies, and regulations, DPRD sessions/meeting schedules, outcomes of meetings, decisions and statements; support development of supervision mechanisms to increase accountability; include political parties in CB efforts
13. Heads of Regions	Preparation of several GR and guidelines. Socialization and capacity building of Head of regions and DPRD.	Not applicable	Suggests: developing more capable electoral administration to ensure integrity of the pilkada process, including provisions for more avenues to address grievances; pushing for greater democracy within parties in selecting candidates and eliminating money politics in the arrangement; maximizing the room still available for DPRD to hold regional head accountable.
14. Local Parties	Not addressed	Not applicable	Suggests: support development of party programs; further internal regulations of parties, esp. financial management (e.g. reporting mechanisms on party assets and finances to the public and internally to party members and codes of ethics in relations with constituents); membership development; democratic selection of party candidates for top party posts and positions on election lists; dialogue with constituents between elections. Possibility of independent candidates.
15. Local Elections	Evaluation of Regional Elections.	Not applicable	Suggests: improvements in election law (e.g. in open lists); continued support to KPU; internal party practices (see local parties); disseminating information on candidates; reform of law on political parties.
16. CSOs	Not addressed	Not applicable	Suggests: improve legal provisions on freedom to

	Grand Design	National Action Plan For Fiscal Decentralization	Decentralization Stock Taking Study
			organize and the right to assemble (e.g. old regulations on mass organizations and on associations); increase CSO CB with balance on individual and networking support; work on CSO-stakeholder trust building; assess sustainability of initiatives; seek to understand why CSO involvement in decentralization/local governance is relatively low; emphasize constitutional and human rights.
17. Villages	Not addressed	Not applicable	Suggests: clearly establish the scope and process of the revision of village policies and legal instruments, and driving vision; develop academic position paper by October 2006 and undertake exemplary process this time around.
18. CSO/university networks	Not addressed	Not applicable	Suggests: diagnostic work prior to more support for CSOs/universities, their networks, and their linkages with government; intensify discussions on the objectives and approaches to supporting CSOs/universities active in decentralized governance, and the division of labor between government and donors (e.g. exit strategies for donors, and how CSOs can be instrumental in shortening the time donors need to be present/form of presence).
19. Regional Government Associations	Not addressed	Not applicable	Suggests: donors should intensify discussions on how RGAs can best be supported (“intermediary” role, support to the secretariats that are sustainable, division of labor between donors); increase RGA ability to do technical analysis as base for advocacy; explore models of RGA-government accords on communication/negotiation, with reference to international experience.
20. Donor coordination	Not addressed	Not applicable	Suggests: clarifying JWGD coordination structures; rationalizing the many donor working groups; ensuring that the DSF dovetails effectively

	Grand Design	National Action Plan For Fiscal Decentralization	Decentralization Stock Taking Study
			with the JWGD/Permanent Secretariat; integrating aid effectiveness discussions in the JWGD; intensifying the discussion on crucial topics of aid effectiveness/decentralization/local governance (e.g. on joint efforts, assessment of good practices, modalities, exit strategies); considering the creation of an additional forum, or expansion of the existing JWGD, to accommodate the voice of civil society.
21. Special Autonomy Aceh	Calls for preparation of Law 18/2001. Aims for Diklat Training, and capacity building.	Not applicable	Not addressed
22. Special Autonomy Papua	Expresses the need for development of concepts on issues, such as governance, education, health, indigenous land rights, status of West Papua, political concept, Peoples' Representative Board. Socialization.	Not applicable	Not addressed

I. LEGAL ASPECTS OF THE DECENTRALIZATION/ LOCAL GOVERNANCE FRAMEWORK

State/Government Reform Objective

Indonesian legislators and government have together set principles for the preparation of legal instruments in Law 10/2004. In preparing legal instruments the drafters must seek the following:

- Clarity of goals
- Appropriate proponents (drafting team)
- Consistency between the form and content
- Feasibility of implementation
- Efficiency and effectiveness
- Clarity in formulation and
- Openness.

These principles should be important criteria in assessing the laws and regulations issued or being prepared for decentralization/local governance. Additionally, in the legal system of Indonesia, there should be legal precepts that allow drafting teams working on decentralization/local governance to create a hierarchy of legal products that is coherent and workable. However, if these precepts exist, they are not yet widely acknowledged or consistently applied.

Current Situation in Legal Drafting and Hierarchy of Legal Products

Seen against the principles of Law 10/2004, there are serious shortcomings in process and outcomes of legal instrument preparation in the field of decentralization and local governance. The shortcomings in process and content have been well noted by regional actors and donors⁵, and acknowledged on occasion by the central government and members of the national legislature.

Quality of Legal Instruments Produced to Date

Numerous government regulations and lesser instruments have been prepared to date, flowing from the original 1999 reforms and the revised framework laws (32 & 33/2004)⁶, as well as

⁵ See for example the statements of Rashid, Ryaas (2002), APEKSI (2004), William Frej in the *Jakarta Post* (2004) and Bernhard May (2003).

⁶ A total of 53 Government Regulations had been envisaged as follow-up of Law 32/2004, out of which 19 were completed as of April 2006.

other related laws. The standard of legal drafting has on the whole not been satisfactory. Specific shortcomings include the following:

- Imprecise language, and inconsistent definitions
- Contradictions between legal instruments (including with the constitution), and use of lower legislation to ‘correct’ perceived problems in higher legislation
- Stipulations that fail to regulate
- Repetition of other legislation, rather than simple reference
- Too large a reliance on follow-up regulations on key issues
- Late preparation of implementing regulations
- Use of elucidation section to introduce concepts or to regulate.

Examples of the above shortcomings and some illustrations are noted in Table 1. The inconsistencies in the legal framework can pit actors against each other and slow the development of subsidiary legal instruments that are meant to make policies more operational. Improving the quality and quantity of legal drafting skills and output is very important to successful reform and implementation in decentralization, both from government’s side and with respect to gaining the public’s respect for policy making and the rule of law.

Process of Preparation of Legal Instruments

Many of the laws and regulations used to develop the regional government framework have been developed without the benefit of a “*naskah akademik*” (policy discussion paper) that could be used to gain clarity on goals, stakeholders, and impacts of the impending laws/regulations. The law governing the preparation of legal instruments gives the option of using a *naskah akademik*, but this option is usually not taken up - although badly needed. There is also a tendency to prepare laws that are heavily reliant on subsequent government regulations, without sufficient thought to the content of the regulations; conceptual and practical problems in the law are only noted once the law has been passed, constraining the preparation of useful follow-up regulations.

Table 1. Illustrative Shortcomings in Legal Instruments/Processes

New provisions in laws or regulations	Nature of shortcomings
Key regional autonomy concepts/terms in Law 32/2004, Law 33/2004 and regulations.	The modes of decentralization (<i>desentralisasi, dekonsentrasi & tugas pembantuan</i>) are not consistently elaborated across instruments, leading to subsequent problems in preparing regulations on structures and financial flows, reporting/accountability provisions.
Article 14.3 of Law 32/2004, detailing the assignment of functions (including central government functions) to be regulated by government regulation.	According to Article 18.5 of the Constitution (UUD 1945), central government functions are to be determined <u>by law, no government regulation</u> .
Changes in village governance in revision of Law 22/1999 (to Law 32/2004): introduction of secretary desa as civil servant, demotion of village council to advisory status.	Surprised most stakeholders as they were not anticipated, nor discussed with village or regional government representatives. There is also no explanation in the elucidation of the law for the magnitude of the changes introduced. The budgetary implications of making civil servants of village secretaries were also not considered—with some regions having average village size of

New provisions in laws or regulations	Nature of shortcomings
	little more than 200, and others over 10,000.
Article 152 in Law 32/2004 on development planning.	Laws/regulations are made more cumbersome without sections that purport to regulate (as in the case of development planning) but add no value to actors in terms of direction on what they should or should not do.
Obligatory functions and minimum service standards (MSS) in Law 32/2004.	Not clear if all obligatory functions are to be accompanied by MSS; if not, the guiding instrument for non-MSS obligatory functions are not clear.
<i>Rencana Pembangunan Jangka Menengah Daerah</i> (mid term plan) in different framework laws.	According to Law 32/2004 it is enacted by regional regulation while in Law 25/2004 the same plan is enacted by decree of regional head; the latter executive approach would diminish widely supported strategic planning.
Scope of the annual plan (abbreviated as RKPD) and, by implication, the entity most suited to approving it in different framework laws.	RKPD according to Law 25/2004 is <i>Rencana Kerja Pemerintah Daerah</i> (Local <u>Government</u> Working Plan). According to Law 32/2004, RKPD is <i>Rencana Kerja Pembangunan Daerah</i> (Local <u>Development</u> Working Plan).

Often, the leading central level agency has not coordinated its efforts adequately with other relevant agencies, nor has it consulted sufficiently with stakeholders and experts. The products produced therefore carry a significant risk in terms of their feasibility and acceptance by stakeholders.

In the case of laws, it has been noted that the National Parliament (DPR) has taken the initiative to prepare laws in the case of *pemekaran* (creation of new regions). This right of initiative has resulted in a flurry of new regions without due regard for the technical process to assess the appropriateness of new region formation. Parliament sometimes uses its prerogative to inject poorly analyzed or deliberated changes in draft laws proposed, even when the latter have perhaps been prepared with some care by government. They may be more careful about making these changes if the government had a more well-established basis and constituency for the provisions of the draft laws at the time they are passed on to DPR for deliberations. Often, problems in the executive promoted laws are compounded by the actions of DPR.

The executive is also prone to finding shortcuts for the preparation of laws and regulations. Some observers noted that some legal products may have been fast tracked to avoid coordination and scrutiny as a quid pro quo arrangement between proponents of the legal instruments and the “vetting” bodies (legal office/secretariat general of the ministries and the State Secretariat for inter-ministerial coordination).

Harmonization of Legal Instruments

The weak inter-ministerial coordination mechanisms and some inter-ministerial competition explain some of the contradictions or inconsistencies between streams of legislation (for example Law 17/2003 on state finances, with Law 32/2004 on regional government or Law 25/2004 on national development planning). The weakness of the legal products in decentralization/local government is due in part to the lack of inter-ministerial/agency consultation. This shortcoming is not unique to decentralization—it is a systemic problem⁷.

⁷ For illustrative purposes, the government response to the disaster management/mitigation draft law initiated by Parliament has been criticized as weak because it did not seem to have been properly consulted with either the Ministry of Home Affairs or Ministry of Finance, see Podger (2006).

These shortcomings could be overcome through improved coordination mechanisms in the drafting of laws and regulations, and also the government's review of both laws drafted by DPR and amendments proposed to laws drafted by the government.

However, harmonization is also made difficult by the choice of legislative strategies for the functional and technical provisions of decentralization and local governance. The dissonance between the former Law 22/1999 and sectoral laws and regulations has much to do with the decision to place functional assignments in a government regulation (GR 25/2000) that is subsidiary to the framework law on regional government. An alternative legislative strategy would be to place principles for functional assignments (or at least some principles for functional assignment) in the constitution, and/or to place the functions for each sector in its own sectoral law. Law 32/2004, superceding Law 22/1999, offers a revised functional assignment, but nonetheless sticks to the same problematic legislative strategy as Law 22/1999, using again a government regulation to make explicit all sectoral functions assigned to regional government (replacing GR 25/2000).

In sticking to this legal architecture, the GoI is apparently counting on sectoral ministries to subsequently lead the effort to refashion their laws and regulations to accord with the replacement GR to GR 25/2000, but there is little to suggest that this will happen (it did not happen while GR 25/2000 was in force). The possibility of issuing a Presidential Regulation to command the sectoral ministries to prepare a suitable law has been floated within MoHA, but this more directive approach has not yet been widely discussed; ministerial commitment and a determined effort would be needed to impress on the President the need to take this route.

GoI Mechanisms to Ensure Quality and Coordination in the Elaboration of Law 32/2004

A positive step has been taken in ensuring quality and coordination of legal products with the establishment in the Directorate General for Regional Autonomy in MoHA of a temporary internal unit with a "clearinghouse" function⁸. This unit has the task of coordinating the drafting of the various legal instruments being prepared under MoHA's leadership in the context of decentralization (most of the follow-up instruments called for in Law 32/2004). This unit has the potential to improve the quality of key legal products being prepared as follow-up to Laws 32 and 33/2004, but it has struggled to date to fulfill its intended function. It needs to increase the number of qualified staff who can define and apply quality criteria and who can shape an appropriate coordination/harmonization process. At the same time, it is not entirely clear if the unit is meant to provide a second look at content or if it is only to ensure that all relevant government units have had their say.

The unit's limited success is evident in the number of regulations that have yet to be prepared; the majority is still in process and the official deadline of August 2006 (stipulated in Law 32/2004) has passed. The difficulty in keeping to the schedule may stem from the unit's low capacity, but likely also reflects a serious weakness in government, where little policy and legal drafting capacity can be found and where there is not a regular effort to undertake impact assessment for new policy/legal products.

⁸ In the past the Law Office (Biro Hukum) of the General Secretariat of the Ministry was technically responsible for this task, but as this office has been structured for the management of routine legal affairs, ad hoc committees have instead drafted regulations and the Law Office has played a marginal role.

Legal Hierarchy of Instruments Used in the Decentralization/Local Governance Framework

Law 10/2004 on the process of drafting legislation, states in Article 7 that the legal hierarchy in Indonesia is composed of the following:

- i. Constitution (*Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*);
- ii. Law or regulation in lieu of law (*Undang-Undang/Peraturan Pemerintah Pengganti Undang-Undang*);
- iii. Government Regulation (*Peraturan Pemerintah*);
- iv. Presidential regulation (*Peraturan Presiden*);
- v. Regional regulation (*Peraturan Daerah*).

Several legal issues arise from the omissions and lack of clarity in this law in its connection to Law 32/2004 and related regulations, namely:

- *The nature of village regulations:* In a rather odd construction, village regulations (*peraturan desa*) are characterized as a category of regional regulation in Law 10/2004 (Article 7 (2.c)). In turning to Law 32/2004, this raises the question of whether village regulations are also subject to review or rejection by MoHA (as in the case of regional regulations), or whether they should be reviewed or rejected by the district government (as may be implied by the overall tenor of the law regarding the relationship between the district and village level of government). Law 32/2004 and government regulation on supervision are silent on the review of village regulations, though Government Regulation 72/2005 regarding Villages describes a review process for village regulations by the district government. However, there is no mention of how the regulations would be rescinded if they contravened the public good or higher legal instruments. If indeed village regulations have the same status as regional regulations, there should be a clear process for their supervision.
- *The status of Regional Head and Village Head regulations and decrees:* (*Peraturan dan Keputusan Kepala Daerah/Kepala Desa*). Regional Head regulations and decrees are mentioned in Law 32/2004 Article 146, and Village Head decrees are only mentioned in the elucidation section of Article 218 (1), subsumed as a category of Regional Head decrees—strangely replicating the same confusion seen in the case of village regulations as a category of regional regulations in Law 10/2004. Village Head regulations are introduced only in the preamble of the elucidation section of Law 32/2004. Neither of these executive instruments are mentioned in Law 10/2004. This omission cannot be explained on the grounds that the latter law only dealt with parliamentary products since government regulations and presidential regulations (both executive instruments) are in fact part of the nation's legal hierarchy in Law 10/2004.
- *The status of ministerial/agency decrees, circulars and letters:* These executive instruments are being used today, though they are also not explicitly listed in Law 10/2004. Questions are raised by stakeholders about their reach and legitimacy.

Law 10, Article 7 (4) states that other legal products are acknowledged as binding as long as they are mandated by a higher level regulation. This means that ministerial regulations and decrees are legally binding if they are mandated by law, government regulations or presidential regulations. Likewise Regional Head regulations and decrees are legally binding if they are mandated by these same higher level instruments or regional regulations. However, the law sidesteps the distinction between various ministerial legal instruments, and what their external reach might be. Law 32/2004 and its follow-up government regulations have dozens of ministerial instruments listed precisely for regulating the actions of regional governments of other ministries/agencies. One observer remarked that MoHA could not in fact rescind regional regulations with a ministerial instrument and that this practice may be contested (through the constitutional court) at some point⁹. In fact, the main mechanism for rescinding regional regulations is specified in Law 32/2004 to be a presidential regulation. However, it is worth noting that in some circumstances Government Regulation 79/2005 on the supervision of regional government does in fact give MoHA the power to rescind a regional regulation through the use of a ministerial regulation, and likewise the Governor the power to do the same for district/city regulations (see Article 40 (2)&(3)). These provisions seem to stand on a shaky legal basis.

- *Legal hierarchy to be used for policy and guidance on decentralization/local governance:* The amended provisions in the constitution regarding regional autonomy are insufficient and open to several interpretations in places. The opportunity to gain consensus and stability through well crafted constitutional provisions has been missed; another amendment is ideally required to enshrine principles and directions for decentralization and local governance in the constitution.

Donor Support for Legal Drafting

Donors have yet to find common ground on what is a proper capacity development support strategy for policy development. A wide range of approaches are evident: “gap filling” (where advisors are involved in actual drafting); provision of international and empirical evidence on what are good practices in process and content; supporting Indonesian stakeholders (e.g. intermediaries) to provide valued inputs to the government. Perhaps these all have their place, but it is difficult to discern whether the mix is right at this point in time based on current information and reflection.

Although donors have encouraged the GoI (e.g. in the context of the Consultative Group for Indonesia) to adopt a more open and systematic approach to policy making and legal drafting, there have not been sufficient strategic thinking and purposeful efforts by donors directed to working intensively with the GoI on this issue. Incentives (funds, TA) have been offered to make changes in the context of a particular policy/legal instrument, but no sustained effort has been made to address the relevant institutional issues.

⁹ Participant in the USAID-DRSP lead focus group on the CSOs/university support for decentralization and local governance, USAID-DRSP office, May 5, 2006.

In part, the donor effort reflects the reluctance or inability of the GoI to consider fundamental changes to the way it develops policy and undertakes legal drafting. It has to be considered whether the fragmented and entrepreneurial approach to policy making actually suits the personal and organizational interests of GoI policy makers. If this is so, the implication is that it is unlikely the GoI will request much donor assistance to change these practices, or make requests for the kind of assistance donors would prefer to proffer.

Policy Options and Recommended Action

Policy Options

Improvement in the legal framework for decentralization and local governance requires a different stance by the executive and national legislature toward policy making and legal drafting in general. Greater stress needs to be placed on the following, in particular:

- i. Establishing a more rational hierarchy of legal products, with due consideration for the principles and key provisions of regional autonomy that should be placed in the constitution and laws.
- ii. Making laws and regulations more complete, to avoid ministerial instruments that lack a unifying framework. In particular, laws should be more complete to clearly reflect the intentions of the legislature and to avoid delegating excessive regulatory power to the executive.
- iii. Extending consultation in the preparation of policy/legal instruments, with appropriate concept papers as aids, and the inclusion of appropriate expertise and stakeholders.
- iv. A more rigorous internal government legislation/regulatory impact assessment that is cross ministry/agency.

Having a common and clear framework embedded in the constitution, and agreeing to the content of sectoral laws, would require a significant legislative effort. The payoff, however, would be significant in terms of a more feasible and durable decentralization and local governance framework.

The use of *naskah akademik* should become common practice for both laws and regulations. When a law is being prepared, the discussion paper could be sufficiently detailed to address the core ideas of the subsequent regulations.

Regulations should not be portions of the law that could not be finished on time. Rather, they must be subsidiary instruments that provide more operational guidance. Their content is not included in the law to maintain a balance of ideas and detail in the law. The key ideas should, however, already be clear enough in the law, giving the regulations a proper “corridor” that they must follow. The use of regulations allows for some changes in procedures over time that, do not threaten the core idea in the law. In principle, changes in regulations are easier to bring about than in laws (which require both government and legislative participation), and they leave the law itself as a more stable anchor¹⁰.

¹⁰ The obvious exception to this rule is the case of legislative (DPR) initiatives that are fast-tracked by the DPR and not subjected to rigorous government scrutiny; as has happened in the creation of new regions.

The Minister of Home Affairs has already stated that Law 32/2004 will need revision¹¹. In fact, given the early stages of decentralization, there will be good reasons to continue to revise the framework laws over the next decade. These revisions should not mean abrupt and poorly thought out reversals on policies (as occurred to the village provisions of Law 22/1999), but rather are best made as well thought out refinements that embody the lessons of experiences made. A key challenge will be to make incremental but significant improvements in the consultation process to make it more likely that the process will yield sustainable and respected rules of the game for decentralization and local governance. In addition to bottom-up participation in policy making, a more involved second house (DPD) would go some way toward rectifying the haphazard treatment of decentralization laws in the DPR.

It is unlikely that the GoI will ask for intensive support from donors in improving its overall approach to policy making in decentralization/local governance across the board. However, MoHA appears willing to seek assistance to improve its vetting and coordination effort for instruments that are prepared under its leadership. Donors should take advantage of this opportunity to make whatever improvements are possible, and add momentum for more system wide changes in policy making/legal drafting in the process. For instance, through the support given in the Law 32/2004 elaboration it may be possible to introduce ideas on how the policy/legal drafting process might be approached in the future. In particular, the relationship of MoHA to Indonesian stakeholders may be stressed (e.g. the role of the regional government associations in policy making/legal drafting could be refashioned through a framework agreement with MoHA or the GoI in general).

Other opportunities will present themselves to donors to influence the policy making/legal drafting process. The work led by the Ministry of Finance in financial management reforms (with regional level implications), being supported by several donors (e.g. CIDA-GRS II, ADB/WB) is a case in point. The upcoming “poverty reduction” TA funded by ADB, anchored in Bappenas, is another example. In each of these instances, donor support needs to encourage appropriate cross-agency cooperation and adequate consultation with other stakeholders. Some successes seen in the past (on the MSS model building exercise and the administrative procedures draft law) could serve as inspiration for redoubled efforts.

Recommended Action

Immediate Action (early-mid 2006)—Assistance to MoHA “clearinghouse” for Law 32/2004:

- The request from MoHA for support to its clearinghouse effort with respect to Law 32/2004 products should be given a full response. Some assistance is anticipated through CIDA-GRSII, but all donors working on the follow-up products should recognize the strategic role of this unit in the Directorate for Regional Autonomy, and work with it, aided by the GRSII staff assigned to support MoHA in this task. The assistance should focus on coordination as well as the capacity to assess the quality of draft regulations.

¹¹ The Minister indicated that the election issues and village government may be legislated separately. Meeting, of the Minister with DPR Commission II, of September 2005 and again May 2005.

- GoI should use the MoHA clearinghouse as one important input to the Joint Working Group for Decentralization, bringing attention to key regulations requiring support.

Mid-term action (2006-2007)—Initiate larger discussion on the policy/legal drafting process:

- Donors could harmonize approaches to policy/legal drafting support, to indicate which capacity development principles/modes are most suitable, and what strategies could be pursued to make faster progress on the quality of the process and products.
- A proper assessment of the shortcomings of the choice and use of legal instruments/hierarchy of the current framework needs to be undertaken, with a long term strategy for how the shortcomings can be corrected.
- Overtures could be made to the oversight and coordinating bodies that process draft laws, government regulations, and presidential regulations, to see if there is interest in addressing the policy/legal drafting process, which include the following:
 - Ministry of Justice and Human Rights (DepHukHam): this ministry is first in line to review and coordinate further inputs following the first effort from the proposing ministry/agency.
 - State Secretariat (Setneg): this organization has a critical role in ensuring that a proper consultation process is undertaken in the preparation of draft laws, government regulations and presidential regulations (the latter through the Cabinet Secretariat–Setkab)¹². Setneg has carried out this role rather unevenly in the past in the field of decentralization/local governance¹³.

It must be recognized, however, that these organizations are politically sensitive and may not be open for assistance (although in the past foreign experts have been used in ad hoc efforts to boost the performance of Setneg).

- Discussions with the above and other actors could also be supported with the view to introduce a more rigorous legislative/regulatory impact assessment, at least for those instruments affecting decentralization/local governance. MoHA would be an organization to be strengthened in this regard, but consideration should also be given to Bappenas, and MenPAN (in addition to MoHA, and particularly if MoHA shows little interest)

Long-term perspective—Sectoral harmonization and constitutional amendment:

- The interest shown by the Ministry for Justice and Human Rights in legal harmonization in decentralization/local governance (in 2004) should be nurtured and developed into a coherent cabinet level effort. This effort could begin soon, with an initial focus on aligning sectoral laws and regulations with the agreed

¹² See Government Regulation 31/2005.

¹³ It is often the case, as occurred for example in GR 65/2005 on minimum service standards, that Setneg and DepHukHam jointly deliberate a draft, together with the proposing ministry.

government regulation on the assignment of functions. At a later point, the focus could be expanded to include some fundamental revisions to the Constitution to reflect a more elaborated consensus on the nature of regional autonomy desired in Indonesia.

II. INTERGOVERNMENTAL RELATIONS

This section of the study assesses the current state of reform in intergovernmental relations. It evaluates the extent to which Law 32/2004 on Regional Governance and Law 33/2004 on Fiscal Balance succeeded in creating a regulatory framework to achieve better decentralized governance. It identifies viable reform options for the medium term, and provides practical recommendations for making further headway. It covers the following four interlinked but analytically distinct areas that are affected by the new regulatory environment:

1. Territorial reform
2. Functional assignment
3. Intergovernmental fiscal relations
4. Intergovernmental oversight and supervision

The area of fiscal relations is further divided into the following:

1. Own regional revenue
2. General allocation grant
3. Special allocation grant
4. Shared taxes and revenues
5. Regional borrowing

Deconcentrated funds are not treated separately, but are addressed in different parts of the report in relation to other topics (e.g. planning and budgeting). Data on deconcentration funds is extremely hard to come by and the study did not have the resources needed to conduct an in-depth review of this issue.

Territorial Reform

State/Government Reform Objective

The GoI expects that the creation, division, amalgamation, and dissolution of regions will result in the increased welfare of citizens, through better service, enhanced democratic life, faster economic growth, increased security and order, and harmonious relations between regions (Government Regulation 129/2000, Article 2). How far, and how rapidly, changes are to be made is the focus of current policy development. Having seen a rapid rise in the formation of new regions by splitting existing regions (*pemekaran*, or literally blossoming), and having heard some concerns about the performance of new regions, the GoI and Parliament desire clarity on what the future “optimal” number of regions should be.

The GoI has intimated that a moratorium may be needed on the creation of new regions to give it and Parliament the breathing space to review the performance of newly established regions (since 1999) and determine a review process for proposals that has greater technical integrity.

Regulatory Framework

The establishment of regions may comprise “merging a number of regions or parts of neighbouring regions, or expansion of a region into two or more regions” (Law 32/2004, Article 4). In contrast to its predecessor law, this revised law is more specific about the fate of regions that are not able to implement their autonomy in a satisfactory way (Article 6). At some point following their formation, an assessment will follow to see if these regions are performing as intended. As yet, no systematic study has been carried out on the new regions formed post decentralization, but the GoI has initiated some work in this area and intends to follow through with a more comprehensive assessment in the near future.

The guiding instrument for the assessment of proposals for new regions is Government Regulation (GR) 129/2000. This regulation is being revised to enhance the technical review of proposals, in line with the broad provisions of Law 32/2004. This law is somewhat more stringent than Law 22/1999 (for instance, to create a new province now requires at least five districts, and for a new district four sub-districts are required, versus four three respectively in the GR 129 framework). The basic administrative process laid out in Law 32/2004 appears to be similar to that used previously, with approvals required from the Regional Head and Regional Parliament, Governor and recommendation from the Minister of Home Affairs (for new districts/cities).

The draft regulation to replace GR 129/2000 is now fairly advanced. Some of the improvements it will include are increased transparency in the decision making process through a required approval from the respective Village Councils, improved analysis and the implementation of a viability survey, the dissolution of non viable regions and an attempt to pare down the technical indicators used in the analysis of proposals. However, the current draft still contains an analytical tool for proposals that has many and questionable indicators, and the “summative” methodology for these indicators is still weak.

Most of the action in territorial changes in Indonesia has been in *pemekaran*. There is no available evidence that the central or regional government has ever initiated merging (amalgamation). *Pemekaran* on the other hand has been happening since the early days of independence, with a burst in the late fifties. Since the start of decentralization reforms, the growth of new regions has rivaled that burst (see Table 2), and there seems to be no end to it; about 100 more proposals are waiting in the wings and it appears that approval will be difficult to withhold.

Table 2. Creation of New Regions in Indonesia 1950-2005¹⁴

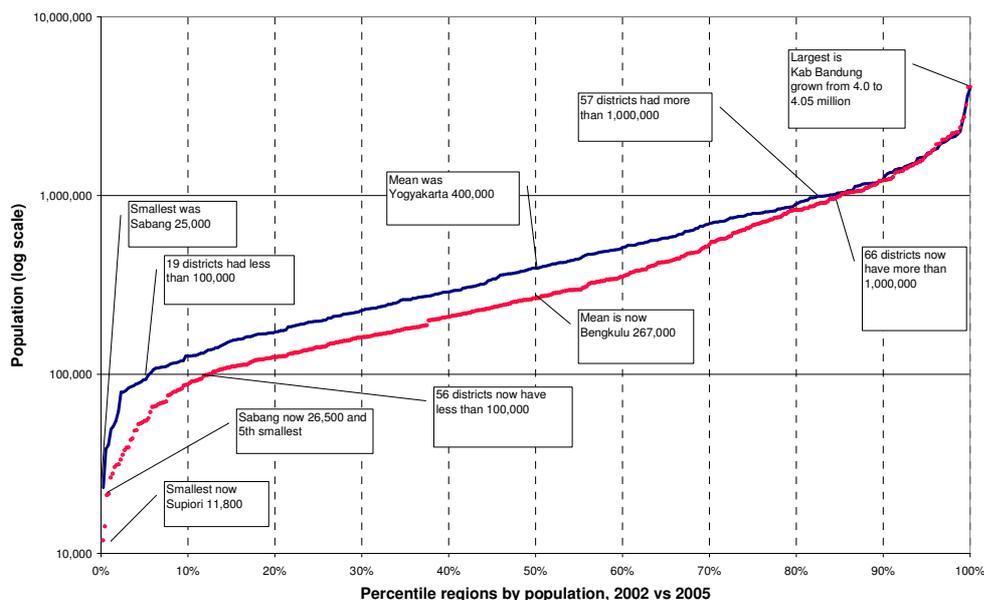
Period	Provinces	Districts and Cities
1950-1955	6	99
1956-1960	16	145
1961-1965	3	16
1966-1970	1	11
1971-1998	1	33
1999-2005	6	136
Total	33	440

¹⁴ Data is derived from Ferrazzi (2005) and Ministry of Home Affairs (2005).

The growth of regions is now far outstripping national population growth. The pattern of *pemekaran* has exacerbated the uneven demographic and geographic make up of the regions. The regions now show a wide variety in population size: provinces range from less than 800,000 inhabitants (Gorontalo) to over 35 million (East Java), and districts/cities range from 11,800 (Supiori) to 4.1 million (Bandung district). This uneven pattern, and rapid pace of divisions, has raised concern in several quarters, including Parliament.

The change in size of districts is shown in the Figure 1, comparing 2002 and 2005 statistics. It indicates a greater number of smaller regions; in the three year period, the population of the mean-sized district dropped from 400,000 (Yogyakarta being the mean in 2002) to just 267,000 in 2005 (when Bengkulu became the mean).

Figure 1.



Source: 2002 figure from MOF for calculating DAU for 2003. 2005 figures from MoHA website.

Table 3. Growth of New Regions by Major Island/Regional Grouping to 2004

Population	2001 (millions)	No. of District/City Governments		
		1998	2001	2004
Java	112.0	103	105	109
Sumatra	47.7	74	96	132
Kalimantan	10.9	30	38	52
Sulawesi	14.4	40	45	62
Bali/Nusa Tenggara	10.9	29	30	34
Maluku/Papua	4.2	16	22	45
Total	200.1	292	336	434

Source: Fitriani et al., 2005.

It is noteworthy that regional make up has been quite stable in the populous island of Java, in contrast to the outer islands (Table 3). This pattern is perhaps explained by the historical domination of Java in government (and culture) throughout Indonesia, and the newly found room in the outer islands for putting forward local grievances and aspirations following political reforms.

Observers and researchers have put forward analysis that suggests that *pemekaran* has several drivers:

- A desire to bring government closer to the people and spur modernization of the region
- Preference for homogeneity and favouring 'sons of the soil' (*putra daerah*) (Riwanto, 2005)
- Response to fiscal incentives inherent in financial transfers
- Bureaucratic rent seeking (Fitriani et al., 2005)
- A desire of some elites to strengthen their political turf.

The impact of *pemekaran* has not been well studied. It may well be that government has been brought closer to the people, and that some service improvement has come about; this story remains to be told. Indicative evidence, however, points to the following negative consequences:

- Inefficient administration as per capita costs of government increase sharply¹⁵
- Decreased capacity to adequately discharge the functions assigned uniformly to all districts/cities
- Increased potential for inter-group (ethnic, religious) conflict (ICG, 2003).

The process of *pemekaran* needs to be seen against the government's vision of decentralized governance, where a uniform assignment of functions across districts/cities has been made. It is this level of government that is expected to be a general purpose local government, i.e. the prime provider of most basic services. The district/city is also expected to be increasingly responsive and efficient, implying that citizens are able to pay through taxes and charges for a significant part of what they demand from their local government. With the fragmentation of districts it is unlikely that the new regions will be able to adequately fulfil their service functions as expected. It is also not clear if other objectives underlying decentralization are furthered or imperilled by the inexorable momentum of *pemekaran*.

It is also worrisome that in some cases the political elite are driving *pemekaran*, and fanning ethnic sentiments as a means to their end. The *pemekaran* problem is largely one of highly motivated political entrepreneurs that have much to gain in the short to mid term from each specific case of regional formation, and a majority of onlookers and decision-makers that are somewhat concerned about the trend in general, and may have something to lose in the long

¹⁵ The local governments with less than 100,000 people have about twice the wage bill per capita that those local governments with 500,000 people have, see Hofman and Kaiser, 2002.

run. This asymmetry in interests tends to favour continued *pemekaran*, until the costs are more fully appreciated by all concerned.

The process of *pemekaran* is now under greater scrutiny. It is visibly a very political process. It consists of gaining local support from various figures and groups, followed by lobbying for approval from the regional parliament of the “mother” region, and then more lobbying at national level with parliament.

Where the proposal is instead routed through the standard administrative route, proponents first gain approval from the regional head and regional parliament of the mother region, followed by technical evaluation of the proposal by the central government’s Regional Autonomy Advisory Council (DPOD), and then endorsement by the president prior to submission to Parliament to be passed as a national law. However, often times the DPOD (or the Ministry of Home Affairs that drives its secretariat), merely stand on the sidelines, giving the proposals a perfunctory review at best. When the central government is entirely bypassed, the law is initiated by Parliament. Its “right of initiative” draft laws can only be slowed, by 30 days, by the President¹⁶. It appears that direct lobbying to the Parliament is now the favored route for *pemekaran* proposals. Members of the DPD have also recently been enlisted by new region proponents to further their cause.

MoHA officials acknowledge that technical analysis is weak or not applied, and that they can only use unfulfilled administrative steps as temporary brakes on the process. Yet the government seems to pin its hopes on GR 129/2000, or its successor regulation. GR 129/2000 sets out a complex scoring system combining 19 indicators and 43 sub-indicators encompassing economic, socio-cultural and socio-political criteria. The relevance of some indicators is questionable, and the scoring system itself is methodologically unsound. It is not clear, for instance, whether the indicator measured should work for or against *pemekaran*; but in the end all of scores are positive and additive, and then compared to a table of thresholds, indicating the policy action to be taken. The technical review is not very helpful in complementing or tempering political considerations. While the draft regulation to replace GR 129/2000 has pared back the list of indicators (11 factors and 35 indicators), it is plagued by the same methodology problems as GR 129/2000.

Policy Options and Recommended Action

Policy Options

Give policy makers time to address the issue by placing a moratorium on new region creation for a period of one year. This idea was floated gingerly by MoHA in early 2006, and recently has been floated by the President. It should become a government proposal to DPR (via Commission II). It is understood that the GoI could only reach an “understanding” that can only hold if there is DPR solidarity.

Determine the scope and tools for territorial reform. Indonesia appears to be one of very few countries on the path to increasing the number of regions. This development is making some stakeholders nervous, but concerned politicians are unfortunately framing the issue as

¹⁶ It is widely held that with either the administrative or political route, proponents of *pemekaran* have bribed their new regions into existence. This may be a misperception encouraged by the general sentiments regarding corruption in government, but it at the very least reveals the lack of transparency in decisions on new regions.

one of setting the “ideal number of regions”, without pushing further to the deeper question this leads to regarding the desired nature of regional autonomy. There is a great need for stepping back for a time and determining what the purpose of territorial reform should be, and what tools are required to accomplish this reform. Only through this process will it become clear how to deal with proposals for new regions or with regions that are struggling with their mandate; the number of regions will fall out of these purposeful and principled adjustments.

Enlarge the discussion and technical support on territorial reform. To date, the political stream seems to consider only some of the important social, economic, and administrative aspects of territorial reform. The political stream is increasingly disconnected from any technical review. Where technical reviews have been done, third parties undertaking the reviews on behalf of the government have failed to impress on the government the weaknesses of its methodology; indeed some have simply become consultants for various proponents, willing to apply the methodology, however faulty. There is an urgent need to rectify this situation by making other societal voices heard, scrutinizing the forces behind the current trends, and bringing greater technical rigor to the review process. Donors need to recognize the importance of this issue, and provide coherent and sufficient support. The World Bank gave it some attention in the early 2000’s and conveyed some cautions to the GoI, but without dealing with the details of the technical review. A modest input on technical matters was provided by GTZ-ASSD in 2005 and early 2006, but this support has now ended. At the moment, USAID-DRSP is funding The Indonesian Institute¹⁷ to work with MoHA and draw other expertise into the process, but this probably needs to be matched to international expertise as there has never been a systematic review of territorial adjustment tools in Indonesia.

Review past experiences as a basis for further regulations. GoI will need to quickly mount an effort to examine with some rigor the impact of prior *pemekaran*. The focus will need to be on administrative aspects and economic viability, as evidenced in efficiency measures. However, it is important to also capture political and social dynamics (democratic processes, security, ethnic/religious group relations), as these are also pertinent to the stated objectives of decentralization and adjustments in regional units/boundaries. The aim should be to design sound criteria, (population size and densities, administrative efficiency, socio-economic homogeneity etc.) that can guide approvals on a case to case basis. At the same time, distorting incentives that favor *pemekaran* will need to be addressed as well (the central payment of regional level staff for instance). The regulatory framework could also include clearer and more effective measures to mitigate the potentially negative effects of *pemekaran*. For instance, the requirement for establishing a new capital, revenue-sharing agreements, and access to services between regions should be addressed.

Recommended Action

Immediate action (2006)—A moratorium to buy time for a review:

1. The GoI should seek to gain Parliamentary agreement on a one year moratorium, to give it and Parliament the breathing space to review the performance of newly established regions (since 1999) and determine a review process for proposals that has greater technical integrity, and adequately addresses relevant factors

¹⁷ The Indonesian Institute – Centre for Public Policy Research (lead in this effort by Cecep Effendi).

(revenues, efficiency, public services, democratic processes, security, ethnic/religious group relations).

2. Should a moratorium not be politically possible, then the government should set simple criteria to assess proposals that will work to stem the flow of new regions, while the review of new regions proceeds and the better proposal review process is developed. The criteria should focus on key determinants of regional government performance (e.g. population thresholds as proxy for efficiency, revenue potential). The government should not be drawn into indicating a priori “optimal number of regions.”
3. The GoI should initiate a dialogue as the review of new region performance nears completion, to bring the relevant factors and dynamics to light and gain an appreciation of the long term implications of *pemekaran*. At the same time, it should examine other tools for territorial reform (including mergers). International experience should also be brought into the mix.

Mid-term action (early 2007) —Completing the regulatory framework:

4. The regulatory framework could be concluded, based on the review of new region performance. The new regulation in particular could include clearer and more effective measures to mitigate the potentially negative effects of *pemekaran*. For instance, the requirement for establishing a new capital, revenue-sharing agreements, and access to services between regions should be addressed. At the same time, distorting incentives in the decentralization framework that favor *pemekaran* will need to be addressed as well (the central payment of local level staff for instance).

Longer term action (2007-2009)—Building capacity in MoHA and allied organizations to conduct research and policy development:

5. The GoI units that are tasked with the analysis of regional structures will need to be strengthened, along with independent units that can also do complementary assessments and analysis. This can be achieved through a capacity development program that includes the following:
 - a. Matching the relevant units to donor supported technical assistance
 - b. Study tours to other countries dealing with similar issues for GoI and non-government members
 - c. Greater cooperation between MoHA and independent centers of research
 - d. Specialized training offerings in research methodology and substantive policy approaches
 - e. Forums for discussion and debate on policy of territorial reform.

Functional Assignment

State/Government Reform Objective

The restructuring of government functions across Indonesia's three levels of government is one of the most critical and challenging elements in the decentralization process.¹⁸ The GoI has noted the tensions that have arisen between levels of government in the wake of the 1999 decentralization reforms, where functional assignment was not clearly defined for the district/city level, and where some ministries/agencies resisted particular assignments made to the regional governments. The GoI hopes that through revisions to the decentralization framework brought about by Law 32/2004, a clearer division will result (Grand Strategy, 2005: 12).

Legal Framework

Obligatory and Discretionary Functions

The basic structure for the assignment of government functions regulated in Law 22/1999 has been superseded in most provisions by Law 32/2004. In line with Law 22/1999, Law 32/2004, the national government fully retains power over six functions that affect the nation: foreign relations, defense, internal security, judiciary, monetary and fiscal policies, and religious affairs. In contrast to Law 22/1999, Law 32/2004 removed the omnibus assignment of residual (non-national) functions to regional governments. Law 32/2004 instead provides for a "positive list" of obligatory functions in Law 32/2004, for provinces and districts/cities (art. 13 and 14), with further details to be regulated in government regulation. The law differentiates between *obligatory functions* and *discretionary functions*, although there is much inconsistency and inadequate conceptualization of both types of functions.

Table 4. Obligatory Functions Under Law 32/2004

Obligatory functions of district/city governments

Development planning and control
Planning, utilization, and supervision of zoning
Public order and peace
Providing public means and facilities
Handling of health sector
Education
Social affairs
Employment promotion
Facilitating the development of cooperatives/SMEs
Environment
Land
Demographics and civil registry
Administration affairs
Capital investment
Other obligatory affairs as instructed by laws and regulations

¹⁸ Aspects related to the fourth tier of government (village level), including functions and finance will be discussed in a separate chapter.

Law 32/2004 assigns a confusing mix of broad sectoral and specific responsibilities as the obligatory functions of district/city government (see Table 4); the provincial list is practically identical but for minor additions relating to cross-district roles.

It is puzzling that there is no significant distinction between the obligatory functions of the two levels of regional government. Moreover, the determination of what is an obligatory function and what is a discretionary function appears to be sectorally oriented, rather than based on the nature of the function itself. These fundamental problems may be in part rectified through the government regulation that will contain more details on functional assignment (although this is not good legal practice). This draft regulation (to supersede GR 25/2000) is currently in the final stage of preparation, a process lead by MOHA that involved intensive consultation with sectoral ministries and agencies (though not much consultation with other stakeholders, such as regional government associations). The process seems to be stuck at the moment over some contested functions, principally on land management issues.

The overall legal architecture of functional assignment chosen in Law 32/2004 is not fundamentally different than the initial 1999 framework. There is still no apparent mechanism to ensure that the new regulation on functional assignment will be the only reference; sectoral laws and regulations that are not consistent with this regulation may or may not be adjusted. If not adjusted, then the inter-governmental tensions seen in the past few years will continue unabated.

Discretionary functions are rightly not listed in the law. They are (poorly) described to be those “functions that exist (*yang secara nyata ada*) in a region and have the potential to increase the welfare of the people according to the conditions, specifics and outstanding potential of the region.” They have ostensibly been introduced to give regions the scope to act in accordance with their needs, preferences and financial capacities. However, the development of the concept goes badly awry in the law, and it is not clear what can be salvaged in the ensuing regulations. Discretionary functions are further explained (in the Elucidation section of Law 32/2004) to mean sectors such as mining, fisheries, agriculture, plantation crops, forestry, tourism. This patently cannot be the case, as these sectors surely contain some functions that ought to be obligatory functions of regional government. Conversely, regional government ought to have the freedom to act in other sectors (education, health etc.), going beyond the requirements embedded in obligatory functions, provided these actions are not specifically prohibited by the legal framework. This scope for discretion is not well explained in the law.

It is also worrisome that the government is also trying to list, a priori, specific discretionary functions, and may even place these within the government regulation on functional assignment. Such a list is not necessary and is ill advised.

Related to the discretionary functions tangle is another potentially confusing feature of the draft regulation; the introduction of *urusan sisa* (remaining functions). This formulation is not found in the original Law 32/2004. These remaining functions pertain to functions that are not listed in the functional assignment government regulation being prepared. It is not clear if *urusan sisa* are obligatory functions that could not be foreseen at the time of issuance, or discretionary functions that are created over time. It would seem that they should not be discretionary, as there is a requirement that approval be obtained by the regional governments from the Minister of Home Affairs prior to discharging the functions. Clarifications on these points are essential.

Donor support for the assignment of functions has been spotty and generally low; in part due to donor project capacities but largely due to the closed approach favored by MoHA in the 2004-mid 2005 period. On occasion, GTZ-ASSD (Advisory Service Support for Decentralization, formerly Support for Decentralization Measures- SfDM) commented on some drafts, but the interaction was limited. When GTZ-ASSD urged clarity or justification for some key conceptual elements (e.g. definition of discretionary functions) the response was essentially that the GoI had made up its mind about this matter—not an invitation to dialogue typically expected of cooperation projects.

Minimum Service Standards for Basic Service Provision

The national government has also been concerned with maintaining common levels in access and quality of basic services across regions through minimum service standards (MSS). These had their initial foundation in the 1999 framework, but were given more emphasis in Law 32/2004. The initial efforts of the sectoral ministries/agencies in 2000-2005 have generated lists of MSS that vary widely in form and intent. Their feasibility and affordability have been untested. Regional government has not been able to use this guidance to any significant extent. Recognizing the magnitude of the challenge, the government undertook model-building exercises and piloting in the 2003-2005 periods, with support from a number of donors¹⁹, and has incorporated lessons learned in Government Regulation 65/2005 on MSS, giving greater clarity to how MSS should be prepared and introduced. This regulation is reasonably robust, but the challenge is in getting the specifics right and these will follow in ministerial regulations.

With support from the GTZ-ASSD and CIDA-Governance Reform Support II project (GRS II), MoHA is now developing the regulatory instruments mentioned in GR 65/2006 to ensure the smooth introduction of MSS in sectoral ministerial regulations. The focus of this assistance at the moment is on the preparation of a MoHA regulation that will assist the ministries/agencies and regional governments in preparing the proposals for candidate MSS. Additionally, and with urgency, assistance is being provided in the preparation of a Minister of Home Affairs decree that will establish a Consultation Team (Tim Konsultasi), and inter-ministerial team comprising MoHA, Bappenas, Ministry of Finance (MoF) and Ministry for Administrative Reforms (MenPAN). Tim Konsultasi will need to ensure that the ministries/agencies will have the necessary tools and support to prepare sound candidate lists of MSS. Tim Konsultasi will assess the proposals prior to their submission to DPOD through the Minister of Home Affairs (via the Director General for Regional Autonomy).

Assistance Tasks

Functions held at a particular level of government can be delegated to lower levels as “assistance tasks” (*tugas pembantuan*). This mechanism is poorly developed, beginning with misperceptions embedded in the amended Constitution: “regions regulate and execute government affairs according to principles of autonomy and tugas pembantuan”. This provision (followed through in Law 32/2004) is inconsistent with the basic principle that regions should not be able to regulate central government affairs. They should certainly be able to implement these, within set parameters, when tasked to do so. It is also not clear in

¹⁹ Notably GTZ, USAID, World Bank, ADB.

Law 32/2004 whether obligatory functions of regions can be delegated as *tugas pembantuan* to lower levels.

Implementation

Both, the design of and transition to new functional assignments require intensive inter-departmental coordination and adjustments. The incentives shaping bureaucratic behavior often run counter to such concerted actions. These dynamics have resulted in overlapping, unclear or even conflicting regulations and policies. Sectoral departments have been particularly reluctant to relinquish control. In the early phase some central agencies, for example the Investment Approval Board, have effectively lobbied for regulation exempting their authorities from decentralization.

There has not been effective cross-agency coordination in the development of the 1999 framework, or its revision in 2004. Consequently, functional assignment itself has suffered, and may continue to suffer, from an incoherent legal framework. Functional assignment is also not properly supported with consistent financing mechanisms. Some departments have convinced the government and legislature that they should be allowed to continue spending significant funds through deconcentrated development funds (DIPs) in the regions to finance functions that are ostensibly in the hands of regional governments. The education department, for instance, has preferred to establish guidance and funding links directly to the school level rather than work through regional governments. Consequently, in 2003 central development spending in the education sector accounted for roughly 70 percent of the total, even though substantial education functions are in the hands of district/city governments. This channel of funding undermines local planning and budgeting (see Section IV.2).

Incoherent policy development is also evident in the case of minimum service standards. It is still largely unclear how meeting these standards will affect spending levels at the regional level and how financing requirements will be matched. Given these unresolved issues, the MSS produced by ministries so far have not been very meaningful, because of their varied construction, and their disconnection from funding and enforcement mechanisms. As well, policies and legal products are being prepared independently by different ministries/agencies in relation to service delivery (e.g. MoHA and MenPAN), leading to wasteful efforts and possibly confusion down the road when regional governments must sort out what has to be done.

Policy Options and Recommended Action

Policy Options

A better functioning institutional mechanism/forum to promote cross agency coordination in the development of the decentralized governance framework is needed. A revitalized Council for the Deliberation of Regional Autonomy (DPOD) would be a significant step forward. If the DPOD cannot fulfill its mandate (perhaps because of perceptions of MoHA dominance) then cross-agency coordination may need to be placed at a higher (and more neutral) level, perhaps in the president's office. In any case, wherever coordination is located formally, a more operational mechanism is required. Cross agency coordination will be crucial to the introduction of minimum service standards in the sectors; to be sure they are affordable in particular. The establishment of an effective donor coordination mechanism (the

current Permanent Secretariat of the Joint Working Group on Decentralization) is also expected to help in gaining coherency between related reforms, and add to the quality of the reforms.

The GoI should not rush to produce follow-up regulations (these should have been concluded by August 2006 according to Law 32/2004), simply for the sake of not overly exceeding the deadline. Good coordination in terms of consulting with stakeholders and sources of expertise takes time, but includes a payoff, in terms of quality and legitimacy. Ideally, many of the draft regulations should have been prepared in tandem with the main draft law. Should a revision of Law 32/2004 be contemplated in the near future, this approach must be seriously considered.

Clarify functional assignment in a provisional way through the government regulation to replace GR 25/2000, and prepare for a more fundamental review and strengthening of the legal framework for decentralization. It is important to try to make clear the distinctions between obligatory and discretionary functions. In the longer term, a revision of Law 32/2004 is needed to make more fundamental fixes, ideally under the umbrella of a constitutional amendment that sets out clearly the principles and key provisions for regional autonomy.

Introduce MSS in a careful, feasible and affordable way. In order to introduce MSS effectively it is essential for all levels of government and related stakeholders to have a common view of what these are all about, and how they will be applied. To date, the effort needed to develop the concept, the legal framework, and awareness has been grossly underestimated. Donors have also been inconstant in their support. As MSS are now in the introductory phase, an enormous effort will be needed to keep the introduction on track, to obtain the benefits it promises and avoid the dangers it could also bring if not properly executed. If the GoI appears unable or unwilling to execute as intended in GR 65/2005, supporting donors should suggest to the GoI to drop the plan to make MSS fundable and enforceable, using them instead as initial benchmarks, at least until such time as there is capacity and willingness to upgrade them to obligatory status (with the funding and enforcement requisites).

Recommended Action

Short to mid term (2006-2008)—Enshrine functional assignment in sectoral legal instruments and apply MSS consistently:

1. The President should issue a presidential regulation directing the ministers/head of agencies to prepare laws and regulation (or changes in these) within a set time with the purpose of alignment of sectoral legal instruments with the soon to be issued government regulation on the assignment of functions.
2. The GoI should ensure that the MSS Consultation Team (*Tim Konsultasi SPM*) is struck with well chosen officials who have standing to represent MoF, Bappenas and MenPAN, and is given the resources to do its difficult job.
3. All donor supported projects active in relevant sectoral ministries should do their utmost to provide support to counterparts to ensure that MSS are properly formulated, costed, tracked, and feasible in terms of regional government capacities. If the GoI seems unwilling to attain consistency across policy fields crucial to MSS, then donors should urge the GoI to downgrade the MSS to guiding benchmark status.

Longer term perspective—Build up to a revision of legal framework that will be stronger and more stable;

4. GoI, in a process that invites a proper role for stakeholders, should initiate a fundamental review of the policy/legal foundations for regional autonomy, to eventually place agreed principles and provisions in a constitutional amendment that can guide future legislative improvements.
5. Legislative fixes related to functional assignment in the future should focus on the following:
 - a. Clarifying the distinction between obligatory functions and discretionary functions;
 - b. Clarifying the new concept of “remaining functions” (*urusan sisa*) in relation to obligatory and discretionary functions (if this is to be used)
 - c. Ensuring that discretionary functions are identified and introduced solely by regional government (excluding any positive lists of discretionary functions in the government regulation)
 - d. Introducing some rules of the game to handle concurrency in discretionary functions between provincial and district/city levels.

Role of the Governor and Province²⁰

State/Government Reform Objective

In 2002, the Minister of Home Affairs responded to calls from governors²¹ to remedy the districts’ intransigence with respect to the supervisory and coordinating role of the Governor/province. On that occasion, the Minister stated that governors:

“...in their capacity as representatives of the central government...should have more authority to facilitate the implementation of autonomy and to supervise the central government’s policy in the five sectors excluded by the autonomy law.”²²

Subsequently, the possibility of enhancing the Governor’s role has been provided, in principle, in Law 32/2004 on regional government, with the justification that making use of Governors would “shorten the span of control” particularly in the “guidance and supervision” (*Pembinaan dan pengawasan*) of district/city governments (Elucidation to Law 32/2004). Notably, the role of the province, as an autonomous regional government, remains ambiguous.

²⁰ The author has benefited greatly from discussions with the technical advisors of GTZ-ASSD in the preparation of this section of the study, as well as from use of preliminary analysis/notes prepared by the project.

²¹ See for example the Governor’s plea to the President, Megawati Soekarnoputri, to revise Law 22/1999 (Unidjaja, 2002).

²² This statement was made in the context of central government alarm over the proliferation of regional laws and taxes that were perceived to be hindering investment (Kearney, 2002).

Legal Framework

Background to Changes Brought About by Law 32/2004

Soon after the implementation of Law 22/1999 was fully underway, the central government concluded that district governments were proving difficult to control. In particular, many regions disregarded the provincial government and Governor, emboldened by the notion that the law had abolished any hierarchy between the provincial government/Governor and the district/city government. The point lost on district/city government was the continued role in the 1999 framework of the Governor as a representative of the central government (in addition to his role as the head of the provincial government). Hence districts should still have heeded Governors, when the latter were acting in the capacity of representatives of the central government.

Beginning in 2001, the central government took steps toward “restoring” the role of Governors. A brief and cryptic Minister of Home Affairs and Regional Autonomy Decree (17/2001) delegated “functional supervision” (with unclear scope) to the Governor. Shortly after that, MoHA announced the delegation of a number of specific powers to Governors (see Appendix 8). However, it is not clear if the list of delegated tasks made public was ever properly enshrined in regulation, or to what extent it was realized in practice.

With the revision of Law 22/1999, there was widespread expectation that the role of the governor and province would be recalibrated and made clear. However, the role of province as autonomous region is difficult to grasp in Law 32/2004. It is significant that the notion of limited autonomy (*otonomi terbatas*) of provinces found in Law 22/1999 was not carried over to Law 32/2004. As well, the explicit mention of the non existence of hierarchy between the provincial and district/city governments was also dropped. Beyond these signals, the relationship of the provincial government must be assessed from the specific list of functions it will be given in the upcoming government regulation on the assignment of functions. This may indicate some enhancement of its role compared to Law 22/1999 and perhaps even a more explicit measure of hierarchy. However, if the past is any guide, it is much more likely that the role of the province will continue to be unclear, reflecting the variety of understanding of multi-level government and contradictory political currents. If this is the case, some confusion and difficulties will be in store for regional actors²³.

The Governor’s Role/Tasks in Terms of Deconcentration

Deconcentration in Indonesia has typically followed two courses:

1. Dispersal of central level ministry/agency offices in national space (often matching provincial and district/city jurisdictions)
2. Delegation of tasks from central government ministries/agencies to the Governor and Bupati/Mayor (in addition to their role as regional government heads)

The dual role was always a challenging distinction to discern and maintain, as it is in other countries adopting this system. What has made it all the more difficult for Indonesia,

²³ Some donors have been expecting a stronger role for the provinces, but tend to misinterpret the nature of the changes made or anticipated. For instance, the policy reform list of the NAPDF, wrapped in a donor loan (ADB, 2005), states that the “provinces are given greater responsibility in two areas: policy and implementation coordination, and evaluation of local government performance.” This has not actually occurred, yet.

following the introduction of decentralization reforms, is the removal of most of the vertical (deconcentrated) offices of ministries/agencies, and the restriction of Bupati/Mayors to regional head status. With these changes, central government has had to make greater use of the Governor (and by implication the provincial administration) to discharge some of its (central government) functions in an effective manner. This shift was not entirely anticipated in the 1999 reforms. They were more fully appreciated in the 2004 reforms, where the intent was to restore/enhance the role of the Governor (if not the provincial government) through deconcentrated tasks²⁴.

The deconcentrated tasks of the Governor are more elaborate in Law 32/2004 (Art. 38) than in Law 22/1999, but still lack clarity:

- Supervision and guidance of district/city governments
- Coordination of the implementation of central government functions in the province and in the district/city²⁵
- Coordination of supervision and guidance of the implementation of assistance tasks (*tugas pembantuan*) in the province and in the district/city²⁶

Details on these tasks are to be regulated in a government regulation that is currently being drafted. It is unfortunate that Article 38 in Law 32/2004 fails to mention “other tasks that are delegated to the Governor by the Government”. This would be needed to retain consistency with the provisions of Article 10(4) where the Government can delegate (deconcentrate) part of its exclusive functions to the Governor, and with Article 10(5) where the delegation of part of its other functions (beyond the exclusive list of six) is permitted.

**Box 1: Regional Inspectorates;
who’s organizations**

One example of the organizational challenge faced is seen in GR 79/2005 on Supervision, where the supervision of regional government is to be carried out by the “internal supervisory apparatus” of the central government, which in the regions would be the “*inspektorat Propinsi*” and “*Inspektorat Kabupaten/Kota*” (Article 24). This statement would be aligned with the task of supervision being given to the Governor, as a deconcentrated task; these inspectorates would then be deconcentrated units under his command as the central government representative. However, the draft regulation on organizational structures characterize the audit bodies (the above inspectorates) at regional level as part of the regional government. It must be added

²⁴ As a side note, the entire issue of deconcentration has been badly handled in the 2004 framework revision. For instance, Law 32/2004 on regional government and Law 33/2004 on the fiscal balance between central government and regional government differ in their definition of deconcentration.

²⁵ Mentioning the district/city in this context is redundant.

²⁶ It is not clear why the Governor would only coordinate supervision and guidance in the case of *tugas pembantuan*, while he/she is generally responsible for supervision and guidance of districts/cities, as indicated in task a.

The functional architecture indicated in this section presents an organizational challenge for central government. It gives the Governor a weighty role, but does not make clear the organizational means at the disposal of the Governor to discharge those functions. Given that there is no evident creation in the framework of a “deconcentrated” unit under the Governor for discharging his central government tasks, it has to be assumed that the “autonomous” provincial units (Regional Secretary, Dinas etc.) will be the Governor’s executing units in this respect²⁷. This architecture is sure to confuse district/city governments, who may find it hard to discern which cap the provincial officials are wearing on a given day or task. It also complicates the financial accounting and accountability reporting of the provincial government.

that squaring these provisions would be all the more difficult in the case of the Bupati/Walikota as s/he does not have any deconcentrated tasks, and so could not be in charge of a deconcentrated institution of the central government.

Further complicating the picture is the overlap between the deconcentrated tasks of the Governor and the role of the Governor in his capacity as regional head. Specifically, the regional head is provided with a deputy regional head, who is to help him discharge the following tasks, ostensibly relating to the role of the Governor as regional head, namely (Article 26 (1)):

- a. Coordination of vertical agencies in the region. Follow-up reports or findings from supervision undertaken by the supervisory units.
- b. Monitor and evaluate the implementation of district/city government.

The above tasks seem to be very similar to those given to the Governor as deconcentrated tasks. A glance at the list of 19 tasks that were to be delegated to the Governor in 2002 (Appendix 8) shows again an overlap with the decentralized role of the regional government head/regional government. If this list is to become the basis for the follow-up government regulation on the role of the Governor, then the overlapping roles will persist.

Additionally, in other parts of Law 32/2004, it is unclear if the Governor is acting as the regional head or as representative of the central government. For instance, in Article 128(1) the Governor has the task of controlling (*pengendalian*) the establishment of organizational structures of the district/city. Law 32/2004 does not have a fixed terminology for the Governor/regional head in his capacity as central government representative.

The development of Law 32/2004 on the role of the governor, province, and related supervision provisions did not benefit from a wide airing, or from deep discussions of international practice. Unfortunately, the academic institutions in Indonesia have not been very active in these issues, and are seemingly not connected with international practices that might provide some inspiration. In recent times, only GTZ-ASSD has provided some assistance to MoHA in internal deliberations on deconcentration and the role of the Governor,

²⁷ This is in contrast to Law 22/1999 (article 63), where the provincial Dinas were identified as the organizations discharging deconcentrated tasks. In Law 32/2004, it does not actually seem possible for Dinas to take on deconcentrated tasks in view of Article 124 (1), which states that “Dinas daerah merupakan unsur pelaksana otonomi daerah” (Dinas are the implementing bodies for regional autonomy), which if narrowly interpreted would mean that Dinas cannot implement deconcentration functions.

and some modest assistance may be given to the drafting of the actual regulation on the role of the Governor.

Policy Options and Recommended Action

Policy Options

The concept of hierarchy between sub-national levels of government is complex; some measure of hierarchy is more common than some Indonesian policy makers may expect, and likely inevitable, even between “autonomous levels.” States choose to use any of the modes of decentralization in charging regional/local governments/officials with tasks that are done on its behalf (and have a strong national character); as deconcentrated tasks, agency (assistance/*tugas pembantuan*) tasks or even as devolved functions/tasks. There are advantages and risks in these choices that refer to specific country contexts. For instance, some countries may allow sub national governments to have a measure of hierarchy between levels, but can count on well developed courts to adjudicate intergovernmental disputes (Keuleers, 2002), thereby limiting potential abuse of power by the higher level.

In moving forward, a great deal of clarification work will be needed, as stressed in initial communications of GTZ-ASSD with government counterparts dealing with these matters. Specifically, the following avenues should be considered:

Clarification is required on some principles for the role of a meso (large region) level of government in the Indonesian multi-level unitary government system. There are a number of views and misunderstandings in policy-makers regarding what is appropriate, common internationally, or desirable for Indonesia. The brief encounter with an imposed form of federalism in the independence struggle, and a history of threats to central government that have come principally from large regions (e.g. provinces), have made the central government skittish about giving the provinces, as autonomous regions, much power;²⁸ hence the focus on the Governor’s role on behalf of the central government. However, in practice the latter modality has not been well used, particularly in the period between Law 22/1999 and Law 32/2004. Other countries, in Southeast Asia as well (The Philippines), have meso level politically representative governments that undertake some measure of coordination and supervision over lower level governments. There is a strong case for providing Indonesian provinces with greater supervision and coordination functions (see for instance ADB, 2004). Provinces are already undertaking a modest degree of allocation between districts/cities. Some of these roles might also be undertaken by the Governor, but then his implementing resources/structures must be well delineated, and distinguished from those related to autonomous functions of the province. Indonesia needs to better delineate, within the frame of current national stability and political frameworks (e.g. the direct election of Governors), the role of the province as an autonomous region, and what is expected of the Governor as a representative of the central government.

Corresponding building blocks of financial flows and organizational structures need to be established, in line with the principles set out in the respective roles of the provincial government and the Governor as the representative of the central government. For the time being, the draft GR on organizational structures should clearly state (as it now does) that the provincial government units (*perangkat daerah*) are the means for implementing

²⁸ For a discussion of federalism in the Indonesian decentralization discourse see Ferrazzi, 2000.

deconcentration tasks, thereby legitimizing what inevitably must happen in view of the problematic framework architecture that is already in place via Law 32/2004 and GR 79/2005 on supervision.

A reconstructed division of roles between levels of government is needed, clarifying the modes of decentralization, and making clear the scope for central government action on its own functions (through deconcentration) will be needed in the longer term. This reconstruction should rid the legal framework of the glaring inconsistencies it now holds (e.g. between Law 32/2004 and Law 33/2004 on the scope of deconcentration).

More intensive support is needed from donors on the challenging regulations that remain to be drafted, particularly those relating to the role of the Governor and organizational structures (as indicated in the MoHA Demand-Supply Matrix circulated among donors— see the donor section of this report). In the longer term, international comparisons on the division of roles within a multi-level unitary government would be a useful input, in reconstructing the framework to make it reflect current conditions and make it clearer and more operational.

Recommended Action

Immediate action (mid 2006):

1. Redouble efforts to produce a GR on the Governor's role that ensures an enhanced role for the provincial government (through the Governor, and in practice the provincial administration) that is consistent with the territorial structure of Indonesia and principles of subsidiarity.
2. Ensure that the GR on organizational structures is pragmatic about the role of provincial administration in regard to deconcentrated tasks.

Long term action—Further revision of legal framework:

With donor support, the GoI should undertake an in-depth comparative study of international practice in the role of meso level governments in multi-level governments (in unitary states), encompassing all modes of decentralization (including deconcentration). This study should bridge international practice to Indonesian historical developments and current challenges and opportunities. The findings and deliberations could feed into an eventual adjustment of the architecture of regional autonomy

Intergovernmental Fiscal Relations: Own Regional Revenue

State/Government Reform Objective

The Minister of Finance has stated her belief that regional own revenues (PAD) “will be the main source of regional revenues in the future, to be derived from regional taxes, regional levies, net profits from regional assets and other legitimate sources.”²⁹ She also made reference to the accountability that local taxes and charges can bring to regional government.

²⁹ Speech of the Minister of Finance (2005: 3).

Even so, the GoI does not have a clear policy for what proportion of the regional budget PAD should account for, and by what time.

Regulatory Framework

The current regulatory framework primarily devolves expenditure responsibilities, and has lagged in terms of devolving tax assignments. Regional taxation is regulated by Law 34/2000 on regional taxes. There are four provincial taxes and seven district/city taxes (see Table 5). The tax bases are determined by the national government and there are rate caps for each of these taxes, within which regional governments can set their rates.

Table 5. Regional Taxes

Type of Tax	Level	Tax base	Cap
Motor Vehicle Tax	Provincial	Based on Vehicle Value (annual)	5%
Motor Vehicle Transfer Tax	Provincial	Based on Vehicle Re-Sale Price (annual)	10%
Fuel Excise Tax	Provincial	Based on Fuel Consumption (Retail Price excl. VAT)	5%
Water Excise Tax	Provincial	Based on Water Consumption	20%
Hotel Tax	District/city	Based on Turn Over	10%
Restaurant Tax	District/city	Based on Turn Over	10%
Entertainment Tax	District/city	Based on Turn Over (Admission Price)	35%
Advertisement Tax	District/city	Based on Advertisement Rent	25%
Street Lighting	District/city	Based on Electricity Consumption (Retail price excl. VAT)	10%
Mining of C-Class Minerals	District/city	Based on Market Value of extracted Minerals	20%
Parking Tax	District/city	Based on Parking Fees	20%

Source: Law 34/2000; World Bank, 2003; PWC, 2005.

In addition, Article 2 of Law 34/2000 states that regional governments have the right to impose new taxes as long as these taxes comply with eight general “good tax” principles:

- They are taxes, not levies.
- Tax base is located in the region and immobile.
- Taxes do not conflict with public interest.
- Tax base is not taxed by provincial and national taxation.
- Adequate revenue potential.
- Taxes do not exert economic distortions.
- Equity concerns are taken into account.
- Environmental sustainability is taken in account.

Law 33/2004 (Article 7) reinforces the principles mentioned in Law 30/2000 and prohibits regional governments from establishing own-revenue sources that impose high costs on the economy or restrict the mobility of people and goods and services across (internal) borders or constrain (international) imports and exports. This provision was introduced in reaction to imposition of taxes on inter-jurisdictional trade by some regional governments (Ray, 2003).

Implementation

The tax bases that are assigned particularly to regional governments have only very limited revenue capacity. In effect, own source revenues account for less than 10 percent of total regional government revenues. The rest are financed through the various transfers, primarily the general allocation grant (DAU). The right to impose new taxes and user charges has resulted in mushrooming regional taxes.³⁰ In the absence of significant taxing power, regional governments resort to inefficient taxes and charges with small revenue potential and high administrative costs in order to raise additional revenues. These taxes tend to contribute to economic distortions (Ray, 2003). This problem is further aggravated by the weak supervision function that resides with an inter-ministerial review team of MoHA and MoF. Lewis (2003) reports that 916 bylaws on regional taxes were enacted in FY 2000/2002. Of these, 406 were reviewed by the national government and 113 were rejected on the basis of the outlined criteria.³¹ According to KPPOD, from 2000 to mid-2005, there were 6,456 *perdas* on local taxes and levies proposed by local governments. Of these, 448 have been cancelled by the central government. This action of the national government was late in coming, and there is little faith that supervision will be conducted in a rigorous and timely manner in the future.

To sidestep these difficulties, the government is currently preparing a revision of Law 34/2000, which apparently includes a positive list of regional taxes and user charges, in order to reduce the administrative burden of the review process and prevent inefficient taxation practices. This approach is not favored by technical assistance donors, given that a positive list for user charges would be too complicated, rigid, and likely unworkable³². There is no support from donors being provided to pursue this effort.

Policy Options and Recommended Action

Policy Options

The GoI reform orientation may be toward increased regional own revenues, but there is apparently little appreciation in government for the underlying logic of this reform, and therefore little sense of urgency to realize it. It is widely held in international literature that local taxes have served to improve service delivery, by creating incentives for more accountability. The willingness to approve taxes (via elected representatives) is an indicator of demand for services. Conversely, an unwillingness to raise taxes in a local government

³⁰ The procedural rules require regional governments to submit bylaws that establish new charges or taxes with 15 days for review. The national government approval or dismissal is supposed to be given within one month. (Lewis 2003).

³¹ The information draws on two datasets, one by the finance ministry, and one by an independent autonomy watch organization KPPOD. (Lewis 2003).

³² Personal communication with Blane Lewis in the context of the revision of the Stock Taking study draft report, June 16, 2006.

suggests that there is a preference to maintain services as they are, or to improve them within existing allocations.

For regional accountability to emerge, broadening regional tax bases and reducing the dependence of regional governments on transfers are among the most critical issues in the reform of inter-governmental fiscal relations in Indonesia. There are two specific reform proposals currently under discussion:

Assign land and property tax to regional government: Property tax is an obvious candidate for tax decentralization, since most of its revenue already accrues to regional governments under current sharing arrangements (Kelly, 2004; Lewis, 2002). Moreover, taxes on land and property are particularly well suited as regional taxes because they are by their nature immobile and represent important sources of finance for regional governments in many tax systems around the world.

Give regional governments the option of levying a supplementary rate on personal income. This rate (e.g., up to five percentage points) of the national tax base for personal incomes would be collected by the central government (see Shah and Qureshi, 1994; Krelove, 2000).

Recommended Action

In the medium term the above policy options are unlikely to be put into practice as the anticipated revisions to Law 34/2000 do not devolve significant tax authorities to the regional level. It is also unlikely that a new law will be prepared soon. Donor support for these efforts is not warranted until the GoI indicates greater interest to realize its reform objective. Donor support might be offered in terms of preparatory analytical work that can broaden the understanding of the importance of reform in this area and be the basis for any eventual policy development initiative.

Intergovernmental Fiscal Relations: General Allocation Grant

State/Government Reform Objective

The General Allocation Fund (DAU) is the primary source of regional government revenues. The DAU is used for both vertical equalization to ensure government expenditure functions and revenues are matched and horizontal equalization to smoothen fiscal capacity inequity across regional governments. The GoI recognizes that design of transfers is of critical importance for the success of decentralization, and it wishes to strengthen its correcting mechanisms, and the data for its calculation (Minister of Finance, 2005: 9). It also wishes to ensure that government transfers to the regions are consistent with the principle of “money follows function” (see Elucidation, Law 32/2004).

Legal Framework

The DAU is an unearmarked grant that is allocated according to a formula based approach. Law 33/2004 has slightly revised the design of the DAU; now a minimum share of at least 26% of the total net domestic income (total income minus shared revenues) are allocated to regional expenditures (starting in FY 2008). Law 33/2004 replaced the fixed proportion of

DAU between provincial and district/city regions. The distribution between provinces and district/city government will be stipulated in a government regulation. The provincial share is expected to correspond to its expanded responsibilities for this level of government (in accordance with principles of functional assignment found in law 32/2004), though there may be a time lag while the implications of the new regulation for financial transfers are fully understood and incorporated in the relevant mechanisms.

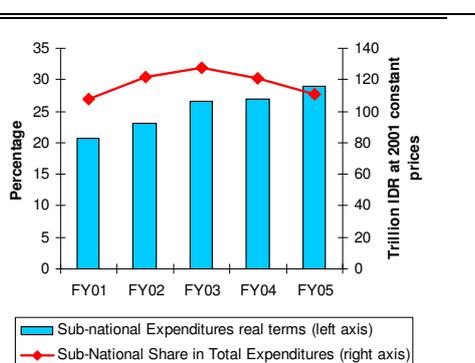
The DAU (for either level of regional government) is composed of a basic allocation and a fiscal gap allocation. The basic allocation directly compensates personnel expenditures of regional governments (the basic allocation equals regional wage bills). The fiscal gap component is estimated as the difference between fiscal needs and fiscal capacity. The proxy variables used for the calculation of fiscal needs are proportional population size, area, construction price index, GRDP per capita, and inverse of Human Development Index (the latter can be seen as reflecting the poverty index, a measure that was included in the previous formula).

The variables of fiscal capacity are actual own source revenue and shared taxes and natural resources revenues. Regions with a fiscal gap equaling zero, will only receive the basic allocation (wage component); regions with a fiscal gap less than zero, will only receive the wage component subtracted by fiscal gap value; regions with a negative fiscal gap that is more than or equal to the basic allocation will receive no DAU. These arrangements would only come into being once the hold harmless formula is phased out, starting in FY 2008. It is planned to fix the hold harmless levels at 2006 allocations which will ease the transition in 2008.

Implementation

Figure 2. Regional Expenditures FY 2001-2005

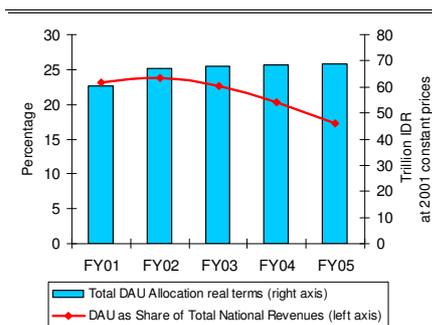
As can be seen in Figure 2, regional spending has increased steadily in absolute terms from 82 Trillion IDR in FY 2001 to 117 Trillion IDR in FY 2005 (at 2001 constant prices). Despite this upward trend, the relative share of regional expenditures in total expenditures remained relatively steady. After peaking at 32 percent in FY 2003 it has declined back to 25 percent in FY 2005.



Source: MOF, Own Estimation.

The DAU is the primary source of Regional Government budgets. On average DAU shares have accounted for roughly 80% of local revenue for district/city level and 30% at the provincial level. This high dependency of regional budgets on transfers is a direct reflection of the limited regional tax bases that constrain own source revenues potentials.

Figure 3. DAU FY 2001-2005



Source: Ministry of Finance, Own Estimation.

Figure 3 shows that the DAU has increased in absolute terms from roughly 60 Trillion IDR in FY 2001 to 69 Trillion IDR in FY 2005 (at 2001 constant prices). At the same time, the share of the DAU in total national revenues decreased from 22 percent in FY 2001 to 17 percent in FY 2005 indicating that the DAU grew at a slower pace than the total domestic revenues. This does not imply that aggregate regional revenues have fallen but suggests a shift away from DAU to other revenue sources, mainly to shared revenues and taxes and to a lesser extent to the Special Allocation Grant (DAK). Nevertheless the DAU grant is still one of the largest items in the national budget.

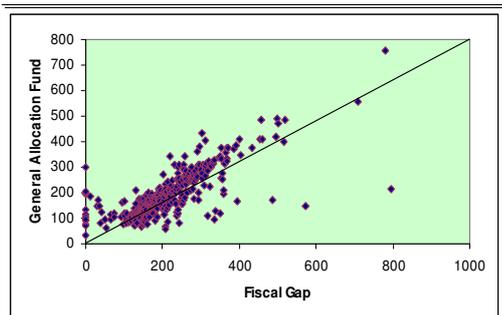
It should be noted that in 2006 the DAU actually increased by 60%, as a result of more realistic budgeting (the DAU is based on the budget, whereas revenue sharing is based on realized figures).

When analyzing the DAU both equalization performance as well as incentive effects have to be taken into consideration.

In terms of vertical balance, bulging reserves that regions have accumulated in recent years suggest that at least at the aggregate level sub national government revenues have exceeded their expenditure obligations. Lewis and Chakeri (2004) report that by the end of FY 2002 aggregate reserves of local government amounted to roughly 14% of total expenditures. By the end of the 2005 reserves equal of staggering 35% of total expenditures. Current regulation does not spell out specifics regarding the accumulation and use of the stock of reserves. Local governments have been reluctant to spend reserves, partly because the interest income earned on reserves increases own source revenues. Given the overall restrictive fiscal conditions, massive reserves are a forgone fiscal stimulus. This year's 60% increase in DAU potentially aggravates the problem.

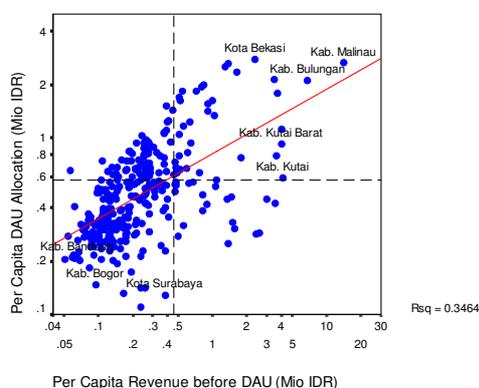
The DAU allocation depends on the fiscal gap of each region, the larger the gap of one region, the more DAU this region will receive. Figure 4 shows the relationship between the DAU allocation and the fiscal gap. From the graph, the fiscal gap of most regions falls between 50 and 400 billion IDR in FY 2005. While in the aggregate DAU allocations responds to the fiscal gaps in the regions, where districts with higher fiscal gaps receive more DAU, equalization is undermined by the hold harmless provision and the wage cost (base allocation) component of the DAU.

Figure 4. The Relationship between DAU and Fiscal Gap (billion IDR) FY 2005



Source: MOF. Own estimation.

Figure 5 : DAU and Fiscal Capacity (FY2003)



Source: SIKD Ministry of Finance. Own Estimation.

As shown by Figure 5, under the current system richer regions with more resources from revenue sources other than the DAU receive higher DAU, a situation that runs counter to the equalization goal of the DAU. This allocative pattern benefits some regions where fiscal capacity exceeds fiscal needs. DKI Jakarta Province for instance, still receives significant DAU allocations, despite the fact that its fiscal capacity exceeds its fiscal needs.

Transfers should be neutral to expenditure and revenue decisions of regional governments. The DAU formula has some features that might cause distortions in revenue and

expenditure decisions. On the revenue side, the formula used to employ the potential own revenues (based on average tax effort and regional GDP) is the estimation of fiscal capacity to prevent that regional governments lower their revenue effort. This has changed in FY 2006, when real PAD was used. Should this practice continue it might cause regional government to lower their revenue collection efforts, since higher PAD will lead to lower DAU allocations. Since the DAU is designed as a block grant it is also largely neutral to expenditure decisions with the exception of the wage component. The wage component of the DAU allocation that is supposed to fully compensate wage outlays of regional governments potentially creates adverse incentives for regional government to increase (or at least not decrease) public employment and shift costs to higher levels of government (see below section on Civil Service Reform). Given excess personnel across regional governments, this feature in the grant allocation will discourage necessary efforts to right-size the regional civil service. It also skews regional budgets to consumptive rather than capital expenditure which can constrain improvements in the quality of public services. The large stock of deteriorating infrastructure (roads, school buildings, medical equipment, etc.) suggests that a different mix

of wage and other outlays might be more efficient and effective in improving public service qualities.

Policy Options and Recommended Action

Policy Options

Hold the course on phasing out hold harmless condition. In order to move to a more equalizing system it is critical to follow through the intention to phase out the hold harmless provision. Law 33/2004 requires the abolishment of the hold harmless provision in FY 2008, however, political resistance by regions that stand to lose from this step already is apparent. The application of the hold harmless provision may have been necessary politically in a transition period, but it would do much harm to equalization if it was not discontinued as stated in Law 33/2004.

Develop MSS expenditure norms for inclusion in the DAU allocation. A more fundamental approach to adjusting the allocation mechanism to equalize fiscal needs and capacity across regions would be to base allocations on (regionally adjusted) costing of minimum service standards. The aggregate level of resources available for DAU allocations (26 percent of net domestic revenue) is set in a somewhat arbitrary fashion and does not necessarily reflect expenditure obligations of regional governments. While adequately estimating costs for minimum service standards for the whole range of service provided requires technical sophistication³³, this approach is the most direct application of the principle “finance follows function” and promises to better match revenues and expenditures. Making this match requires clarity on the MSS, their expenditure norms, and how they are phased into existence on a funded basis. Achieving this match (along with progress tracking and support/supervision) would go along way toward focusing regional government attention on basic service delivery. However, it cannot be a halfhearted approach; if there is no political will to execute this well, then the MSS should be downgraded to initial service benchmarks. This would however leave the GoI with the challenge of determining how regions can be coaxed into prioritizing basic services. Attention will likely turn to the DAU/DAK, to see how they could be reconfigured to place conditions on spending, inviting the danger of a return to the pre-decentralization fragmented conditional grants, with a heavy emphasis on fixing inputs/program spending levels.

Reduce adverse incentives. While the wage component is an important feature of the DAU formula with regard to vertical equalization (matching of revenues and expenditures), it potentially creates adverse incentives. To attenuate the problem GOI could revise the formula to only partly compensate wage outlays. A regressive rate based on per capita wage costs could be considered, so that regional governments face increasing marginal wage costs. This would create an incentive to right-size civil service at the regional level. It must be recognized however that this reform (a reversal of a recent “reform”) would require a change in current decentralization laws, and will therefore only be possible in the mid to long term.

Consider all revenue sources in estimating fiscal capacity. Currently, fiscal capacity of regional governments does not take into account all revenue sources of regional governments.

³³ There are donor technical advisors (principally Blane Lewis of the World Bank) who believe that while the concept is attractive, the technical difficulty of incorporate service costs in the DAU makes the approach not feasible. However whether this is indeed the case can only be known after a genuine effort has been attempted.

Shared revenues and taxes from the province to the district/city level should be included. If the DAK is made more need/demand oriented, its variability for any one district/city would not warrant trying to include it in the DAU fiscal capacity calculation. As well, on granting donor funds may be too unstable and difficult to anticipate in the DAU.

Recommended Action

1. The GoI should communicate clearly to regional government (through the associations for instance) and to the DPR its resolve to follow through on the schedule for phasing out the hold harmless provision of the DAU, reiterating the rationale for this reform.
2. In revising the DAU, the GoI should also consider incorporating previously excluded revenue sources, if feasible, in estimating fiscal capacity, to make the DAU more equalizing (the DAK and on-granting are unlikely to be suited for inclusion).
3. The Ministry of Finance, in conjunction with the inter-ministerial Consultation Team on MSS, should gear up to adequately develop expenditure norms for inclusion in the DAU. The aim should be to generate useful approximations/proxies in early years, with greater accuracy as familiarity is gained with the costing approaches needed.
4. As part of the review of the DAU, the GoI should abolish the compensation for wage outlays, to create an incentive to right-size civil service at the regional level.
5. To keep the DAU significant in size and unearmarked, the review of the legal framework for decentralization (including the constitution) should seek to:
 - a. clarify the eventual role of the DAK,
 - b. focus on desired outputs and outcomes, avoiding restrictive provisions such as the 20% floor on educational spending,
 - c. avoid earmarking shared revenues to sectors or programs,
 - d. use MSS only to set expenditure norms for the DAU (sectoralizing the DAU), avoiding prescribing regional spending levels for sectors or programs.

Intergovernmental Fiscal Relations: Special Allocation Grant

State/Government Reform Objective

DAK funds are earmarked matching grants that can be used to fund activities related to national priorities or specific needs that cannot be included in the calculation of DAU, e.g. emergency relief, or specific investments needs in remote localities. The DAK funding is to prioritize regional governments with lower than average fiscal capacity. It is noteworthy that in the Elucidation of Law 33/2004 the special needs are said to relate to “basic public services.”

Descending into more specific policies, there is a disconnection between the vision of the DAK as seen in Law 32/2004 on regional governance and that in Law 33/2004 on fiscal balance. In the former, the DAK responds to regions’ proposals, while in the latter it is largely distributed nationally through a set of criteria. More specific policies regarding the transition or permanent role of the DAK, its relationship to the DAU, and the size it should be

now or in the future have yet to be made clear. The GoI has however stated its intent to improve the criteria for distribution of the DAK and the distribution mechanism³⁴.

Legal Framework

Government Regulation 54/2005 (from Law 33/2004) translates the outlined objectives into an operational framework for the allocation of DAK grants.³⁵ Regional governments can propose the establishment of specific DAK grants to line ministries. These in turn make requests to the Ministry of Finance. The latter consults with the relevant technical Ministries, the Ministry of Home Affairs, and the National Development Planning Board (BAPPENAS). In practice, the existing DAK grants are initiated and designed by the respective sector agencies.

Although Law 33/2004 technically expanded the use of DAK to non-capital expenditures, in practice DAK funds are still primarily earmarked to finance capital expenditures, limiting administrative costs, project allowances, research, training and other costs that are typically associated with service delivery. Moreover, DAK are designed as matching grants to ensure they truly meet local demand. Regional governments need to match at least 10 percent of the total cost through own resources. They also need to prove that DAK projects cannot be financed through other revenues.

Law 32/2004 instead calls for a bottom up approach and allocations based on regional government proposals. The central government has not been able to cope with this mechanism. It did not explore how it could cope (e.g. by using the provincial level more intensively). Rather, it opted for a more expedient route, the top down mechanism proposed in Law 33/2004. In this mechanism, the allocation of the DAK grants is based on general, special and technical criteria. The first two are set uniformly for all sectors by the Ministry of Finance.

The general criteria is based on a formula that takes into account a proxy for capital funds available in a given district, total revenues and expenditure obligations (wage costs):

$$FNI_i = \frac{Rev_i - Wage_i}{\sum Rev_i - Wage_i} \times N$$

The special criteria directly refer to Papua and Aceh. In addition, coastal areas, conflict areas, less developed regions and regions that experience floods and other natural disasters receive DAK grants. The regulation remains unclear about how and to what extent these criteria are included in the allocation process. The technical criteria are set by the respective sectoral departments in consultation with Ministry of Finance and Ministry of Home Affairs and vary across sectors. In the education sector for example the number of class rooms in need of repair and the construction price index are used. In the health sector, the technical criteria

³⁴ Minister of Finance (April 2005: 10).

³⁵ These stipulations do not apply to reforestation fund which is governed by a separate government regulation (GR No. 35/2002). This regulation stipulates that 40 percent of reforestation fund is distributed to local governments based on derivation basis, while the remaining 60 percent is retained by the central government. The reforestation grant works more like revenue sharing.

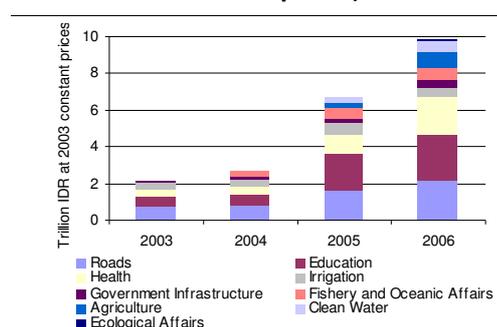
include the Human Development Index (HPI)³⁶, the number of health service facilities and the construction price index.

Implementation

The implementation of DAK grants has lagged behind other fiscal instruments during the first two years of decentralization. In FY 2001 and 2002 the use of DAK was limited to a reforestation fund. Starting in 2003, however, the central government has extended DAK grants to finance the capital expenditures in health and education facilities, infrastructure, including roads and irrigation, government property and to finance projects in the fishery sector. In FY 2006 there were nine different sectoral DAK.

As can be seen from Figure 6, DAK has seen a steep increase from IDR 2.1 Trillion (USD 300 Mio) in FY 2003 to IDR 9.7 trillion (USD 1.2 Bill.) in real terms. The sectoral composition of DAK throughout the first three years prioritized education, health and road construction, which together account for roughly 70% of total DAK. Despite these increases DAK remains a fairly limited revenue source for regional governments. In FY 2005 the total DAK pool came to less than 10% of the DAU. For most sectors, DAK grants are also much smaller than the national deconcentrated spending, at the aggregate equaling a mere 20% of national spending in the regions (Eckardt and Shah, 2006). It is difficult to make an accurate comparison however since the proportion of national spending in the regions that is channeled to regional government functions has not been rigorously determined.

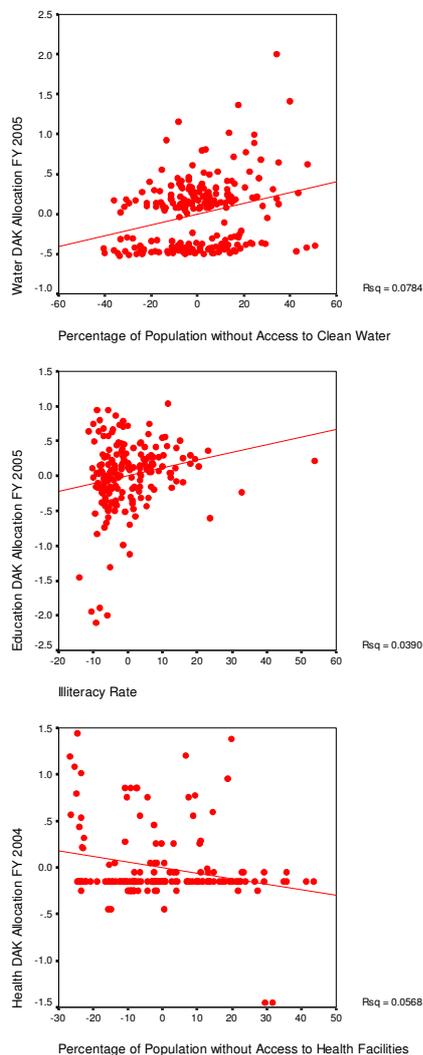
Figure 6. DAK by Sector and Year (Trillion IDR at 2003 constant prices)



Source: Ministry of Finance

³⁶ The HPI is a weighted average of the percentage of the population with life expectancy below 40 years, the percentage of the population without access to clean water, the percentage of the population without access to health facilities, and percentage of malnourished children below the age of five.

Figure 7. Partial Correlation Plots DAK and Service Need Indicators (holding FNI constant)



Source: MOF, BPS Human Development Report 2004. Estimated from non-random sample of 188 districts

With regard to the regional distribution, indicative analysis suggests that DAK grants are not yet sufficiently reaching regions with the most substantial needs. Figure 7 shows the relationships between DAK allocations in education, health and water sector and sectoral need indicators, holding the fiscal capacity, as measured by FNI constant. Due to lack of reliable data it is not possible to directly measure differentials in capital expenditure needs across regions. Instead the percentage of population without access to health and water facilities and illiteracy rates are used as proxies. In all three sectors DAK allocations respond only weakly to these need indicators. The education and water DAK at least marginally respond to district illiteracy rates and the population's access to clean water, respectively. In contrast the health DAK distribution does not seem to follow differences in access to health facilities, yielding instead a weak negative correlation.

Despite significant increases in recent years, the DAK expenditures remain relatively limited compared to both regional revenues and the sectoral development expenditures of the central governments. Wage bill pressure constrains capital financing in many regions (a problem that could be mitigated by utilizing the bulging reserve funds accumulated in recent years, particularly in 2006). The DAU, the most significant revenue source in most regions does not encourage shifts from routine to capital expenditures given its wage cost component. At the same time, largely depreciated infrastructure (for example school buildings, medical equipment, etc.) suggests that higher capital expenditure might be in need in order to provide high quality services. The DAK can play a vital role in financing investments in infrastructure in poorer regions. For this to happen, the regional targeting of the DAK would need to improve.

Allegedly, the allocation process of the DAK funds remains vulnerable to political interference, by regional governments, sectoral departments and the budgeting commission of the parliament (DPR). This perception is supported by the mentioned indicative analysis of cross-sectional distributions that shows weak correlation between DAK allocation and measures of expenditure needs.

DAK grants have been allocated on an annual basis, with regional governments lacking information about the expected size and structure of DAK allocations to their regions. This practice undermines planning and long term capital budgeting at regional levels. Given the multiyear nature of many investment projects, multiyear DAK pledges would enhance allocative efficiency in particular if applied in the medium term expenditure framework (MTEF).

Performance reporting and oversight of DAK expenditures is weak. Regions are supposed to report on the performance of DAK grants on an annual basis. According to the MOF officials, the reporting mechanism has proved ineffective in practice, as few as 10 percent of the regions report back on the DAK financed projects. Without these reporting mechanisms enforced there are risks of irresponsible and inefficient use of DAK resources.

Policy Options and Recommended Action

Policy Options

Increasing DAK funds that are regionally and functionally targeted and sensitive to expenditure needs could provide an important instrument to achieve minimum service standards (at least until the DAU properly reflects expenditure norms) and to address disparities in capital expenditure needs across Indonesia. In this regard, the upward trend in DAK is a positive development and should be continued. According to Article 108 of Law 33/2004, sectoral development funds (DIP) and *tugas pembantuan* funding that are now spent on functions that are in the hands of the regional government will be migrated to the DAK over time, as specified by government regulation. This is highly desirable, although it remains to be seen if the Ministry of Finance and its allies in this cause can muster enough support to make this clause stick; sectoral ministries and other parties stand to gain from the lack of transparency currently existing in the DIP streams (deconcentration funds).

The fragmentation of the DAK, already in evidence, may undermine efforts to achieve important service delivery goals. Fragmentation becomes more likely as the size of the DAK fund increases since all ministries connected with regional government expenditures will seek to channel DAK funds to their sector. If the funds are shifted from their previous DIP funds this claim will be made all the more forcefully. Keeping the DAK focused on the sectors most connected to the MDGs/MSS will be necessary to maximize priority development results.

At some point in the growth of the DAK it will be important to sort out its relationship to the DAU, particularly with respect to basic service provision. It may well be that the DAK becomes a useful tool to rectify the shortcomings of the DAU in terms of equalization, but as the DAU data/formulae increasingly integrates actual expenditure norms associated with basic services (MSS), the role of the DAK in funding basic service delivery would need to be adjusted.

A second caution to rising expectations that the DAK can play this (transition) role in basic service funding is the current perceived or real limitations on the range of budget items it can be used for – it is not entirely clear that the DAK could be used, as it stands, for the entire range of service delivery investment and operational needs. Some adjustment or clarification in the DAK rules would need to be made.

Regional targeting should be improved, with an increased role for the Governor and a performance orientation. Despite the application of various sets of need indicators the allocative efficiency of the DAK is relatively poor, reflecting in part a process driven by negotiations and discretion among MoF, the DPR budget commission and sectoral ministries. While the DPR should have the mandate to decide the sectoral allocations consistent with national priorities, the regional distribution should be decided at the operational level without undue political interference. Better targeting may also be attained if the DAK is delegated to the provincial level in accordance with technically and fiscally sound criteria, and from there to districts/cities that have the greatest need and meet certain governance thresholds. The allocative decisions could be made in the context of the Governor's mandated review of district/city budgets, resulting in "performance based" grants; this mechanism could be a way to fruitfully marry the top down approach of Law 33/2004 with the bottom-up approach of Law 32/2004.

Performance monitoring of DAK grant implementation should be improved. There are reporting mechanisms on the implementation of DAK funds in place, but enforcement of these requirements is weak. In order to spur reporting on financial flows and outputs and outcomes, qualification for future DAK disbursements should depend on performance reports should have been delivered on previous DAK grants. If the governor/provincial government is inserted in the role as indicated above, there is a good chance that reporting and oversight will be feasibly developed.

The government should consider multi-year pledges for long term investment projects. To date DAK grants are disbursed on a year to year basis, limiting their use to investment projects that can be completed in this timeframe. Since some investment projects might span more than one fiscal year it would be useful to have mechanisms by which DAK grants could be pledged on a multiyear basis in order to make revenue flows more predictable for regional governments. Reporting on progress, meeting expected results and governance thresholds could be made conditionalities for continuation of funding.

Recommended Action

1. The GoI should explore ways of making the DAK a transition mechanism to compensate for the equalizing limitations of the DAU, while the latter is being bolstered with actual expenditure norms related to MSS. Attention should be given to enhancing the role of the Governor/province, combining a top-down with bottom-up mechanism that rewards service delivery and governance results (performance –based grants).
2. As a modeling step toward the adaptation of the DAK to reflect regional government performance, the Personal Income Tax (PPH) portion directed to districts/cities by the province could be developed into a performance based grant, with donors providing funds to participating provinces to add to the fund, and providing technical assistance to develop the mechanism.
3. Once the assignment of functions regulation is issued, the Ministry of Finance should set out a clear time frame and mechanism for sectoral ministries to make the shift from sectoral development (DIP) and *tugas pembantuan* funds (that relate to functions of the regional government) to the sectoral DAK grants.

Intergovernmental Fiscal Relations: Shared Taxes and Revenues

State/Government Reform Objective

There are no fundamental policy statements of the GoI to guide the further development of shared taxes and revenues, except that revised framework laws foresee that shared taxes and revenues will continue, but that the DAU hold harmless provision will be dropped by 2008 (Law 33/2004, Article 107) to mitigate regional disparities that have been exacerbated by the few regions that benefit enormously from shared taxes and revenues.

Regulatory Framework

The general provisions for the sharing of tax and non tax revenues were initially regulated by Article 11-26 Law 33/2004 and subsequently by GR 55/2005 that sets out specific sharing arrangements. The sharing arrangement for personal income tax that were previously included in Article 31 Law 17/2000 on income tax, are now also directly regulated through Law 33/2004.³⁷ Special arrangements concerning revenue sharing for Aceh and Papua are included in the two special autonomy laws.³⁸

Table 6. Arrangements for Tax and Revenue Sharing according to Law 33/2004

Revenue Source	Central Government	Originating Provincial Government	Originating District/City Government	All District/City Governments in originating Province	All District/City Governments (Equal Share)
Personal Income Tax	80%	8%	12%	-	-
Property Tax	9%	16.2%	64.8%	-	10%
Property Transfer Tax	-	16%	64%	-	20%
Mining Land Rent	20%	16%	64%	-	-
Mining Royalty	20%	16%	32%	32%	-
Forestry License	20%	16%	64%	-	-
Forestry Royalty	20%	16%	32%	32%	-
Fishery Royalty	20%	-	-	-	80%
Geothermal Mining	20%	16%	32%	32%	-
Oil					-
Base rate	84.5%	3%	6%	6%	-

³⁷ The sharing of income tax was introduced through the revision of the income tax law in 2000. In contrast to the property taxes, the share of the income tax does not include an equalizing element but is re-distributed purely on a derivation principle to provinces. Provinces then decide how to distribute to districts. While the law itself is unclear about whether the sharing is based on the location of residence or work place, the current practice seems to apportion the personal income tax among jurisdictions by place of work (Brodjonegoro and Martinez-Vazquez 2002; World Bank 2003a; Hofman et al. 2004).

³⁸ Law 18/2001 on Aceh's special autonomy and Law 21/2001 on Papua's Special Autonomy. The differences concern the sharing rules for natural resources for these two regions. The special autonomy laws give 55% of Oil revenues and 40% of natural gas revenues to the provincial government of Aceh and 70% of Oil and Natural Gas revenues to the provincial government of Papua. A new Aceh governance law is currently in preparation.

Revenue Source	Central Government	Originating Provincial Government	Originating District/City Government	All District/City Governments in originating Province	All District/City Governments (Equal Share)
Conditional rate (Education)	-	0.1%	0.2%	0.2%	-
Natural Gas					
Base rate	69.5	6%	12%	12%	-
Conditional rate (Education)	-	0.1%	0.2%	0.2%	-

Source: World Bank (2003). Art 6 Law 22/1999, Art 31 Law 17/2000 (Income Tax).

Arrangements for natural resource revenue sharing had been in place for mining and forestry proceeds in pre-reform period. Decentralization increased the relative share of district/city governments. Table 6 gives an overview of current sharing arrangements. The table shows that while most of tax sharing is primarily based upon the derivation principle, fishery royalty and property related taxes also use equal shares as an added criterion. The 9% national share in the property tax is an “administrative fee” to compensate the national tax administration for collecting and administering the tax. It is noteworthy that in the apportionment of personal income taxes, place of work is used rather than the almost universally used place of residence criterion (Brodjonegoro and Martinez-Vazquez 2002; World Bank 2003a; Hofman et al., 2004).

In addition, Law 33/2004 introduced a new type of shared revenue, namely proceeds from geothermal mining. The new law also slightly increases the regional share of oil and natural gas revenues. Starting in 2009, 84.5% of oil revenues will accrue to the central budget and 15.5% to regional governments. For gas revenues, 69.5% will go to the center and 30.5% to the regions. Regional governments will receive an extra 0.5% of both oil and gas revenues which are earmarked to increase regional expenditures on primary education. Most of the revenues from these two resources are returned to the originating regional jurisdictions. In addition to the sharing arrangements for national revenues, district/city governments receive shares of the four provincial taxes, namely the motor vehicle tax (30%), vehicle transfer tax (30%), fuel excise tax (70%) and ground water extraction and use tax (70%). However, the contributions of these taxes to overall regional revenues are relatively small.

Implementation

While shared revenues from natural resources account on average for mere 9 percent of regional revenues, they are extremely important for a small number of regions. As can be seen from Figure 7 shared revenues and taxes are the major drivers of fiscal disparities in Indonesia. In FY 2003, the industrial town of Bekasi located on the fringe of Jakarta, received more than 100 times the income tax than the rural district of Lombok Timur.

As can be seen from Figure 7 in FY 2003 about 80 percent of all revenues from shared taxes and natural resources are concentrated in the top twenty percent receiving district/city governments. On a per capita basis the bottom 80% of districts receive only 30% of the total revenues, or conversely 70% of the revenue accrues the richest 20%.

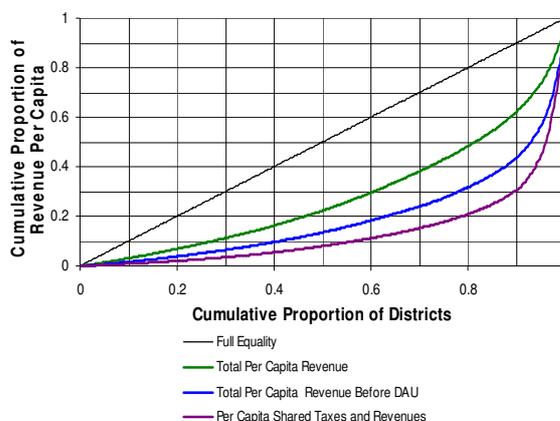
Current revenue sharing arrangements for taxes and in particular for natural resource revenues attempt to strike a delicate balance among the genuine grievances of resource rich provinces and national equity objectives. The recent revision of the regulatory framework (Law 33/2004) has reinforced the existing arrangements. Politically, the existing revenue and tax sharing arrangements help to sooth perceived injustices in the distribution of natural resource revenues. However, fiscally they greatly increase revenue disparities among regional governments.

It is not clear how the conditional transfers for education will be implemented. It will be difficult to determine whether additional resources are spent in the education sector on top of what would have been spent otherwise. So far no practical guidelines have been developed to tackle this problem.

Policy Options and Recommended Action

Substantial changes in the current sharing arrangements are unlikely in the short to medium term. Resource rich regions face incentives to oppose changes in the current system as they would stand to lose resources. This necessitates the use of other fiscal instruments, namely the DAU, to promote horizontal equalization.

Figure 7. Lorenz Curves Per Capita Revenues (FY2003)



Source: SIKD MOF. Source: SIKD Ministry of Finance. Own Estimation.

Intergovernmental Fiscal Relations: Regional Borrowing

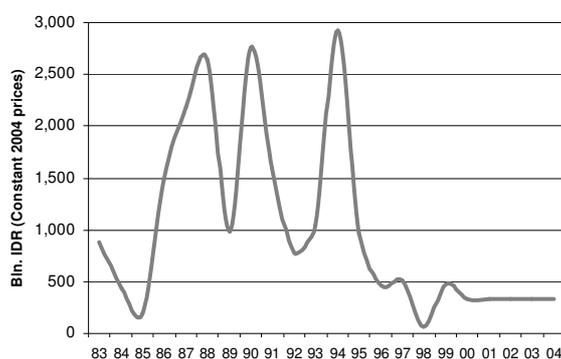
State/Government Reform Objective

Raising revenues on capital markets through loans or municipal bonds is often a more efficient way to finance capital expenditures than financing them through taxes or transfers. The regional government framework allows for borrowing in recognition of this fact. However, as the Minister of Finance has stated, there is concern that regional borrowing not become a burden on the national budget or destabilize macro-economic policy³⁹.

Legal Framework

Concerns about macro-economic instability have led the government to carefully regulate access of regional governments to capital markets. Law 33/2004 does not allow for regional borrowing from both domestic and international sources and to issue IDR denominated municipal bonds on domestic capital markets. In addition, regional governments may also guarantee third party debt. At the same time, the related government regulation on regional borrowing sets tight limits for debt-revenue and debt-service-revenue ratios, namely the total debt is limited to 75% of revenues minus necessary expenditures⁴⁰ and debt service to 40% of revenues minus obligatory expenditures (fixed costs). In effect these requirements constrain borrowing in fiscally weak regions while they enable fiscally robust regions to access external sources of finance. They thus potentially increase fiscal disparity across regional governments. Law 33/2004 does explicitly state that there is no sovereign guarantee for regional government bonds, but the law remains unclear on defaulted regional government loans.

Figure 8. Regional Government Borrowing (FY1983-2004)



Source: Lewis and Pradhan, 2005.

In addition, there are differentiated requirements depending on the maturity of debt. Short term borrowing (less than one year maturity) is limited to 1/6 of current spending and can only be used for cash flow management. Medium-long term borrowing (more than one year maturity) can only be used for capital expenditures in projects with cost recovery potential. Any long and medium term borrowing of regional governments requires approval by both the regional parliament and by

the Ministry of Finance. Regional debt and repayment are closely monitored by the national government and the latter has the right to intercept the transfer of DAU grants in the event

³⁹ Minister of Finance (2005: 6).

⁴⁰ This condition is now directly included in Law 33/2004.

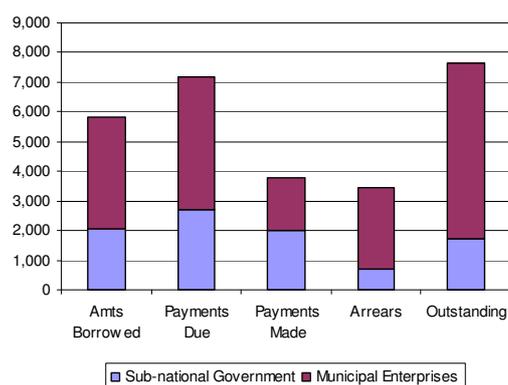
regional governments fail to serve their debt service obligations.⁴¹ Given the increased importance of regional governments in public service delivery, donors and international lenders have been keen to channel resources to regional governments. Regional governments do not have direct access to capital from international sources but can borrow from foreign sources through on-lending through the Ministry of Finance. The Ministerial Decree 35/2003 (KMK 35/2003) of the Ministry of Finance and new GR 2/2006 stipulate the modalities of on-granting and on-lending procedures⁴². Among others, regional governments must provide supporting funds and existing arrears must be repaid. GR 2/2006 simplifies approval and on-lending (on-granting) procedures, in particular with regard to the coordination between the involved institutions at the national level (MoF, BAPPENAS and MoHA).

Implementation

Regional government borrowing has been low in Indonesia. The cumulative regional debt to GDP ratio for the years 1978-2004, reported by Lewis (2005) is 0.33% of GDP, significantly lower than for example in the Mexico (4.9% of GDP), South Africa (4.0% of GDP) or Brazil (18.8% of GDP) (Lewis, 2003). As can be seen from Figure 8, borrowing has not recovered after a sharp drop during the financial crisis in 1998. In FY 2001-2003 it accounts for a mere 0.2% of total regional revenues. The market for regional government bonds remains similarly underdeveloped. The uncertain legal environment potentially undermined both demand and supply for municipal credit and bonds.

Most of the regional government debt is indirect debt of regional public enterprises, mainly water suppliers (Perusahaan Daerah Air Minum, PDAM), accounting for more than three quarters of the outstanding debt. Figure 9 also indicates that repayment performance is poor with only about half of payments due being settled. Lewis (2003) has shown that repayment problems are largely a function of regional unwillingness, rather than inability to repay debts.⁴³ This state of affairs also points to a lack of application of existing regulations and a lack of consequences for individuals and organizations (at both regional and central level) concerned with delivery or its supervision. In addition to the outlined legal complications, the limited creditworthiness hampers the expansion of credit

Figure 9. Composition of Regional Debt (FY1978-2004)



Source: Lewis and Pradhan, 2005.

⁴¹ GR 107/2000

⁴² As of June 2006 Bappenas has issued three new decrees on on-lending and on-granting; these have not been assessed in detail for their content given the timing of this study.

⁴³ Estimating a typical debt service coverage ratio 9.5% Lewis concludes that local government have borrowed well within their fiscal capacities to repay (Lewis, 2003).

access of regional governments. In effect, the low level of regional borrowing potentially constrains infrastructure development, efficient public service delivery and economic growth.

Reform Options and Recommended Action

Increase transparency and move to market based allocation of capital. GR 2/2006 gives the central government a strong role in controlling regional debt. Since uncontrolled regional borrowing can trigger macro-economic destabilization this is well justified. In order to fulfill its role the central government should support capacity building to meaningfully assess the creditworthiness of regions and choose carefully the regions that gain access to external funds. In addition, the central government can increase overall transparency in municipal credit markets. In the long run, allocation of capital should become increasingly market driven. Developing a state supported municipal credit rating system that is reflected in risk premiums could spur the growth of the market for municipal credit.

Compensate for limited borrowing capacity. While it is important to foster municipal credit markets, access to capital will be unequally distributed across regions. Fiscally weak regions will have more limited access to capital or will have to borrow at higher interest rates (risk premium). This is likely to result in differences in the quality and quantity of public services. It is thus important to implement alternative mechanism to finance capital expenditures in those regions.

Establish default regulations. In order to move to functioning municipal capital markets it is critical to establish rules for municipal default. In the absence of such regulation the sovereign guarantee for loan defaults by the national government can cause moral hazard among regional borrowers in anticipation of national bailouts. In order to encourage responsible debt management by regional governments a regulatory framework for municipal debt defaults needs to be passed.

Recommended Action

1. The central government should increase overall transparency in municipal credit markets, and introduce default regulations. It should also ensure that fiscally weak regions have equitable access to other sources of funds to avoid increasing regional disparities.

Oversight and Supervision

State/Government Reform Objective

The Council for the Deliberation of Regional Autonomy (DPOD), an inter-ministerial body with minister level membership, is given the primary role in the central government for regional government oversight. It receives information through the Minister of Home Affairs on the progress of the regions in implementing regional autonomy, and provides considerations and suggestions to the President regarding its assessment of this progress (Government Regulation 28/2005, Article 3). This assessment is important since it could determine whether regions continue to exist in their current administrative boundaries; dissolution and mergers are possible for non-performing regions. The DPOD has been

reconfigured somewhat in Law 32/2004, dropping regional associations. Experts and selected regional government representatives are still members. The intent is to make it a more effective government forum for inter-ministerial policy coordination.

One of the driving reasons for the revision of the decentralization framework was the perception that regions were not sufficiently well-guided and supervised on an ongoing basis. The government intends to tighten the supervision system in particular, and aims to do so in part through the enhanced role of the Governor. It also wishes to see better coordination between the organizations involved in supervision (Grand Strategy, 2005: 29, 30).

Regulatory Framework

With Presidential Regulation 28/2005, the DPOD has been given the writ to give considerations and recommendations to the President on policies of territorial reform, regional finances, and the capability of regions to discharge their functions. The DPOD has a secretariat (headed by the Director General for Regional Autonomy – MoHA and with the deputy being the Director General for Budget and Balancing Fund – MoF). The DPOD is to establish a technical team, to undertake reviews and prepare policy recommendations. The technical team is to meet at least monthly. Further details on the operation of the DPOD are to be established by MoHA.

The way the DPOD connects with the ongoing supervisory work of the government remains unclear, and awaits further details in MoHA instruments. It is to be expected however, that the DPOD will make use of the ongoing supervision machinery in MoHA and other central government agencies. This machinery has broken down over the last few years, and is in bad need of an overhaul. Articles 217-223 of Law 32/2004 provide the legal basis for national government supervision functions. Government regulation 79/2005 translates these provisions into an operational framework. In addition, MoHA is leading the effort to prepare additional government regulations dealing with regional reporting, performance monitoring/evaluation, and organizational structures of regional government. There may also be a related government regulation being prepared under the leadership of Bappenas, relating to the performance of the “implementation of regional government planning”, as a follow-up to Law 25/2004. Already, the Ministry of Finance has lead the effort to address reporting for regional finances, based on Law 1 on the State Treasury, resulting in GR 8/2006 regarding Financial Reporting and the Performance of Regional Government Units. The latter covers both national and regional government units.

The GRs already issued are already problematic in terms of coherence and incisiveness of their content, and they are problematic in terms of their scope and fit with each other. It appears that the existing, and additional pending regulations, is doomed to create a complex, incoherent, burdensome, and unmanageable system of reporting and evaluation of regional government performance.

GR 79/2005 broadly distinguishes between legal and technical supervision. MoHA is responsible for legal oversight, while ministries/agencies are responsible for the implementation of technical supervision corresponding to their respective functions. The role of the Governor (and by implication the provincial administration) was significantly expanded in principle by Law 32/2004. It must be recognized however, that there are existing legal instruments relating to the sectors that have mechanisms to “delegate” supervision to

the regional government, not to the Governor in his capacity as the representative of the centre. It is unclear if these provisions are now valid or in need of realignment⁴⁴. In any case, whether through technical or legal considerations, the government desires to carry out both preventive and repressive supervision.

As part of preventive supervision, district/city draft regulations concerned with taxation, user charges, budgets and land zoning need approval by the Governor (and approval by the national level for provincial draft legislation). Other regulations are to be reported after they are issued, and are inexplicably only reviewed by MoHA. It is not clear why the Governor is not given a role in these other regulations. Depending on the regional regulation in question, MoHA (or the Governor) have the right to recommend to the President that they be revoked (via a Presidential Regulation) if they are found to contradict higher level legislation (repressive supervision). Conflicts between regional and national legislation can be resolved by appealing to the constitutional court.

While legal supervision can be readily understood to be a check against higher level laws, for instance, technical supervision is only vaguely defined in the current regulatory framework. The regulatory framework details the areas over which central government has technical supervision, explicitly including both obligatory and discretionary functions of regional governments.

Provision on the organizational set-up of supervision is rather muddled. Inspectorates general of ministries and the internal government auditor (BPKP) operate from the perspective of the central government. Additionally, GR 79/2005 calls for a role for regional inspectorates (*Inspektorat Daerah*) at both the provincial and district/city level, giving the impression that these are regional government units. In fact, the regional head is asked to nominate the staff. However, the staff is expected to have the status of central government employees. The draft GR on regional organizations sees the *Inspektorat Daerah* to be a regional government unit. These inconsistencies will lead to serious misunderstandings if not corrected.

Overall, the existing and planned regulations do not seem to be building a supervision system that is clear, with well defined standing and roles between actors, and with operational processes for the various roles.

To date, donors have had a fragmented approach to support in the areas of reporting, monitoring/evaluation, and supervision. The work of the World Dutch Trust Fund in 2003-2005 was focused on some of these aspects (mostly reporting) but support ended before a consensus could be achieved in the GoI (esp. MoHA) on approaches and practical efforts. It has advocated for a substantial increase in technical assistance to help MoHA and other central agencies to converge on concepts and approaches, and to build up the capacity of MoHA to undertake the most needed management of the required systems. Currently, some assistance is being provided by GTZ-ASSD (on supervision issues) and CIDA-GRS on monitoring and evaluation, but these are under resourced, and they are not well inserted into the policy process. The policy process on the GoI side is itself fragmented, making it difficult for donors to anchor to it properly.

⁴⁴ See for example Law 23/1997 on the Management of the Environment (Article 22), and Law 41/1999 on Forestry (Article 63).

Implementation

The oversight framework relating to DPOD has never been made operational in the way it had been intended. It is difficult to say if there is any different approach afoot to make the “revitalized” DPOD function better in providing oversight – specifically on the issue of performance of regional government. The DPOD will only be as good as the information and analysis that it is supplied.

The central government supervision system for regional government is being rebuilt, after a period of decentralization where regional excesses went without central level knowing, being able to mount a response, or being late and partial in its response. GR 79/2005 is however not a very incisive instrument for rebuilding the system, and the other regulations being added do not seem to be rectifying this situation.

There are several problems with the system as it stands, or is being developed. The reporting requirements are mushrooming but are a shotgun approach. Moreover, the response mechanism of MoHA and other central government actors have yet to be properly conceived and prepared. There is a considerable risk that the lack of coordination among national level governments will result in overburdening regional governments with numerous reporting requirements. Already there have been complaints from the regions regarding voluminous reporting requirements. In order to avoid overlapping and inefficient reporting requirements a more systematic approach is warranted that assess reporting needs, and streamlines reporting and oversight across sectors/central ministries/agencies.

What is most worrisome is the lack of preparation to handle the technical reviews on the preventive side. The budget review by the Governor/province on district/city budgets for instance still is unclear in scope and aims. The aggressive intrusive actions of regional governments on economic domains, demanding taxation rights or shares of corporations for instance, are handled in a purely politically expedient manner, with little reference to the legal framework⁴⁵.

What is more alarming is the inability of either the Governor or MoHA to stem or respond to the more frequent incursions of regional regulations on matters that are either the preserve of the national level state or are potentially counter to the “public good.” A few dozen regional regulations prohibiting or regulating certain behaviors, cultural and religious practices (e.g. reciting the Koran, attending mosque, wearing the jilbab, soliciting) have been passed, with much controversy and media attention⁴⁶. Yet there has been no response from MoHA regarding the legal validity of these regulations, and their likely standing in relation to constitutional rights or the “public good.”

⁴⁵ The case of Cemex is a highly visible one at the moment, with the West Sumatra province demanding a proportion of the shares of this multinational that is ready to quit its investment in Indonesia (Jakarta Post, 2006).

⁴⁶ E.g. the wearing of Islamic clothing in Bulukumba district; consumption of alcohol and soliciting in Tangerang municipality.

Policy Options and Recommended Action

Policy Options

Review and refine the existing regulations framing intergovernmental supervision. The ineffectiveness of the existing intergovernmental oversight and supervision systems relates to substantial weaknesses in the regulatory framework. A proper completion of the existing draft regulations, and revision of those recently issued that have serious shortcomings is required, with attention to:

- Better definition of guidance, control and supervision roles
- Clarification of the roles of main actors (MOHA, Bappenas, MOF, sector Ministries, regional government)
- Consistency on relevant elements across legal instruments, e.g. on organizational structures, reporting mechanisms.
- Simplification and integration of reporting and monitoring/evaluation provisions to generate the data and information required to support supervision/oversight, maximizing the sharing of same data/analysis between provincial and central level actors concerned with district/city government compliance and performance.

Enhance capacity of oversight and supervisory institutions, in particular at the provincial level. If the DPOD is to function as intended, it is crucial to have clear means for providing useful data and analysis to it from central government ministries/agencies. The latter must have the financial and organizational capacity to meaningfully assess regional government operations. To make its task feasible, it is essential to follow through consistently with one of the key intentions of Law 32/2004, to bolster the role of the Governor (and by implication the provincial government) in supervision and related tasks.

Consideration should be given to elevating the oversight/coordination role to a higher level body should the DPOD not function despite efforts to revitalize it; the office of the president for instance. The concern with the DPOD is that it has yet to function adequately since its inception in the 1999 decentralization framework, and that it may never function properly if it is seen to be dominated by MoHA.

Strengthen incentives for regional governments to report to higher levels of government. Decentralization has reportedly weakened intergovernmental communication structures, as regional governments disrupted reporting to higher levels of government. To rebuild these structures in a decentralized framework regional governments need to have incentives to report upward or consequences if they do not. Reporting requirements should be designed in a way to minimize the burden for regional governments; they should be based on streamlined procedures, timelines and reporting formats.

Recommended Action

1. Review and refine the existing regulations framing intergovernmental supervision, to ensure clarity in concepts, roles and organizations, and incentives/sanctions for lack of compliance with reporting requirements.
2. Mount a significant effort to enhance the capacity of oversight and supervisory institutions, in particular at the provincial level.

III. CIVIL SERVICE REFORM IN THE CONTEXT OF DECENTRALIZATION

Introduction

Civil service reform is key to making decentralization work. Civil service reform provides a supporting strategy for the implementation of decentralization in government operations, thereby improving service delivery to the population through the appropriate level of government.

Reform of the civil service is not an end in itself but a way to organize the delivery of services in a more efficient and effective way and to manage the human resources and support government objectives. Civil service reform means that roles and responsibilities in relation to service delivery may change, as well as the management of the civil service itself: the latter may shift from central to local government level or among the various levels of government. It also means that capacity building to perform new tasks in new organizational settings must follow.

Decentralization requires the redefinition of authority, power and the roles and responsibilities of the various levels of government. Organizational reforms are part of the decentralization process in the sense that local government organizations must adapt to their new role and to their responsibilities to provide better service delivery. Thus they must adapt their human resources base to best match the needs of their new mandate and organization.

Key to the success of civil service reform in the decentralization process is:

- An appropriate legal framework to define the legal mandate, functions, roles and responsibilities of the various levels of government in a coherent, transparent and manageable way;
- A clear definition about which level of government and which regulatory agencies should have the power to determine organizational requirements and human resource policies and procedures (pay scales, terms and conditions of employment, and civil service structures);
- Sufficient power and appropriate tools for regional governments to determine their own organizational structures related to local needs and subsequently be provided with modern HR policies and instruments geared at improving service delivery;
- Consultation with various constituencies—civil servants, unions, local politicians, service users to voice needs and to set national standards for service delivery;
- A transparent and accountable personnel management system that provides adequate incentives for civil servants and is sustainable over the medium term;
- A strong ability of CG to monitor and evaluate decentralization and in particular civil service reform and to adapt changing policy objectives, local needs and the availability of financial resources.

Prior to the first decentralization Law 22/1999, civil service regulations, management of the civil service and the division of roles and responsibilities between central agencies were already problematic.⁴⁷ Mandates and assigned roles and responsibilities were fragmented among central agencies. This fragmentation cut across many functions such as recruitment and training. This situation affected the introduction of the decentralization process and its effective implementation. Many observers have documented and analyzed the long-standing absence of effective management of the civil service which is rooted in the complexity and ambiguities of the regulatory framework, combined with a flagrant lack of enforcement of the rules and and the presence of rent seeking⁴⁸.

In the years after Law 22/1999 was implemented, systemic reforms in the legal framework, the management of the civil service and the definition of roles and responsibility of the various levels of government have not proven, despite some laudable efforts, coherent, well planned or successfully implemented. The second decentralization Law 32/2004 also altered the rules of the game between central government (CG) and regional government (RG). The explicit right of regions to manage their civil services was abolished and such responsibility is now assigned to the Governor, acting in his role as representative of the CG. In fact, Ryaas Rasyid, former minister of Regional Autonomy and also known as an architect of Indonesian decentralization, openly asserts that the implementation of UU 32/2004 is an abortion of decentralization initiatives as it is contrary to the spirit of regional autonomy⁴⁹. The Ministry of Home Affairs (MoHA), has also acquired new responsibilities for overall guidance and management of the regional civil service. This has not resulted in the clarification of who is responsible for the management, the rules and the administration of civil servants at which level of government. These changes have instead raised serious questions about the regulatory responsibility for the regional civil service and created disquiet among regional governments and donors.

Some specific stipulations in the second decentralization law have not resulted in amendments in related laws, such as the civil service Law 43/1999. The latter assumes the existence of a national civil service. Due to the absence of a clear framework, the management of civil servants by RG's is insufficient and inconsistent. In addition, Law 43/1999 also mandates a new Civil Service Commission - which is not yet operational. No efforts are under way to rationalize the roles and responsibilities of the various agencies at CG in order to administer, plan, develop and budget the civil service. No substantial reforms for example, have been proposed in the personnel area which would facilitate RGs in adapting their human resources to the new organizations.

As a result of the developments described above, it is not clear:

- Who is responsible for what at CG level;

⁴⁷ Ryaas Rasyid was also the proponent of political and civil service reforms in 1998, but his proposal for civil service reform was unacceptable to Habibie, the President at the time (Mark Turner, Owen Podger et al. 2003). Even when he later became the minister for administrative reform under Megawati, he was unable to get agreement to put it on the political agenda.

⁴⁸ World Bank (2004). *Combating Corruption in Indonesia – Enhancing Accountability for Development*, October 2004, p. 171.

⁴⁹ Keynote speech by Ryaas Rasyid in a Seminar on Strategic Pengembangan SDM Aparatur Berbasis Kompetensi, PKP2A II LAN Makassar, 29 March 2006.

- How cooperation and coordination among central agencies is ensured for effective management of the civil service, or
- How central agencies exercise their respective responsibilities in relation to RGs.

The central regulatory environment is characterized by the large number of agencies that share responsibility for managing the national and regional civil services: BKN (National Civil Service Agency); MenPAN (State Ministry for State Apparatus Reforms); MoHA; LAN (National Institute of Administration); Ministry of Finance (MoF); sectoral ministries; and regional (provincial, district and city) governments. All have responsibilities for oversight and/or regulation, policy-making, line management and technical assistance and training.

The definition of respective responsibilities, however, has never been fully clear. A 1993 World Bank study⁵⁰ described the regulatory framework as fragmented and blurred and stated that agencies were neither performing their respective functions adequately nor ensuring coherent coordination among themselves. The mandates of MoHA and MenPAN result in fragmented regulations and management of personnel. Under Law 32/2004 MenPAN acquired the right to approve the annual *formasi* of all regional governments based on the governors' proposal. This has given MenPAN, which was traditionally a policy and coordinating body, a line role. MoHA is responsible for the related budgets and for general supervision of regional civil service matters. See Appendix 9 for an outline of the functional responsibilities of national actors for RG regulations and support..

The agencies themselves are part of the problem as well as the solution for the management of the civil service and its potential for reform: the central agencies failed to re-organize themselves to reflect their new role after the introduction of decentralization.

Recent initiatives in drafting new and additional regulations which affect the civil service are not very promising. In general, the revisions may be characterized as marginal and are not written with a view to reform the civil service in light of decentralization in a coherent and systematic manner, taking into account the current tangled and complex regulatory framework.

As of December 2005, there were 3,662,336 civil servants in the core civil service excluding the military, police and public enterprises. Of these approximately 2.5 million are at the regional level. The civil service profile is aging rapidly; 24.6 % are in the age of 41- 45, 19,7 % in the age between 46–50 and 16.4 % in the age between 51–56.⁵¹ The aging of the civil service population is a serious problem that needs to be addressed urgently in order to avoid an under-resourced pension system and gaps in the human resource base. There is limited information on the gender component in the civil service and policies to promote the participation of women in and assist them with developing careers appear to be absent. Based on the BKN data per December 2005, the total number of female civil service is 1.530.662 (42%) while women are clearly underrepresented in the the higher echelon level.⁵²

⁵⁰ As quoted in a World Bank study "Civil Service Reforms at the Regional Level: Opportunities and Constraints", World Bank, 2005 p.1. This study is part of a series of studies which aim at the development of a Methodology for Regional Civil Service Reform. The World Bank is administrating this ASEM grant. Reports related to the studies will be published by the Partnership for Governance Reform in 2006.

⁵¹ BKN unpublished data form 2005. Calculation made by the authors of this chapter.

Organizational Structure of Regional Government

State/Government Reform Objective

The Government is attempting to make RG's as efficient and effective in delivering services as possible and to streamline the roles of central governments, regional governments and regulatory agencies.

Regulatory Evolution Relating to Regional Government Organizational Structures

The big-bang decentralization undoubtedly overwhelmed RGs with the unprecedented number and magnitude of functions that were devolved from the CG. RGs had to cope with absorbing about 2.4 million CG employees (mostly teachers and health workers) and integrating CG sectoral organizations in the regions into their administrative structures. One of the immediate impacts of this change was the restructuring of RGs' organizations. The Law 22/1999 on Regional Government and one of its implementing regulations, GR 84/2000, provided a framework and guidelines on the structure of organizations in the regions. Both Law 22/1999 and its implementing regulation GR 84/2000 gave RGs wide discretion on how to set up their own administrative structures. However, despite some indications of progress⁵³, there has been a systematic attempt by the CG to reassert central control by imposing restrictions and embracing a much stronger regulatory role, thereby reducing the discretion of regions in reforming their organizations. Soon after the passage of GR 84/2000, the MoHA issued Ministerial Decree No. 50/2000 which stipulated the number and the type of administrative structures that the regions were allowed to have. The precise internal organization for each type of administrative unit was also prescribed, including the level of echelon for officials. These restrictions were somewhat altered in GR 8/2003, which replaced GR 84/2000, but the approach remained similar. The current draft to replace GR 8/2003 is now based on Law 32/2004 and contains no significant improvements in terms of providing RGs with more flexibility for reforming their organizations.

The Effects of GR 8/2003 on Regional Governments

The current regulation has had two notable effects on local governments: i) transitional problems, and ii) structural problems.

Transitional Problems

It is reasonable to expect that some RGs would initially go beyond their needs in terms of building their organizations. This tendency was unavoidable given the tenor of the times and the challenges faced by RGs in the transition (GTZ-SfDM, 2003). Having been under a highly centralized system for a long time, there was an euphoria of autonomy during the early stage of decentralization which might have induced the regions to exercise their newly acquired authorities, including the setting up of their organizations. RGs initially lacked the capacity to analyze their functions, needs and local characteristics and therefore were not capable of building the most appropriate type and size of organization; as such task had never

⁵³ See, for example, the first Indonesian Rapid Decentralization Assessment (IRDA) pp. 2, 9, 15; Second (IRDA) p. 25; GTZ-SfDM (2003: 2) where progress was reported before the implementation of PP 8/2003.

been performed during the era of centralized governance. At the same time, the CG did not provide RG's with adequate guidelines for such a complex task⁵⁴. In such a situation, political interests may have been the ultimate determinant.

The limited capacity of RGs in organizational design was compounded by the requirement that RGs absorbed 2.4 million CG employees and incorporated CG organizations into their own organizations.⁵⁵ In certain cases, RG's had too many staff and without any adequate policy to guide them they had no other option than to accommodate staff. This situation is still ongoing since RG's only option to reduce staff numbers is through attrition and recruitment stops. From the information gathered through Focus Group Discussions, and through the presentations of the regions in a recent international conference⁵⁶, relevant documents as well as interviews with Bupati⁵⁷, it becomes evident that what the regions need are flexible guidelines to accommodate their local needs and characteristics rather than a rigid, monolithic prescription on how to structure their organizations.

Structural Problems

The way the DAU is allocated to RG's provides the wrong incentive. The number of personnel in a region, hence the size of its organization, reflects the size of DAU allocated to the region⁵⁸. The RGs have no discretion over the formula used to determine the local wage bill. The DAU will automatically increase if the number of permanent staff increases; consequently RGs are tempted to expand their organizations to accommodate personnel and thus secure a large amount of DAU.

For example, in Solok district, more than 80% of the DAU for 2004 was absorbed by wages and salaries and that percentage increased to 92% in the budget for 2005.⁵⁹ The increase in the level of echelon for officials in the organizations of RGs intended to reflect their increased scope of responsibility has also given the wrong incentive. RGs are motivated to expand their organizations in order to establish a large number of echelons for high paid officials, thus obtaining a larger DAU.⁶⁰

Sectoral Ministries are attempting to force RG's to create a single local representation at Dinas level⁶¹. For example, the Department of Workforce and Transmigration, the Ministry of Agriculture, the Ministry for Women Empowerment, and MoHA send letters to all Governors, Bupati/Walikotas and DPRD's in Indonesia to encourage them to create Dinas relevant to the respective CG organizations' functions. Although it is only an encouragement, RGs may interpret this as a prerequisite for having access to deconcentrated funds from the relevant sectoral Ministries. As a result, there is a tendency for the regions to replicate the

⁵⁴ See statements by Ryaas Rasyid in Kompas 30/02/05.

⁵⁵ See, for example, the report of SMERU "Mencari alternatif penyempurnaan kebijakan desentralisasi dan otonomi daerah: Beberapa pelajaran dari daerah. Jakarta, 20 Agustus 2002. p. 8.

⁵⁶ Speeches by Walikota Tarakan, Bupati Jembrana and Bupati Sleman, the International Conference on Responsive and Accountable Local Governance. Hotel Nikko Jakarta, 21 - 22 February 2006. They indicated the need for a flexible regulatory framework.

⁵⁷ For example, Bupati Jembrana and Bupati Sleman.

⁵⁸ There are some exceptions to this case where health workers and teachers who are contractors are paid by central government.

⁵⁹ Civil service diagnostics and road map for reform in Cluster 2 Region West Sumatra, World Bank October 2005.

⁶⁰ See SMERU Report p. 16.

⁶¹ World Bank 2005.

number and pattern of CG agencies in creating Dinas without thinking about their needs and local characteristics. This is an example of the inconsistency in the CG's approach to decentralization and reform.

Another structural problem is the discrepancy in benefits between structural and functional position holders. The Indonesian Civil Service system (Law 43/1999) recognizes two types of career positions; structural and functional positions. A structural position is a management position within the organizational hierarchy based on the Echelon Structure (see Appendix 10); a functional position is a position which is not clearly mentioned in the organizational structure but which by nature of its functions is needed by the organization; for example researchers, teachers and lectures. This division within the career system is unique and typical of the Indonesian civil service.

The number of structural positions directly affects the size of an organization. Since the echelon level for a Head of a local agency (Dinas) has been upgraded from echelon III to echelon II this reinforces the prestige of structural positions. In addition, structural positions provide multiple incentives (e.g. possibility for extended retirement age, opportunity for rapid promotion, prestige) and therefore have an impact on the expansion of organizations in the regions. These multiple incentives boost the popularity of structural positions; hence they contribute to the tendency of RGs to expand their organizations. The interest in structural positions is also caused by the fact that the number of functional positions accessible to RG's officials is limited and unattractive (the wages are low in comparison). If functional positions were more attractive more civil servants could be offered a career path without the need to set up additional organizational units. Makassar city is considering functional positions as an alternative for accommodating redundant officials (those who lost their managerial positions as a result of organizational restructuring under GR 8/2003). However, the city is still in the process of identifying functional positions which would truly provide career prospects for those redundant officials.

The uniform echelon structure introduced through GR 84/2000 has an inherent weakness that the CG has failed to address in subsequent regulations regarding organizational structure of RGs. This structure does not reward heads of regional government organizations who are dealing with an extended workload, wider scope, more complex and more challenging tasks and responsibilities. It appears that a higher echelon level for officials in the Province is established in comparison to those at the district or city level. Officially there is no hierarchy between the three levels of regional government but many officials in regional government interpret the difference in echelon level as a hierarchy between them (GTZ-SfDM, 2003: 2). Thus, a head of Dinas in the province of Papua would have a higher echelon level (better pay) than a head of Dinas in Surabaya city. The current uniform echelon structure, therefore, does not provide a basis for a future performance-based remuneration scheme where, for instance, two heads of Dinas are paid differently because they perform tasks with a different level of responsibility and complexity. Prior to the passage of GR 84/2000, the Capacity Building to Support Decentralized Administrative System (CB-SDAS)⁶² project provided a recommendation on how to design an echelon structure that would reflect the workload and scope of responsibility of the regional officials, but the government did not respond (ADB 2000. TA 3177). The idea of having a different, more equitable echelon structure was also raised by officials of the cities of Yogyakarta and Makassar during recent field visits. They

⁶² The CDSAS is a joint project between ABD and MoHA. Discussion Paper number 26, comments on Government Regulations number 84/2000 on guidelines for Organizational Structure of the Regional Administration. Owen Podger, December 2000.

proposed that also Heads of Dinas within an RG should have different echelon levels, depending on their workload.

The above examples illustrate how personnel policies, procedures and instruments may affect the reorganization of RGs. These examples suggest that reorganizing RGs must be accompanied by a review of the existing personnel policies including the pay and grading system with its distinction between functional and structural jobs. In addition, if a job classification system was in place, the echelon structure could be abolished, which would facilitate the introduction of equal pay for equal work.

Reform Efforts: The Successor Regulation to GR 8/2003

MenPAN is currently drafting the replacement of GR 8/2003 and the available draft continues to impose restrictions. One of the major changes in the draft is the omission of article 2(1) in GR 8/2003 on the considerations for establishing organizations of regional governments. This draft stipulates that the basis for RGs organizations is, among others, their local characteristics, resources and needs. Another key change is the shift in scoring criteria: from the type of administrative institution to the size of RG's organizations. The draft suggest that RGs can establish any type of organization as long as the total number does not exceed that corresponding to the score determined by their spatial area, population density and APBD budget. A number of officials interviewed in RGs anticipate that apart from some large regions, the majority will not be able to get high enough scores to accommodate their real local needs and characteristics.

The CG and RGs have competing views on this issue. On the one hand, the CG argues that RGs expanded their organizations far beyond their needs and irrespective of their local demands. For instance, in referring to GR 8/2003, the Minister of Administrative Reform explains that the expansion of the organizational structure of RGs has been driven by various interests of actors and stakeholders.⁶³ The MoF indicated that if the expansion of RGs' organizations continued, it would soon run out of money to fund RGs through the *Dana Alokasi Umum* (DAU).⁶⁴ The CG, therefore, is under pressure to impose a stronger regulatory control over the regions. On the other hand, the regions argue that the CG generalizes the issue of excessive organizational structure based on a limited number of isolated cases⁶⁵. The precise percentage of regions that established excessively large organizations has not been revealed by the CG. In a recent interview with officials from MenPAN, it was suggested that only about 20% of RGs had reorganized strictly within the stipulations of GR 8/2003.

The first Indonesian Rapid Decentralization Appraisal (IRDA) conducted by the Asia Foundation found that "RGs have coped with the immediate problem of integrating large numbers of staff by reorganizing and restructuring agencies and units, without downsizing"⁶⁶. The second round of IRDA found that following the devolution of functions and the transfer of large numbers of government personnel from the central government, the number of *Dinas* (agencies), generally decreased as a result of mergers of units, but the number of new *Badan*

⁶³ See the Keynote speech by the Minister of Administrative Reform delivered in the Workshop on PP 8/2003, LAN 2003.

⁶⁴ Interview with Assistant Deputi I Menpan dealing with organizational structure of local government.

⁶⁵ Interview with the Executive Director of the Indonesian Regencies Cooperation Agency (IRCA).

⁶⁶ See report of the first Indonesian Rapid Decentralization Assessment (IRDA, 2002a: 2,9,15).

(Board) and *Kantor* (Offices) increased⁶⁷. A survey conducted by MoHA also shows that “more than half of the participating regions said that merging of deconcentrated units of central government agencies with the existing administrative structure of the regions did not contribute to the development of larger organizational structures” and that “two-thirds said that the GR 84/2000 would provide sufficient guidance (*arahan*)” (see GTZ-SfDM, 2003). As an illustration, Solok district implemented the spirit of GR 8/2003 even before the GR was passed.⁶⁸ A similar case was found in Yogyakarta city where the organizational structure was streamlined under GR 84/2000. In fact, the application of GR 8/2003 resulted in an increase in the number of structural positions instead of reducing the overall numbers of positions.

This suggests that Solok district and the city of Yogyakarta (and perhaps some other regions) were able to assess their needs and used the analysis responsibly as a basis for building their organizational structure. In addition, interviews with heads of regions known to have been innovative (e.g. Sleman and Jembrana) revealed that, although they restructured their organizations without taking GR 8/2003 into consideration, the resulting organizational structure turned out to be consistent with the GR 8/2003. Similarly, Tanah Datar district had eight Dinas before GR 8/2003 became effective, and this was in line with GR8/2003. This is a further indication that some regions are indeed capable and willing to streamline their organizations responsibly. This confirms the findings of other case studies but there is no broad analysis of the types and numbers of reforms throughout Indonesia.

Policy Options for Regional Organizational Structures

Rather than imposing a prescribed blueprint of an organizational structure on RGs, the CG should consider giving RGs the opportunity to manoeuvre so that they can take into account their regional characteristics and the core services that they must deliver, e.g., by providing them with more time to comply, with support and with flexible guidelines, as well as by giving them a broad legal mandate. The current criteria in the draft to follow up GR 8/2003, do not take into account such things as service delivery standards, the costs of goods and services to be provided, regional education and health levels etc. In addition, the GC must consider how to deal with the unwanted incentives described above in order to avoid that RGs expand their organizations beyond their real needs. This could include reforming the echelon structure, reformulate the DAU so that the RGs are held responsible for the financial implication of their organizational structure, and balancing the benefits between structural and functional positions in the civil service.

Personnel Management

State/Gol Reform Objectives

Regional government civil servants (PNS) will be qualified in accordance with their tasks, and in the number required to discharge the governmental functions transferred to the regions (Grand Strategy, 2005: 17).

⁶⁷ See report of the second Indonesian Rapid Decentralization Assessment (IRDA, 2002b: 25).

⁶⁸ Interview with Kepala Bappeda (Head of Agency for Local Development Planning) of Kabupaten Solok.

Personnel Management: Policies and Effects

Recruitment

A key step in decentralization was the shift in recruitment management from central level to regional level under Law 22/1999. This shift was reversed in the 2004 revision of the law (Law 32/2004).

Law 32/2004 gives CG and the Governor (acting as representative of CG and MoHA) new responsibilities for the overall guidance and the management of the regional civil service. Recruitment of new civil servants in 2004 was managed centrally by MenPAN and BKN; the recruitment for RGs in 2005-6 was coordinated by the Province (on behalf of CG). Many RGs experience this recentralization as a direct undermining of their legal rights within their own jurisdiction. CG, however, claims that controlling the recruitment and selection from the center reduces the opportunities for corruption. RGs retort that through the innovations that they have been introducing they have achieved some results and it might be preferable to organize and manage recruitment locally.

It has been widely reported that one example of endemic intra-governmental corruption is that the annual *formasi* (the total of approved positions) is also subject to “payment”.⁶⁹ A further issue in this process is the opportunity for corruption by civil servants within the system involving potential recruits: and between levels of government. These abuses have been well documented.⁷⁰ In particular two large groups in the civil service, teachers and health workers, suffer from rent seeking practices in recruitment.⁷¹

The annual *formasi* (the total of approved positions) is also subject to “payment”. Corruption is also evident in the recruitment process; these opportunities in part explain the tussle over jurisdiction between levels of government. These abuses have been well documented. In particular two large groups in the civil service, teachers and health workers, suffer from corruption in every personnel action that has to be taken, beginning with the first step of recruitment.

Recruitment constitutes the single entry point into the Indonesian career system every year through examination. This process is therefore critical to increasing the quality of the civil service. With the exception of teachers and health workers, new staff members are not recruited for specific positions but enter the civil service after which they may be appointed to a position. Key to recruitment is: the quality of the test; the transparency of the recruitment process; the transparency and objectivity of the grading and selection process.

GR 48/2005 stipulates that all existing contractuels paid by RG (APBD) and national budgets (APBN), the bulk of whom are employed as teachers or health workers, will be recruited into the service between 2005-2009. It is questionable how effective this policy will be, since contractual teachers in the non-government schools, for example, are not paid under the APBN (state budget) or APBD (RG budget) and therefore are not eligible for this policy. Another problem is that contractuels are often not qualified and therefore not eligible. In addition, this policy may undermine other policies like the zero-growth policy designed to

down-size the civil service. It is more likely that in certain regions the number of civil servants will go up.

Job Descriptions

Law 43/1999 states that, once a civil servant has been recruited into the career system, he/she is then appointed to a position and the position is reflected in a rank. The position refers to the duties, responsibilities, authorities, and rights of a civil servant within an organization or unit of the state. Positions are divided into structural, functional or staff positions (staff is the lowest level) and job descriptions are mostly non-existent. Since 1968, civil servants have been ranked into 17 levels and this ranking serves as a classification system. For example, a civil servant entering the service with graduate education (*sarjana*) will be granted the rank III/a. In four years' time, whether or not they perform well, everyone will move to rank III/b because the prescriptions of the evaluation system are largely ignored. The evaluation system itself is obsolete and needs to be replaced.

Job descriptions do not exist throughout the civil service. The job descriptions that exist (mostly for structural positions) lack robust descriptions and person specifications, tasks in relation to education, experience and skills. Job descriptions are formal ways to ensure that the right civil servant is appointed to a given post and to hold the employee responsible for their duties and tasks. The absence of job descriptions impedes the introduction of a performance management system. In addition, the ranking system is not sufficient to differentiate between various jobs and grade their value.

Career Development

Article 133 of Law 32/2004 states that the career development of civil servants must consider: integrity, morality, education and training, rank, previous structural position, and competency. GR 100/2000 and its revision GR 13/2002 stipulate that there should be a Presidential Decree regulating the career development of civil servants; this has yet to be issued.

Advancement, promotion, and transfer

Advancement. All civil servants are assigned a rank on entry. Staff moves within ranks through steps within the ranks. Advancement (every two years for functional and every four years for staff and structural) is based on DP3, an annual evaluation instrument used nation wide to evaluate the employee. This instrument is regarded as inadequate and is only used pro forma. An employee needs at least a 75 % score in order to be advanced and almost everyone attains that score annually.

A major weakness in advancement policies is the lack of a robust and performance oriented annual evaluation. In practice, advancement for civil servants is automatic, irrespective of their performance.

Promotion. Promotion is based on age, experience, education and training and performance and is set out in GR 99/2000 and its successor - GR 12/2002. the latter stipulates that advancement is based on performance and experience or seniority or the length of service.

Civil servants in structural positions may be promoted to a higher rank based on criteria and the availability of a post. The candidate is assessed by a team and the criteria are publicly

known but the way in which they are applied is not transparent. The criteria are set by MoHA, BKN and MenPAN. Promotion to echelon II positions have to be approved by the Governor and echelon I positions by the President.

Promotion is hindered by two basic weaknesses: i) performance appraisal is a mere formality and not based on performance criteria, ii) the promotion system is in practice based on seniority and does not select more rigorously through an open and transparent method based on the necessary skills, experience and performance. Moreover, the regulations and their respective revisions on promotion in echelons are contradictory. This phenomenon explains why in many organizations “the wrong person gets in the wrong place”.

Transfer. Law 32/2004 and GR 09/2003 regulate the transfer of civil servants in RGs. Law 32/2004 stipulates that the appointment, transfer, and termination of echelon II positions in the district/city are decided by the Bupati/Walikota after consultation with the Governor (Article 130/2). In addition, transfer of civil servants between RGs within a province is endorsed by the Governor after approval by BKN (Article 131/1). However, there are no clear guidelines and procedures for the transfer of the salary and other benefits of the civil servants from one RG to another RG. Difficulties in transfers seem to affect mainly teachers and health workers, notably in the case of transfers between jurisdictions. Gender is a particular issue with regard to transfers; many health workers and teachers would like to follow their partners if the latter are posted elsewhere but are hampered by the absence of clear policies. It has also been documented that transfers are subject to illicit practices.

Chief challenges in transfers are the absence of clear guidelines and transparent procedures and the lack of a reliable data-base to record the changes.

Performance management including performance appraisal

Law 43/1999 stipulates that to ensure objectivity in advancement and promotion, the performance of every civil servant must be appraised. The instrument for performance appraisal of civil servants (DP3) as regulated in GR 10/1979 is inadequate to measure performance. Indicators used to measure performance such as loyalty to *Pancasila* and to the Constitution of 1945 are very subjective and not link to work and performance. Indicators are descriptive and uniformly applied to measure the performance of professionals as varied as teachers, doctors or librarians. The same indicators are used to appraise front-line staff and civil servants holding the highest structural positions.

The annual performance appraisal of civil servants is prepared by their immediate superiors who in many cases will give good marks to not impede the rank advancement of their subordinates. Superiors preparing the appraisal see it as a routine and meaningless activity. Consequently, the appraisal system fails to function as an instrument for reward, punishment or accountability as stipulated in the regulation.⁷²

Performance appraisal is not performance oriented and rigorous. The process of performance evaluation has deteriorated and the performance appraisal instrument is inadequate and outdated.

Dissatisfied with the inadequacy of DP3 to appraise civil servants, a number of RGs have initiated the use of other performance appraisal instruments.

⁷² Interviews with Bupati Jembrana (21/02/06).

Remuneration

Law 43/1999 stipulates that every civil servant has the right to receive a salary according to their level of responsibility and work load. The salary must also be able to secure their prosperity and to improve productivity and work motivation. Remuneration of civil servants is calculated based on civil servants' rank and years of service. Currently the lowest rank (primary school and junior high school qualification) is around US \$ 58 dollar per month or less than US \$ 2 per day. Meanwhile the salary for the highest level of government employee with 32 years in service is around US \$ 155 dollar per month. In addition to the basic salary, a wide variety of allowances may be offered. For example, allowances based on the post, such as a structural position, receive position allowances ranging from Rp. 20,000 (US\$ 2) to Rp. 4.5 million (US\$ 450) per month. Civil servants who have access to projects can obtain honoraria, per diems, transportation allowances, compensation for attending meetings etc. In addition, those civil servants who are employed in positions in so called "wet departments and units" (e. g., finance, public works) have access to high rents. Various studies have produced estimates of these additional opportunities, the World Bank study on corruption for instance⁷³.

Civil servants claim that they receive substantially less pay than their counterparts in the private sector. A major World Bank report (Steedman and Kenward, 2005), analyses Indonesia's labor force survey, *Sakernas*, which provides comparative data on earnings by industry. These data indicate that average government wages have increased rapidly during the past 3 years, at rates well above sectors that are dominated by private activity. By 2003, wages of government employees were much higher than in major sectors dominated by private activity. Job-to-job comparisons indicate that Indonesian civil servants with skills that are in demand in the private sector are underpaid, but person-to-person comparisons indicate that average salaries of Indonesian government employees are substantially above those in the private sector. Tracer studies indicate that for the great bulk of public sector employees, the relevant alternative is the informal sector (including agriculture) which is paid much less than the civil service in Indonesia.

The remuneration system is that the system is complex, lacks transparency and simplicity and provides no incentive for performance. Moreover, the absence of monetization of all awards and the rent seeking behaviour of civil servants distorts the real picture. The remuneration system abets inequity, a feature promoted in part by the grading and ranking system.

Training

GR 101/2000 stipulates that there are three kinds of training for civil servants: leadership, functional, and technical training. Leadership training (four levels) is a mandatory requirement for promotion to a structural position. The substance of the leadership training is very general and the process is very formal. Rather than improving performance and leadership capability, the leadership training focuses more on how to improve the loyalty to the system. In general the quality of civil service training is poor and the design of structural training is outdated.

⁷³ World Bank, Study on corruption in Indonesia, 2004.

Functional training is designed to improve the performance of functional civil servants (such as librarians) whereas technical training aims at improving technical skills needed by civil servants to perform their tasks. There is a tendency for civil servants to join leadership training rather than to join functional and technical training. Leadership training provides eligibility for promotion, which follows suit in most cases without due concern for performance or skills and experience.

LAN, RGs, and departmental training centers all provide in-service training for civil servants. The budgets for training are for the larger part within LAN and the supplier can therefore generate the demand. The demand is often not driven by the need of individuals for improved job related skills or technical requirements but rather rent seeking practices.

Training is thus supply rather than demand driven, and LAN holds a monopoly over the content, quality and resources. Training and curricula are not being developed to fulfill the demand of new RG functions and obligations. In addition, civil servants in their new role as service providers are in need of training geared at improving their behavior. Service delivery is affected by the current lack of accountability of both staff and managers. Training for behavioral change, in combination with new performance management instruments, could make an important contribution towards better service delivery.

Disciplinary Issues

GR 30/1980 on Disciplinary Conduct of Civil Servants, in general, regulates two things: what Indonesian civil servants should do and should not do. It stipulates that civil servants must be professional, honest, fair, and neutral and cannot join political parties. In addition, they must also perform their official functions with dedication, consciousness, and responsibility, based on regulations and act so as to improve the image and integrity of the civil service. GR 30/1980 prohibits Indonesian civil servants from misusing government property, engaging in profit-oriented activities outside of government, or holding shares in an enterprise which may be in conflict with their job. However, this regulation is so blurred and ambiguous that it may be interpreted in various ways. Disciplinary actions appear not to be applied often; superiors are reluctant to discipline their staff since the ambiguity in the regulation makes them uncertain whether they can hold the person accountable for bad practice.

Disciplinary action is rarely used and the regulations are not linked to performance, pay and dismissal of the service. The civil service is so entrenched by irregularities and illicit practices that enforcement of discipline is effectively not possible unless other changes are also introduced to curb the practices.

Retirement and Pension

GR 32/1979 about Retirement of Civil Servants has also caused confusion and problems in the RGs. Article 3, for example, sets the retirement age for civil servants at 56. In article 4, however, civil servants for a number of different positions can extend their retirement until they are 58, 60 or 65 years of age. For most civil servants, the word “can” in article 4 of this GR means “they have the right to” whereas for some RGs it means optional (not the automatic right but only if they are still needed).

The basic pension is an unattractive retirement package (80% of the basic salary) which leads to civil servants extending their service and this creates problems in some RGs. Holders of

structural positions may either extend their retirement age (this is the most lucrative option) or transfer to a functional positions for which the retirement age is later age. A more generous retirement package could be a possible alternative.

Reform Issues in Personnel Policies and Instruments

The Right Person in the Right Place and Right-Sizing

Most RGs struggle with getting the right person in the right place due to the absence of clear regulations, procedures and instruments. Moreover, the actual practice often ignores the rules (for example in promotion which in principle should consider merit but in fact considers seniority as the most important criterion). A substantial number of civil servants in Indonesia are holding posts for which they are not qualified and which do not match their ability to perform.

Weak personnel policies in combination with weak personnel management have reinforced this problem. In certain regions this has resulted in overstaffing on the one hand (too many generalists) and a lack of critical skills on the other hand. In the absence of new policies in the areas of early retirement, retrenchment etc. regional governments can only stop recruitment for a limited period or send staff home (who keep their remuneration). Lateral entry is not allowed in the current system and RGs can only consider bringing in skilled manpower by transferring academics from the university into the service since academics are civil servants and therefore eligible for such moves.

A report by the World Bank⁷⁴ (2005) concludes that it is taken for granted that the Indonesian civil service is generally over-staffed and that a reduction about 10% would be a strong start to reform. In the Province of Yogyakarta the number of civil servants was reduced from 13,000 to 8,250 after decentralization and is scheduled to shrink to 4,000 in 2007. Most of the reduction of staff occurred through attrition; a few candidates chose early retirement (though this was rather unattractive and not well taken up), and transfer to the district level. These policies may be effective in the short time but are not sustainable if qualified people are not recruited for key and critical areas.

Systemic Weaknesses

Regulation GR 8/2003 has serious shortcomings and gave RGs insufficient discretion to organize their organization in relation to the needs of their clients. A majority of RGs have not attempted to implement this regulation. The nature of the regulation was to “control” RGs from the perspective of CG and therefore does not follow the spirit of decentralization. It does not provide sufficient flexibility for RGs to take into account the respective characteristics of their jurisdictions. The regulation has as a premise that –one model fits all– which is by definition difficult to apply in a country as heterogeneous and regionally different as Indonesia.

Regulations in the personnel area are not reviewed and updated systematically in order to address the modernization of the Indonesian civil service management system. The civil service is deprived of modern policies, procedures, tools and instruments that are part of

⁷⁴ Ibid, World Bank, 2005 p. 51.

modern human resources which facilitates the efficient and effective functioning of civil servants performing in relation to their duties.

The regulatory and management framework is characterized by a traditional rules based culture. The career system is closed and marked by inward looking procedures and rules geared at control and authority over staff. The career development of civil servants is based on weak personnel policies and procedures in combination with bad practice and abuse of the rules over the years, also prior to decentralization. All policies, instruments and procedures are outdated, obsolete and obscure. There is no existing vision or rationale to modernize the civil service; neither is there political and technical leadership for reform. The fragmented legal framework in combination with the absence of well defined rules of the game in organization and personnel has resulted in competition over authority and mandates among central agencies. This has seriously undermined reform or the preparation of needed reform. Attempts at reform, therefore, simply add to the complex web of existing laws and regulations which are often contradictory, incoherent, incomplete and poorly drafted.

Effective management of civil servants in terms of modern human resource management, the right person in the right place, performance management, adequate remuneration and a well designed organization structure are absent in Indonesia. RGs are well aware of the urgent need to address these if they are to improve the functioning of their organizations, motivate their staff and improve service delivery including holding staff accountable. The policies and instruments to bring about these reforms in the present legal and regulatory context would need to come from the centre. This is not happening.

Organization and personnel as distinctive and crucial features of the civil service and its management must be reformed if the decentralization process is to gain new momentum. Without reforms in this key area, further attempts at decentralization will fail.

Reform from the Perspective of the Regions

Innovations in the regions show two major characteristics: innovations are aimed at i) improved service delivery and ii) improved accountability. They are locally driven, though in cases they have benefited from donor assistance. These are important innovations in that RGs have attempted, in the absence of broad and more comprehensive reforms, to introduce change. Most innovations are within the legal right of RGs. Some have taken the initiative to improve the management of their jurisdictions in the context of decentralization as well as improvement in service delivery, for example, through one-stop-shops. Some regional council now play an important role in securing local service delivery. These innovations show that change is possible but is also limited due to the current uncertain regulatory environment and the unclear role and responsibilities of the central agencies in civil service management. For an overview of regional attempts at personnel innovations see Appendix 11.

Reform Options

If reform are to be intensified and deepened in such a difficult and complex context, it behooves all stakeholders to carefully consider *options* for reform, to *prioritize* reforms and *sequence* these accompanied by an *adequate approach* and *responsible, strong leadership*. Such reforms will be sustainable only if political leadership is secured, including the will to

address the prevailing uncertainties. Reforms may be considered based on the *degree* of reform: partial, substantial, and comprehensive depending on the following:

- i. How conducive the political environment is to reforms;
- ii. How the decentralization process over the medium term is planned and what reforms would be crucial to make decentralization work and
- iii. Whether a *sense of urgency* for civil service reform can emerge between all stakeholders including donors.

The following approach to reforms in Indonesia can be seen in light of the above.

a. Continuation of Innovations: partial reforms

Partial reforms have been initiated in the regions through local innovations within the RGs' jurisdiction. Such reforms may be further encouraged if RGs can secure sufficient financial independence to meet local demands. In the absence of clear rules of the game and a fragmented legal framework, regions cannot bring innovations to their logical conclusion. RGs meet the limits of their legal rights, their capacity and their leadership. More substantive reforms are therefore difficult if CG does not initiate reforms in consultation and coordination with RGs. However, donors and local institutions like universities and NGO's have played an important role in assisting RGs to implement and sustain local innovations. It is also clear from the cases and field work that all stakeholders have gained experience over time in terms of effectiveness, feasibility and sustainability of such innovations. Innovations in some regions seem to be contextual in nature. Best practices in one region may not be readily transferable to others.

Cross regional cooperation may be encouraged to initiate local innovations based on experiences elsewhere. In addition, RGs can also lobby more effectively with CG to introduce further innovations based on positive experiences and attempt at piloting more structural changes. CG could facilitate such efforts by updating laws and regulations to reflect or to accommodate transferable proven best practices in innovative regions. This could resolve the paradoxical view of CG where on the one hand, it sees innovative regions as "rebels" and on the other hand encourages regions to take those innovations in certain regions as examples.⁷⁵ In organization, RGs can attempt to streamline their organizations with the assistance of universities and donors alike who can draw on external knowledge and experience.

In personnel, RG's can identify those personnel reforms which can be introduced without CG approval and are thus part of the legal authority of RGs such as i) introducing a HR planning tool to determine HR needs over the medium term; ii) introducing supplementary performance appraisal tools which may be used in addition to DP3 and linked to performance and local incentives; iii) implementing local remuneration policies and procedures (redistribution of local allowances) to increase transparency and accountability; iv) improving disciplinary tools which monitor civil servants presence and enforce the rules of the game; v) introducing training needs analysis to train indeed those civil servants that are "trainable" and developing a policy to promote the right person for the right job.

⁷⁵ Interview with Deputi I MenPAN dealing with the organisation of local governments.

The donors have been active in the regions and have supported various innovations in these areas. They may want to consider how to streamline their interventions and how their support could be broadened and extended while more gradual reforms appear on the agenda.

b. Substantial Reforms

Substantial reforms are currently limited since these reforms require RGs to step into unclear legal territory or to clearly overstep their current mandates. They are more radical in nature and call for local political support, particularly in the face of an unconvinced central government. Substantial reforms in this context aim at getting the organization and personnel functions improved in order to get routine tasks at local government level reinforced and introduce reforms which gradually improve transparency and accountability. Such improvements would also have a positive effect on service delivery.

Substantial reforms in relation to organization and personnel can address the regulatory environment and the existing policies and procedures within these specific functions (organization and personnel). These reforms focus on a first attempt to *integrate* the planning, implementation and management of organization and personnel. Currently, these 2 areas are treated separately; GR 8/2003 is designed and implemented without linking the effects of the organizational change to human resources policies and management and vice versa the human resources policies and procedures are not interrelated and subsequently designed to support organizational change.

A fully integrated approach to organization and personnel may be too ambitious and radical but “segments” of personnel policies in the context of organizational change may assist in addressing the *most urgent needs* of RGs. These reforms could help RGs to implement *incremental changes that would enhance decentralization*.

In the area of organization, pilots may be introduced which allow RGs to experiment with flexible approaches in relation to units, staff and finances (hard budget constraints) and by which the devolved functions and needs are the point of departure for the organization. These pilots must include rules of the game as well as a clear role of CG and the precise discretion of RGs. Half-hearted revisions of existing regulations in the area of personnel will have little effect.

In personnel, the current system needs to be reviewed by addressing segments of the personnel policy chain, i.e. interrelated policies and procedures must be reviewed such as job descriptions, job classification and remuneration, performance management. Pilots may consider lateral entry to the service (based on secondment, transfer) in critical skills areas thereby narrowing the gap between existing vacancies in critical areas and unavailable skills in the region. Training policy should be reinvented in the context of skills needs at RG level including the transferring of budgets for training to RGs.

These substantial reforms are very radical in the Indonesian context and require a sound approach in which all stakeholders, including the clients, are involved. They require debate and technical assistance in all areas to define which areas of organization and personnel are conducive to gradual reforms and are politically feasible and sustainable over the medium term.

c. Comprehensive reforms

Comprehensive reforms would be a “big bang” civil service reform in Indonesia requiring the following:

- i. Reviewing the decentralization process;
- ii. Defining the role of the public sector over the medium term in relation to civil society and the private sector;
- iii. Identifying and sequencing well planned reforms over the medium to long term.

Reforms in this approach are radical and entail a revolutionary break with the past. This type of reform is *political reform* and its implementation will be resisted by those who have traditionally monopolized decision-making over the use of resources. Laws and regulations do not suffice; they must be followed by clear and detailed procedures for a successful transition. Civil service comprehensive reforms require a broad review of organization and human resources within the role and responsibilities of the public sector in a next phase of decentralizing Indonesia. These reforms would entail streamlining organizations; improving personnel management; introducing merit in a career based system; change skills mix (does staffing needs meet requirements, the right mix of generalists and specialists); improving incentives; controlling costs; rightsizing and moving away from downsizing by attrition; addressing inefficiencies; identifying macro constraints (salary level, wage bill and pensions); introducing rules of the game based on objectivity, consistency and transparency; use of technical standards, introducing performance management and measurement and so forth. This type of reform may not be possible in Indonesia today; the political and governance context is not conducive to such reform and the risks of failure would be very high.

Recommended Action for Civil Service Reform

From the previous analysis and reform options for organizational and personnel issues it may have become clear that civil service reform in Indonesia is a serious challenge. It is therefore recommended that innovations in the regions continue and be further encouraged while at the same time more substantial reforms are prepared. Donors, who have already supported such innovations, should be encouraged to continue their support. In addition, donors could create a platform in which RG’s and donors exchange experiences and create learning opportunities for RG’s preparing for innovations.

At the time of writing this report various sources, including donors and GoI, indicated that several initiatives aimed at preparing for civil service reforms are under way. These include:

1. The implementation of a Civil Service Commission as stipulated in Law 43/1999
2. An evaluation of the remuneration of state officials in the context of Law no.12/1980
3. A Presidential Task Force on civil service reform, whose Secretariat is to be hosted by the Partnership for Governance Reform. This Task Force presently includes institutions focusing on economic development and the Coordinating Minister for Economic Affairs is in charge of this group.
4. Plans by the KPK to encourage pilots reforms in various Ministries.

In the short term regional innovations may be encouraged. Systematic lessons should be drawn from ongoing experiences in order to stimulate debate both among RGs themselves and between the RGs and the CG.

1. In terms of the debate among RGs, they should be stimulated to recognize their legal rights and to introduce innovations based on these rights and incorporate these in local regulations. In so doing, RGs should be granted the opportunity to innovate based on experiences in other regions. At the same time, innovative regions should be recognized and encouraged to share their innovations and support other RGs to innovate (mentoring). Technical assistance could be provided, either through universities as is already happening in some cases or by donors in order to improve their quality and sustainability of such innovations. RG's associations such as BKKS, ADKASI, APEKSI, APPSI should be empowered to assist RG's in replicating innovations and lobbying CG for reform.
2. RGs should encourage CG to disseminate the lessons learned. These results should then lead to the amendment of regulations and the production of policies, guidelines, instruments and tools. In turn, the latter will encourage less innovative RG's to prepare and implement needed changes. The CG could facilitate and provide assistance for implementing the needed changes; finally, once the legal framework is amended, the innovations will be more sustainable.
3. RGs should encourage more dialogue between RGs and CG and use any opportunity to voice their needs and concerns. For example, the process of the consultations between CG and RG (during the process of drafting regulations) should be improved; during consultations the CG must acknowledge and accommodate the diverse characteristics of RG's.
4. More (new) pilots could be introduced in the regions based on sound analysis, local needs and clearly agreed objectives between CG and RGs. In addition, a platform for innovations and pilots could be created and become part of an existing forum in which various stakeholders reside such as GoI, donors, NGO's and various associations.

In the medium to long term, substantial reform would entail *shifting the paradigm from incidental innovations to more systematic and significant reforms* related to those aspects of organization and personnel that find sufficient consensus. The preparation of such reforms requires additional technical work and analysis as well as a broad discussion forum to identify the aspects to be tackled and agree on an approach and plan for the next 5 years; it also requires support from the top political level and donors. This effort should be accompanied by a carefully planned campaign aimed at introducing a new era of government and governance based on modern practices, strong leadership and which abandons the "ineffective old practices". Through such a campaign, the GoI would demonstrate its seriousness and its firm commitment to implementing fundamental changes for the benefits of the population.

General areas that could be tackled include:

1. Overall framework; a clear definition and delineation of the roles and functions in civil service management of CG, Provincial, and district/city level.
2. RG's organization structure:

- The definition of RG's organizational structure based on clearly defined roles and functions of different levels of government (see above);
- The structuring of RGs' organization should be based on broad criteria including: hard budget constraints, fiscal analysis and incentives. The latter would allow RG's to efficiently re-organize according to their needs and medium term vision.

3. Personnel:

- Reforms in personnel have to be compatible with the organizational needs of RGs.
- Introducing new personnel policies and instruments which address and overcome the current ineffective policies and instruments.

A transitional period should be negotiated in order to facilitate moving from the "old system to the new system". Pilots may prove useful in testing emerging practices (from Indonesia or elsewhere) and building confidence that models can work.

IV. REGIONAL GOVERNANCE REFORM

Regional Government Service Provision

State/Government Reform Objective

It is widely stated in Indonesian policy documents and legislation, and often quoted, that decentralization is instrumental for bringing about better public services. Adequate basic services are deemed crucial for individual and national development. These services pertain to basic education (“nine years obligatory education”), primary health care (e.g. mother and child health), water provision, sanitation, and other essential public services such as the provision of identity cards upon which other services are made available. The constitution (Article 28) sets out a number of important rights relating to basic services. Legislation, such as the Education Law 20/2003, elaborates the meaning of the constitution, providing greater detail on the expected outcomes of basic service delivery⁷⁶.

Regional government is enjoined by central government, the public, and donors to improve services and make innovative breakthroughs in quality, efficiency and accountability. Specifically, the government encourages regional government to give the very best service (*pelayanan prima*) that is increasingly of higher quality, cheaper, simpler, and faster. The private sector is also encouraged to invest in basic services (Grand Strategy, 2005: 26).

Legal Framework for Regional Government Service Provision

In Law 32/2004 on regional government, the rationale for stronger regional autonomy includes the improvement of services (preamble, and Articles 22, 167). Directions are also given for improving the efficiency and effectiveness of services, for instance through the vehicles of interregional cooperation and cooperation with third parties (Article 195). The improvement of services is further supported in the legal framework by laws and regulations pertaining to the civil service, regulations that relate to the supervision and support functions of central government toward regional government, and the various provisions found in laws and lesser instruments relating to the participation of the public in policy making, planning, monitoring and management of service delivery. Additional laws relating to public services and administrative procedures also have their primary aim to improve public service delivery (broadly defined, not only basic services).

It is not easy to determine what the above framework adds up to in terms of directions to government actors and service producers, or the safeguards and recourse that can be used by the public. While the framework is certainly a work in process, and there is value in assessing the process and coherence of each element of the framework, the ultimate assessment may need to be made in terms of the on the ground reality.

⁷⁶ In the case of education law (Article 3) the goal of educational services is to develop, among others, capabilities, character, dignity, intelligence, and creativity.

On the Ground View of Service Provision

The service delivery scene in Indonesia post-decentralization is clouded, due largely to the patchy information gathered to date. On a positive note, public services (and in particular basic services) have not collapsed post-decentralization as some feared they might. Perceptions of service quality suggests that users feel that the services are as good as they were before. At the same time, as the findings of the Governance and Decentralization Survey suggests, there are significant differences across localities and sectors (GDS, 2005). Case studies (e.g. SMERU, 2003) and much anecdotal evidence bear out this suggestion of uneven performance, indicating that in cases some slippage has been experienced in reach and quality (see Box 2). On the other hand, some regions have made improvements, and a few are quite innovative⁸¹.

Box 2: The situation in key services

Water utility service covers about 20% of population, and largely ignores the poor⁷⁷. Net enrollment rates in junior and senior secondary level in NTT is 40.9% and 24.5% respectively. Health center facilities are under utilized, and citizen, including the poor, depend more on private service provision⁷⁸. National budget allocation for water service provision barely exceed 3% of the total budget⁷⁹. Financing for health service provision depends largely on out-pocket financing from the user fee.⁸⁰

A key policy question raised by the GDS is why certain localities are able to make improvements and be innovative, while others stagnate or even fall back. Particularly worrisome is the degeneration of some services across regions; e.g. immunization rates (Lieberman et al., 2005), and the degeneration seen in particular regions (e.g. early child nutrition)⁸². There is much concern that attention is being placed on curative rather than preventive health. The infrastructure stock for health, schools, roads, and water works are also believed to be suffering from underinvestment in selected regions.

The achievement of minimum service standards has yet to be pursued in a coherent and intensive fashion, in large part due to the incomplete legal framework. However, some regions are making efforts to track their performance in terms of MSS. Gresik district data suggests that educational standards might be quickly achieved in some cases (e.g. participation rates for first 9 years of education; number of teachers for basic “SD” education) and some may be more difficult and require many years of effort (e.g. on facilities, textbooks,

⁷⁷ Statement of Kumala Siregar, Dirut of one PDAM *Indonesia in Enabling Water Utilities to Serve the Urban Poor*, The World Bank Infrastructure Department East Asia and Pacific Region, January 2006.

⁷⁸ Health Strategy in Post-Crisis, Decentralization in Indonesia, The World Bank Report, 2002.

⁷⁹ The World Bank Report, Drinking Water and Environmental Sanitation Service Provision in Post Decentralization Era, 2004.

⁸⁰ Health Strategy in Post-Crisis, Decentralization in Indonesia, The World Bank Report, 2002

⁸¹ By improvements the authors mean the application of well known and accepted practices in internal governance and front-line service delivery that will lead to incremental improvements in the quality of service, reach of the service and client/citizen involvement in determining the service provided. Innovation is deemed to be a more significant “leap” in service delivery, such as a breakthrough in service technology, organizational set up (e.g. one roof service centre), provision-production arrangement, or service quality/reach attainment policy and application (e.g. free health insurance for the poor). Of course, an innovation in one region may well be a long standing practice in another, or internationally. Also, the improvement-innovation should be seen more as a continuum that is rather blurred in the middle range.

⁸² It is not surprising to see this happening in Aceh, post-tsunami, as reported in FAO/WFP (2005). More worrisome are the non-tsunami regions facing food security problems, including the eastern part of Java, West Nusa Tenggara (NTB), East Nusa Tenggara (NTT), central and southern Sulawesi, Maluku, North Maluku, and Papua. See the report from BKKBN (2005).

and teacher qualifications)⁸³. It also confirms a large variation by sub-district. Baseline data on MSS across sectors and districts is still lacking, potentially undermining any drive to apply MSS.

In summary, the following pattern of service performance can be seen in Indonesia's regions:

- A general increase in funding going to key basic services, but less than what is needed to make significant improvements in many regions
- Minimal improvements in the quality and reach of services in general
- Isolated cases of regional government innovation, and in other cases negligence
- Minimal dissemination of information on innovations.

The innovations seen since decentralization should not be discounted (see a partial list in Appendix 12). Even if relatively few, when compared to the number of regions, they are nonetheless significant, and could prove to be an inspiration to other regions, generating a knock-on effect. Some of these innovations have come from central government encouragement, regulation, or support (see Box 3 regarding education bodies established throughout Indonesia). Another example of national government taking the lead is that of the Ministry for Administrative Reform (MenPAN), supported by the GTZ-SfGG⁸⁴, where regional government is encouraged to apply service complaint mechanisms and service charters. Commitments are generated in a participatory way and become the basis for accountability toward the public. This effort has generated considerable interest in selected regions, and about 50 best practices or innovations are currently being documented and will be offered to organizations interested in dissemination⁸⁵.

Box 3: "Voice" in education provision

The central government, through Law 20/2003 (Article 56) has established Regional Education Councils and School Committees to give voice to citizens and parents. These bodies aim to

- allow citizens to influence education policies and programs
- increase citizen's responsibility for education service provision
- create transparent, accountable, and democratic education service provision

Initial evidence suggests that these can have success, but their effectiveness depends on the quality of the individuals active in these bodies, their linkages (Committees to Council), and the strength of the linkages between these bodies and external actors (e.g. education interest groups, teacher unions) and regional politicians.

Other innovations have been crafted entirely by regional government, with or without donor involvement (see Box 4 on health insurance in Jembrana). Regardless of their derivation, a number of actors should ideally be involved in the dissemination of innovations. Appropriate strategies are also necessary if innovations are to be properly screened, packaged, and supported through application elsewhere.

⁸³ This brief assessment was prepared by the USAID funded RTI-Decentralized Basic Education 1 based on data provided by the AusAID/Indonesia-Australia Partnership for Basic Education project (Howse, 2006).

⁸⁴ Gesellschaft für Technische Zusammenarbeit – Support for Good Governance project.

⁸⁵ Interview with Mr. Günter Felber, principal advisor in GTZ-SfGG, May 8, 2006.

Box 4: Jembrana health insurance scheme

Introduced in 2003, the scheme provides free primary health care to all members. It has increased access to health care of both poor and non-poor, opening choice to private providers. The percentage of ill people seeking treatment went from 40% to 90% by 2004.

The initiative has been more expensive than anticipated, and the district has resorted to increasing registration fees, leading to a drop in enrollment. The inclusion of non-poor, and the drive to make it sustainable, may be crowding out the poor. Moreover, the 2004 national law on health insurance threatens the scheme. Even if it survives this challenge, the scheme is only based on a Bupati's decree, an instrument that facilitates exploration, but raises questions of continuity (World Bank, 2005).

It appears that there are many organizations professing to be active in the dissemination of service innovations, including central and regional government, local government associations, universities, research centres, development NGOs, and donor funded projects. Regional heads from innovative regions have been generous with their time, enriching the workshop circuit throughout the country with their accounts. However, this is draining and takes them away from their main work.

Local government associations are interested and have made some attempts to disseminate best practices, but these efforts are relatively modest in term of practices/innovations covered and support given to introduce them to their members. Perhaps with the growth of regional branches (e.g. *Komisariat Wilayah*)

they will become bigger players.

Within the central government itself there are initiatives within MoHA, MenPAN, and LAN. There is a great deal of variation in what is understood to be the innovation chain or cycle, and what is needed to ensure replication and/or institutionalization. Some may argue that innovation requires such a diversity of ideas, channels and efforts. Others may argue that there are too many overlapping and partial efforts that never establish momentum, are wasteful of scarce resources, and do not result in significant dissemination.

Innovations noted in the past few years hold lessons at several levels. At a general level they confirm that decentralization will lead to variation and that some exemplary practices or innovations are bound to arise when freedom and encouragement to experiment is provided. Further lessons can be learned about what makes the initiatives successful in a given context. In this respect, some innovations must be treated with caution. While they do represent genuine efforts to explore approaches and make a difference for citizens (sometimes even with a focus on the poor) they are not always straightforward successes. This suggests that more effort may be needed in supporting their design, and confirms that due diligence is required in scrutinizing claims of success. Both the positive and negative aspects of the innovation should be fairly documented, with cautions regarding the parameters for success. The Jembrana region health insurance scheme shown in Box 4 underscores this point⁸⁶.

Given that regional government has been operating in a fairly permissive legal environment, in terms of functional assignment and use of funds, it is fair to inquire why improvement or innovation in service delivery appears to be much below what the general arguments for decentralization would suggest. Some reasons for this shortfall may be:

- It is early days yet in decentralization

⁸⁶ In this case due diligence was well carried out by a combination of separate researchers, from the World Bank and the University of Indonesia.

- Not all improvements and innovations have been uncovered or reported
- Lack of concrete central government (and Governor/province) encouragement, incentives and support for innovation
- A passive approach to service delivery, with the expectation that a central government “blue print” will be provided
- Persistence of risk avoidance stance of regional government leadership (mainly the executive body)
- Insufficient technical level support to regional government for taking up or exploring possibilities
- Weak administrative capacities and challenges of scale due to the creation of new regions
- Insufficient use of kecamatan and village level administration/government in extending and improving services
- Preoccupation with extracting personal and organizational gains (legally and otherwise) by bureaucrats and front line workers, i.e. corruption in its many forms
- Traditional attitudes towards power by position holders, wherein serving the public is not the driving motive behind the attainment of posts
- Traditional attitudes of civil society that makes citizens or their associations reluctant to make claims for better services and introduce ways of disciplining officials and politicians
- Inflexibilities or disincentives in the central government framework regarding organizational structures, personnel, and financing
- Reliance on executive leadership, with reduced sustainability of changes.

Perhaps it is unfair to expect rapid and extensive improvements in service delivery when central and regional governance is still fragile and problematic. Service delivery reach and quality is the visible result of a great number of less visible governance practices and institutional dynamics. As in other countries, Indonesia has embarked on a journey to improve governance, and service delivery is essentially a barometer of a wide range of reform efforts. In particular, the ability (and incentives) to hire, fire, and prepare public servants adequately for their service and service support tasks (attitudinally and skill-wise) figures prominently. In this respect, not too much has changed in Indonesia post-decentralization (see the Cluster II section).

This contextual view of service delivery is supported in international and local literature. The lack of service improvements consistent with mainstream decentralization theory has been noted in a number of decentralizing countries, and has been attributed in part to weak local government capacities, capture by local elites, corruption and inequitable resource distribution (DFID, 2004).

It is also known, from both Indonesian and international experiences, that the proper use of community information, resources, and organization can lead to project implementation that is significantly more efficient and in line with local preferences than typically contracted projects. It is reasonable to expect that if regional governments are not using the kecamatan administration and village level fully in infrastructure development or service delivery efforts, they may be foregoing some significant gains. Evidence of the added value that can come in using these levels can be found in Indonesia. In Bandung, the “Free Education Fee Card” distribution via the involvement of the kelurahan in identifying poor students was deemed to be an improvement over former methods⁸⁷. In the health sector, village government plays an important role in recruiting, maintaining and changing the village health cadres. In the water sector, community-based drinking water development requires a high degree of coordination between district and village government⁸⁸.

Quality of service delivery also reflects the overall policies on regional autonomy (how many units, with what mandate, scale, resources and potential). As the number of regional governments increases (now reaching 440 districts/cities, with another 101 on the waiting list) so does the likelihood of creating under-resourced and inefficient governments, as indicated in a World Bank study of relative wage bills in Indonesian regional governments⁸⁹.

Another strong determinant is the role of civil society. Despite the flowering of CSOs, the “voice” option for many communities is not yet significant, for lack of supporting organizations and the existence of cultural practices that inhibit the claiming of individual or collective rights.

In summary, a number of reasons can be offered for the lacklustre performance of regional government in service delivery. To be more definitive, and prescriptive, there is a need to understand the larger context and dynamics. As part of this effort, the views from the region may also be helpful in understanding why many regional government seemed to be locked in a passive stance or low level efforts in service delivery improvement. This fine grained knowledge will be helpful in shaping central government frameworks (e.g. the application of minimum service standards) and in aligning donor support with entry points that are most promising.

Reform Efforts to Strengthen the Legal Framework

As mentioned above, a confluence of governance practices affect service delivery. The legal framework for service delivery then is extremely complex. Several regulations stemming from Law 32/2004 on regional government will figure prominently, including those already created on the supervision of regional government, reporting of regional government performance, role of the Governor, and the application of minimum service standards. Many other legal frameworks on planning and budget processes also make their contributions. Additionally, new legal streams are being created that address how the bureaucracy must deal with the public. The most relevant efforts are described below.

⁸⁷ Interview with Head of Education SKPD Administration Unit in Bandung City.

⁸⁸ The World Bank Report, Drinking Water and Environmental Sanitation Service Provision in Post Decentralization Era, 2004.

⁸⁹ The local governments with less than 100,000 people have about twice the wage bill per capita that those local governments with 500,000 people have, see Hofman and Kaiser (2002).

Application Instruments for Minimum Service Standards

With the passage of Government Regulation 65/2005 on the guidelines for the preparation and application of Minimum Service Standards (MSS)⁹⁰, the government has moved closer to the application of minimum service standards. These standards have been expected for some time, and other legal instruments on planning and budgeting already allude to them or direct actors to use these standards.

The challenge now rests in making this regulation operational, with all of the safeguards that are called for in the regulation to avert unhealthy budget competition, unfunded mandates, and increased tension between all actors (Ferrazzi, 2005). MoHA is leading the inter-ministerial effort to make the MSS operational (see Cluster I – Functional Assignment). If properly implemented, service accountability should follow by (i) enabling citizens to monitor the extent to which regional government fulfills its responsibility in providing adequate service; and (ii) promoting transparency in regional government planning and budgeting. The introduction of MSS should embolden the public to make some claims on regional government, and give guidance and adequate resources to regional government as it pursues basic service improvements.

Drafting of the Law on Public Services

The House of Representatives is currently deliberating the draft law on “public services,” covering service improvement principles to be espoused by the government bureaucracy, expected procedures and issues of quality and accountability. The conceptual kernel for this law was prepared in 2002 with the assistance of the University of Indonesia. There is some concern that this law will be rather general, and tread on matters already handled by the regional government law (e.g. minimum service standards) or the draft law on administrative procedures (principles guiding government actions and recourse of individuals). This law has been lead by MenPAN but it is not clear which constituents are calling for or supporting this law. In fact, MoHA itself, leading the charge on minimum service standards, seems to be largely unaware of what this law contains and what it is expected to accomplish.

A coalition of NGOs (supported by Yappika) is active in advocating for the passage of an effective law. Not all NGOs are happy with the current draft. Masyarakat Peduli Pelayanan Publik (MP3, 2006) notes the draft law focuses only on services that are delivered by government, has limited scope for public participation, does not target marginalized groups, contains an inadequate complaint mechanism, and has no assurance of access to information. These may indeed be some of the shortcomings of the draft law. What the criticisms miss is that some of these aspects are already addressed elsewhere or are being addressed in a more operational way in pending legislation. The MenPAN officials attending the focus group on services for this study did not provide an explanation for why this particular law was needed and how it fit in the constellation of existing and pending laws/regulations⁹¹. They did state their intention to follow up the law with a book on innovations in service delivery for regional government use.

⁹⁰ Peraturan Pemerintah Republik Indonesia Nomor 65 Tahun 2005 Tentang Pedoman Penyusunan Dan Penerapan Standar Pelayanan Minimal.

⁹¹ The rationale for championing legislative/regulatory efforts in the Indonesian bureaucracy is all too often the opportunity to gain a higher profile and role for a particular unit/organization; this legislative/regulatory effort is thus conducted in isolation from other mandated/affected government units, with the intent to avoid impediments or to gain relative advantage.

Drafting of Law on Administrative Procedures

This law is intended to make it easier for citizens to claim their rights with respect to service provision. It covers principles of administrative procedures, particularly in relation to the public. For instance it deals with the expected response to complaints on government service delivery or other actions of government. It aims to bolster codes of conduct, reduce discriminatory or capricious acts of government, increase access to information and increase accountability. This law has also been lead by MenPAN. In contrast to the draft law on public services, this draft has been put together with significant stakeholder support, involvement and donor facilitation from GTZ-SfGG. The drafting process has taken place over 18 months with the participation of civil society groups, universities, and the national ombudsman's office.

Special Service Agencies Regulation

Central level departments and regional government units have been given the means to create special service agencies (*Badan Layanan Umum – BLU*) to increase the efficiency and effectiveness of service delivery through Government Regulation 23/2005 on the Financial Management of Special Service Agencies. This regulation, stemming from provisions in the state finance Law 17/2003, gives more freedom to managers over employees, revenues and resources. Some provisions on financial administration provisions related to BLU/BLUD have also been placed in the GR 58/2005 on Regional Financial Management. Assistance for this reform was provided by the CIDA-funded GRSII. Further regulations are to come in the form of a MoHA regulation. It is not clear why the BLUD provisions were required, and what more needs to be regulated. Specifically, it is not clear what obstacles they remove that would impede the regional government in delegating more management power to their implementing arms, or in charging or keeping these revenues obtained from services. In any case, it is now perhaps clearer that this is possible. How this confirmation or facilitation is taken up by regional government remains to be seen. The challenge may be more in attitudes and other systemic impediments rather than facilitating legal instruments on organizational aspects of service delivery.

Policy Options and Recommended Action

Improving service delivery entails considering access, cost, quality, alignment with local preferences, and ensuring client satisfaction. The complexity of service delivery suggests that support for improvements or innovations, is no simple matter; there is no magic bullet. Yet service delivery is the face of government to the people, and it is a good barometer of overall progress on “governance.” Progress should then be seen as the result of incremental improvements and sometimes systemic changes on a number of fronts, with a focus on improving accountability relationships. It is common in the service delivery discussions to forget that regional government efforts, however important, are bounded by the larger central-regional relations that set the scope for systemic changes in the civil service. Fundamental improvements require systemic changes to establish structures, management roles, and incentives that will orient the civil service towards service improvements/innovation.

Knowledge of the factors that impinge on improved service delivery in Indonesia is still rather sketchy. The GDS has been helpful, and the rapid appraisals made by other parties have also made a contribution. But more analysis is necessary before making larger decisions on approaches and intensity of efforts.

What Do We Know About Regional Government Innovations?

Preliminary information gathered by government, donors and NGOs concerned with service delivery paints the following tentative picture of the characteristics of innovations in regional government services:

- Strong leadership of the regional head (Bupati/Mayor)
- Regional heads who are well connected with Jakarta power centre (party, bureaucracy)
- Donor supported innovations.

Explorations, best practices and innovations have not, in the main, come from pressure from local groups or internally from designs of the bureaucracy exerting its professional competence. They have come from the forceful leadership of a fresh leader who has the trust (strong vote mandate) of his/her constituency. If this characterization is accurate (and more analysis may be needed before making this conclusion), then the character of regional innovations raises some flags regarding the depth and sustainability of reforms. As the World Bank (2006) review of nine service innovations in Indonesia points out, reform is threatened when local regulations are weak or non-existent. Having reform led by the executive, and put into effect with instruments such as executive regulations (Peraturan Kepala Daerah), may not be sufficient to ensure sustainability. These short cuts to reform can yield timely results, but they may not garner the support of DPRD members, or much support within the bureaucracy, and may not survive when the regional head exits. The World Bank review also highlighted that ongoing funding is assured “only...where reforms were locally conceived, relatively cheap, and locally funded.”

Understanding the Accountability Relationships

If a sustainable approach to service delivery improvements is sought, then perhaps the idea of “innovation” needs to be properly cast. It may well turn out that the drive and possibilities of innovation in service delivery is as difficult to understand and bottle as that relating to entrepreneurs in the market place. Yet sound business principles, management and corporate governance have served many established businesses well. Similarly, it may be that “good practices” should be the focus in enhancing front line service delivery, rather than the more impressive but elusive “innovations.”

If the above premise is accepted, then the emphasis will be placed on finding and applying a great number of good practices that have a direct or indirect bearing on service delivery (as is being attempted by MenPAN with GTZ-SfGG). Because service delivery is a complex undertaking, whether new practices or innovations can be successfully introduced and applied sustainable depends on the nature and effectiveness of the accountability relationships between the main actors, and the more systemic structures, management roles, and incentives

that give rise to these accountability relationships. Threshold levels of achievement along these relationships may be a pre-condition for significant advances in service delivery.

As the World Bank (2004) report suggests, the key accountability relationships in a multi-level government context are shown in Figure 10 (adapted from Figure 3.2 of World Bank Development Report 2004).

The interrelated accountability relationships shown in Figure 1 are constructed in intricate ways, employing many elements of political and administrative character. The main elements of the relationships that are currently being developed in the Indonesian context are noted below⁹²:

Relationship #1

- Ensuring that service standards are applied by regional government agencies/third parties
- Facilitating local participation in targeting of service improvements
- Reporting on service improvement plans and achievements to higher level government and the public
- Exploring and applying service best practices/innovations through inter-regional cooperation, use of third parties, greater agency autonomy and other good governance measures.

Relationship #2

- Applying standards/targets provided by government/regional government
- Reporting progress and challenges to regional government
- Spearheading improvements and innovations within framework space given

Relationship #3

- Providing the opportunities/mechanism for customer satisfaction feedback (e.g. surveys, complaints systems)
- Facilitating participation in planning of services and in co-management of services
- Providing information on service achievements and gaps/challenges, and allow direct monitoring and evaluation of services by users/public

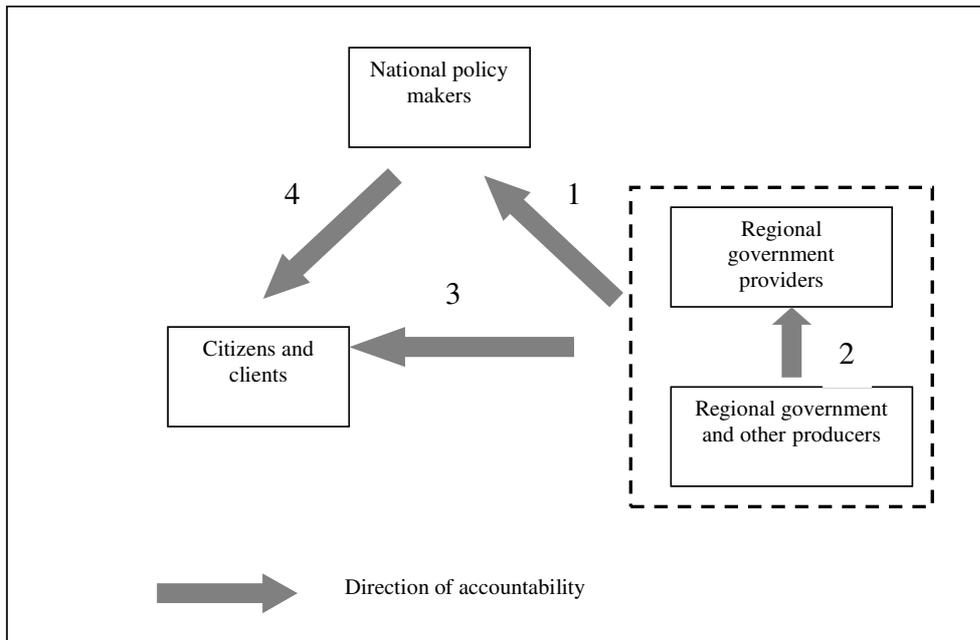
Relationship #4

- Participatory policy making in legal instruments that pertain to service delivery

⁹² The accountability relationships and elements in Figure 1 are somewhat similar to those found in the 2004 World Development Report. Figure 1 is not meant to capture all of the possible elements of the accountability relationships.

- Involvement in setting service standards
- Monitoring of service gaps and improvement efforts
- Obtaining national and comparative data from government on progress in service delivery

Figure 10. Key Accountability Relationships Among Main Actors in Service Delivery



The efforts of the GoI have been directed mainly to the reform of the regulatory framework that frames the accountabilities listed in Relationship #1 (largely through the revised regional government law), where regional government is given a framework for planning, budgeting, and reporting on service delivery. Minimum Service Standards have been conceived as a key instrument to improve services in an equitable way across regions. Donors have been supporting this effort since 2000, working both with the Ministry of Home Affairs (e.g. GTZ-SfDM/ASSD, USAID-PERFORM, ADB-RTI-GTZ-; CIDA-GRSII) as well as sectoral ministries (e.g. USAID funded RTI-DBE in education). The task is large however, and an even greater effort will be needed to make the concept operational.

Largely untouched is the centralistic civil service legislation (Law 43/1999) that establishes control over personnel management (e.g. hiring, firing, moving, evaluating, rewarding), and those elements of financial relations (Law 32/2004 and Law 33/2004 on regional government and fiscal balance respectively) that set incentives in managing the regional civil service⁹³. More recently the regulatory effort has been directed to Relationship #3, accentuating the

⁹³ See the Cluster III section on the Civil Service for more details.

relationship to citizens/users. These regulations are variable in quality and not always well vented with stakeholders (indicating a weakness in Relationship #4); they are prone to internal organizational entrepreneurship, which means that they may not add up to a coherent frame when all the current “work in process” is finalized. In particular, the justification for the Public Services law is weak in view of other laws/regulations existing or in process.

Legislation/regulations may be helpful for Relationship #3, but it will need much more than that for accountability to come to life. It is appropriate for CSOs/universities to take a key role in this relationship. In this regard, regional government associations should probably play a larger role than they are presently playing.

There is now a reasonably long list of improvements and innovations that can be taken up by regional government. Some regional governments have already taken these on (as indicated in Appendix 13), and many more could, with support from higher level government, CSOs/universities, and donors. These possibilities include:

- Regional government cooperation for cross-district spillovers (e.g. access to hospital care in district/city border areas)
- Private public partnerships, exploring how standards of service can be achieved when the private sector is the producer of the services (this means differentiating public provision from private production⁹⁴)
- Increasing client/community participation, scrutiny, and feedback (e.g. client complaints mechanisms, citizen charter for service provision)
- Regional good governance initiatives (codes of conduct, integrity pacts)
- Focusing service delivery on the special needs of marginalized groups

One possible mechanism for disseminating these practices is to use district, city and provincial level champions who have pushed for new ways of doing things and achieved a measure of success. They can be assisted in validating and documenting their efforts (where this is necessary), and in communicating these through a variety of peer to peer engagements (mutual study tours, workshops, document sharing, task group formation of leading practitioners to design CD approaches for all regions). This approach has been tried with success by GTZ in other countries, such as Namibia (see Box 5 for an Indonesian example).

Box 5: Peer-to-peer sharing – JaLINKota

An Indonesian based approach to peer to peer transfer has been seen in the cooperation of the Ministry of Home Affairs and GTZ. The Jaringan Fasilitator Pemerintah Daerah dalam Manajemen Perkotaan (JaLINKota) is a network developed and promoted through the support of GTZ-Urban Quality. It consists of a pool of Indonesian local government officers who provide advice to local governments in towns and districts throughout Indonesia for the implementation and introduction of innovative and efficient local government practices. They have gained experience with procedures, systems and methods for improved urban governance, and have been proven change agents in their own place of work. Presently there are about 100 JaLINKota advisors.

⁹⁴ Provision in this context refers to regional government choices that determine the (1) goods and services to provide, (2) private activities to regulate, (3) amount of revenue to raise, (4) quantity and quality standards of services, and (5) how to arrange for productions. Production is limited to the more technical processes of transforming inputs into outputs. See Oakerson, 1987.

Box 6: Recognizing success in service delivery

Since decentralization was given a boost by the Local Government Code (1991) several government departments, aided by donors, have introduced awards for local government units (LGU) and related organizations. LGU success has been recognized and spurred by, for example: The Hamis (Health and Management Information System), initiated in 1990 and supported by GTZ; the Galing Pook Award for Local Service, managed by the Local Government Academy and DILG, initiated in 1993 and supported initially by the Ford Foundation; and the Konrad Adenauer Medal of Excellence, awarded by the Foundation and the Local Government Development Foundation. Several hundred prizes have been awarded to date⁹⁵.

Relationships between regional government and citizens (#3), front line units and regional government (#2) and regional government and central government (#1) could all benefit from well-fashioned recognition and rewards for those making excellent progress (or indeed forging breakthrough innovations). Box 6 provides the case of The Philippines, where local government performance is significantly spurred through public recognition, rewarding local actors with attention, reputation, and monetary incentives.

Taken another step farther, good governance and progress on key service indicators could be the basis for “performance based grants” that supplement local resources and reward efforts by regional governments to close service gaps (see Box 7 on performance

grants).

Donors need to support CSOs, universities and government (at all levels), and explore how this assistance can be made more strategic. For example, they should support the potentially pivotal role of the province in guiding districts/cities in improving service delivery. Provincial and district/city governments could also give their delivery agencies more freedom to manage (e.g. hiring/firing, managing revenues) within a framework of expected outputs/outcomes (Relationship #2). The previously mentioned special service agency status (BLUD) that is provided for in GR 23/2005 may be helpful in this regard.

In short, through appropriate regulations and support programs, a concerted effort is required to:

- Identify and understand the full potential of regional innovations (as well as the blockages that entail more systemic changes in the civil service)
- Determine the adaptations and cautions that must accompany dissemination efforts
- Develop guiding instruments to facilitate application/adaptation

Box 7: Performance based grants

Several countries (e.g. Uganda, Tanzania, Kenya, Nepal, and Bangladesh) are experimenting with grants, largely from donor funds, to spur local government performance. These grants vary considerably in size and earmarking, but they have in common their intent to reward performance, defined largely in terms of improved institutional processes (Steffensen and Fredborg Larsen, 2005).

It is possible to incorporate service delivery processes or outputs in such grants. CIDA-Indonesia has held preliminary discussion with the GoI to introduce such a grant in Sulawesi provinces, to spur district/city efforts to close MDG/minimum service standards gaps.

⁹⁵ See: Konrad Adenauer Medal of Excellence (KAME) <http://www.logodef.com.ph/KAME.html>, The Gawad Galing Pook <http://www.galingpook.org/ggp2005.htm>, and Brillantes Jr Alex (undated).

- Provide opportunities for technical support in the application stage
- Provide freedom and incentives to explore, manage, and stimulate best practices/innovations.

Recommended Action

Immediate action:

- The GoI should give more attention to harmonizing the legal framework affecting service delivery (ensure legislation/regulations dovetail and superfluous instruments are not produced).
- The GoI and donors should make a concerted effort to develop and apply minimum service standards, with donor support to the relevant central-level sectoral agencies and a nationwide capacity development effort for regional government.
- Donors should assist the GoI in developing a sustainable screening mechanism to validate innovations, and suggest how these can best be packaged for dissemination (with a stress on marketability) by GoI/CSOs/universities, with a diminishing role for donors over time.

Long term action:

- The GoI and donors should examine the role of good practices, innovation disseminating agencies, and organizations in service delivery to note where cooperation can be increased and duplication reduced.
- Donor-supported efforts that are employing, or wish to employ, peer-to-peer mechanisms, should jointly explore how these efforts may be adapted, bolstered and housed appropriately to make them a sustainable means of disseminating locally-tested good practices.
- The GoI and regional government associations, with donor support, should develop more incentives for the development and dissemination of good practices and innovations through recognition and awards.
- The GoI and donors should invest in developing sound accountability mechanisms by strengthening CSO capacity; encouraging public discussion for service provision policy formulation; empowering ombudsman institutions; and improving basic service information systems.
- The GoI should consider spurring regional government investment in basic services through performance-based grants that recognize efforts to close service gaps. This may require an adapted DAK, or a related funding window.

Regional Government Planning and Budgeting/ Financial Management

State/Government Reform Objective⁹⁶

With a number of new laws and government regulations promulgated between 1999 and 2006, the government has set in motion a fundamental reshaping of regional government practices in planning, budgeting, and other aspects of financial management. The desired reforms include unifying the budget, simplifying the treasury function, increasing planning and financial management transparency, linking planning to budgeting and making these performance based, and preparing budgets within a medium term expenditure framework.

The planning process in particular is expected to coordinate the actors involved in development and make the most of scarce resources. Assets, cash, and debt management will be tightened. Accounting standards are being introduced, including accrual accounting. Stronger accountability requirements are also being sought, mainly through enhanced auditing, monitoring and evaluation function.

This reform agenda is broad and ambitious, and although some of the financial management elements are phased, key planning and budgeting elements are valid immediately, in principle at least.

Legal Framework

The change to the legal framework is broad and fundamental. Regional government planning and budgeting/ financial management is being overhauled through a number of legal (institutional), policy and legislative streams or sub-streams (see Box 8). The greatest complexity is seen in the planning and budgeting processes, which derive their mandates from at least four such streams. Other aspects of financial management are less fragmented.

Box 8: Legislative streams for planning/budgeting and financial management

- Law 17/2003 on State Finances
- Law 25/2004 on the National Development Planning System
- Sectoral planning: various sectoral laws
- Decentralization laws:
 - Law 32/2004 on Local Government
 - Law 33/2004 on Financial Balance between the Central and Local Government
- Law 24/1992 on Spatial Planning
- Law 1/2004 State Treasury
- Law 15/2004 State Audit

The laws shown in Box 8 have been elaborated in government regulations and lesser instruments. The inconsistencies that existed in the original laws are in cases reflected in the lower level legal instruments. The preparation of Government Regulation 58/2005 on Regional Financial Management (to replace GR 105/2000 that originated from the 1999 decentralization laws) has been one attempt to join the streams, in this case the decentralization laws and the state finance laws as they become operational. It is not clear yet to what extent harmonization has been achieved through this instrument. Early indications are that it is still rather general in nature. As will be noted in the sub-sections that follow, the framework is an odd amalgam of traditional policies and new approaches. The net effect is

⁹⁶ The following summary of state objectives is abstracted from a number of laws and regulations that are treated in the next sub-section on the legal framework.

the creation of a complex, inconsistent, and burdensome set of requirements on regional government.

In bringing about these reforms, the GoI has established a schedule for phasing in some of the changes, particularly on budgets and accounting systems⁹⁷:

- At the end of FY 2005, local governments were expected to report financial statements on the basis of the revised accounting standards, although auditable reports will continue to be based on Ministry of Home Affairs Decree 29/2002.
- The 2006 budget is prepared on the basis of Ministry of Home Affairs Decree 29/2002 accounting standards. But end-of-year accounts will be audited on the basis of the revised accounting rules.
- In 2007, the revised Ministry of Home Affairs Decree 29/2002 (just issued as Ministerial Regulation 13/2006) is expected to come into effect. It is expected that the 2007 budget will be prepared according to new rules and local governments will be required to switch to the revised chart of accounts.
- In 2008, local governments are expected to have migrated to accrual accounting.

So far, the emphasis in the more detailed legal instruments has been to provide the basic mechanisms of the budget process and the associated accounting rules. GR 58/2005 does acknowledge key planning and budgeting system innovations (e.g. MTEF, budget unification, performance budgeting) but provides few details on their implications and application. The newly issued Ministerial Regulation 13/2006, is also viewed as a basis for the development of additional operational tools, rather than complete guidance as required by regional government practitioners.

The Framework for Planning and Budgeting

Early decentralization reforms in Law 22/1999 neglected planning in the law itself, and only indirectly addressed it through Government Regulation 105/2000 and Ministerial Decree 29/2002. Budgeting processes were however quite detailed in the latter documents, and already contained some far reaching reforms, namely performance-based budgeting and greater participation and transparency in the planning and budgeting process.

Noting the relative vacuum left on reform of the planning processes, several years later Bappenas lead the effort that enacted Law 25/2004 to address national and regional development planning. This law stresses the central-regional link in planning. For instance, the Medium Term Development Plan (MTDP) set out the government's strategic five year policy framework (e.g. 2004-2009) that will also guide regional plans. It must be noted that this law was also partial leaving untouched another stream of planning – spatial planning, based on Law 24/1992. There is a conceptual link between development planning and spatial planning, and the two must be integrated in some plans (particularly long-term plans). However, in Indonesian practice, the distinction has been blurred, resulting in separate “development” and “spatial” plans that overlap in scope but are often inconsistent. Law 25/2004 also does not sufficiently clarify the relationship of regional planning to sectoral planning. It also fails to make linkages to the MTEF approach put forward in Law 17/2003.

⁹⁷ This sequence is obtained from the support strategy document of CIDA-GRS (Hickling Bearing Point, 2006).

At about the same time, the GoI issued GR 20/2004 on the Government Work Plan and GR 21/2004 on State Ministry/Agencies Work Plan and Budgeting Formulation. These regulations flowed from Law 17/2003 on State Finance. They only partially addressed the planning and budgeting processes of regional government, and did not bridge well with decentralization laws or the national planning law⁹⁸.

The planning shortfall in Law 22/1999 was also addressed in the successor Law 32/2004 (being drafted around the time of Law 25/2004, but on separate tracks). Government regulations are now being prepared as a follow-up to Law 32/2004 to address the core approaches of regional government development planning, or aspects of this process. Regarding the latter, the previously mentioned draft regulations in Cluster I, on regional government reporting, and monitoring and evaluation of regional government performance, are still far from being ready. Impinging more directly on regional planning, a draft GR on regional development planning, still in very early stages of drafting, is being prepared by the Directorate General for Regional Development (Bangda), MoHA⁹⁹.

This growing legal framework, developed through a variety of poorly coordinated streams, is leading to contradictions between legal instruments (see Box 9 for some examples). As stated earlier, some convergence between streams was attempted through GR 58/2005, but this regulation also does not deal in any detail with the issues of MTEF or performance budgeting. Clarity may have to come through the successor to Ministry of Home Affairs Decree 29/2002 (as an elaboration of the new GR 58/2005), governing the more operational aspects of regional government planning, budgeting, and other aspects of financial management.

This decree (13/2006) has only very recently been produced and has not been disseminated widely.

Donors have assisted some of the planning and budgeting related regulations. CIDA-GRSII has assisted in the preparation of GR 20, GR 21, GR 58, and MoHA Decree 13/2006. A multi-donor effort, with the coordination of the Forum for Public Participation (FPPM) supported by USAID-DRSP, is being mounted to support Bangda in the preparation of the draft GR on regional development planning. Additional donors include USAID-LGSP,

Box 9: Examples of Contradictions in Legal Framework

- According to Law 25/2004, RPJMD is enacted by a regulation issued by the head of region (*Perkada*), while in Law 32/2004, RPJMD is enacted as a regional regulation (*Perda*).
- Unclear use of terms: RKPD in Law 25/2004 is explained as *Rencana Kerja Pemerintah Daerah* (Regional Government Working Plan), which should be enacted as *Perkada* while Law 32/2004 introduces it as *Rencana Kerja Pembangunan Daerah* (Regional Development Working Plan), which should be issued as a *Perda*.
- Law 25/2004 article 27 states that mechanisms of regional plans are to be regulated through regional regulation, while Law 32/2004 article 154 states that the central level will provide implementing guidelines.

⁹⁸ The original drafts of GR 20 and 21 included wider coverage of regional government processes. However, these were rejected in the discussion at Setkab and most references to regional government were dropped. It appears that MoHA in particular was not sufficiently on board.

⁹⁹ The draft, now in its fourth version, is still quite weak, but Bangda intends to provide regional actors with several interactive opportunities to strengthen it with their review/comments. The role of donors and other actors in supporting the drafting effort is under discussion.

CIDA-GRSII, and GTZ-ASSD/GLG. The Ford Foundation and TIFA Foundation are also involved.

Although the evolving framework has generally lacked details on the planning and budgeting side, some concrete guidance on particular aspects has come in the form of ministerial instruments. MoHA and Bappenas issued a joint circular letter concerning the mechanism of Development Planning Deliberation (*Musyawahar Perencanaan Pembangunan/Musrenbang*). The guidance focused on using the outputs of *Musrenbang* (programs and projects proposals) in formulating the Regional Government Working Plan (*Rencana Kerja Pemerintah Daerah – RKPD*) and General Budget Policy (*Kebijakan Umum Anggaran – KUA*).¹⁰⁰

Framework for Financial Reporting

GR 58/2005 on the Financial and Performance Reporting of Government Agencies regulates both central and regional government agencies (Dinas etc.). The reporting not only covers financial performance but also the “results” expected, in accordance with specified indicators. In this respect, the regulation, co-championed by the Ministry of Home Affairs and the Ministry of Finance, seems to have carved out ground that is currently being worked in the preparing the draft regulation on reporting and monitoring and evaluation, an effort being lead by MoHA.

Framework for Accounting

Government Regulation 24/2005 on Government Accounting Standards, introduces some changes, all arising from the work of the Committee for Government Accounting Standards (KSAP) as referred to in Law 17/2003 on State Finances, brought into being through Presidential Decree 2/2005¹⁰¹. Under the new framework, the Government will transition to accrual accounting, with financial reporting based on a modified accrual basis to 2007, and thereafter based on accrual accounting, under which financial transactions are counted when the transaction occurs.

Framework for Audit

The Third Amendment to the 1945 Constitution (Article 23) stipulated BPK as the only external auditor of central and regional governments. The internal audit function (reporting to the executive) is carried out at the regional government level by regional internal audit agencies (BAWASDAs), formed as part of the implementation of Law 32/2004. Law 17/2003 stipulates that by 2007, the financial accountability statements of the 440 district/cities and 32 provinces will be audited within 6 months of the end of the financial year.

¹⁰⁰ The formulation of this circular was supported by Forum for Popular Participation (FPPM), Perform Project, and Tifa Foundation.

¹⁰¹ The KSAP developed the accounting standards relating to Financial Statements Presentation; Budget Realization Statement; Cash Flow Statement; Notes to the Financial Statements; Inventory; Investments; Fixed Assets; Construction in Progress; Liabilities; Error Corrections, Changes in Accounting Policies and Extraordinary Events; and Consolidated Financial Statements.

Implementation

Planning and Budgeting in Practice

Although some guidance on performance based budgeting has been provided to the regional government since 2002, it has yet to take hold; the changes have come too fast to be implemented in any significant way. The current number of requirements for planning and budgeting has resulted in an excessively demanding set of requirements (see Box 10 – not an exhaustive list).

On the other hand, the planning requirements are now radically changed in some ways with progressive but poorly elaborated objectives, e.g. performance based budgeting, pro-poor planning and budgeting, gender mainstreaming. These innovations assume some important preconditions in terms of understanding, skills and political support. It is worth noting that the innovations are not well connected and are not sequenced. The unification of the budget alone requires shifting from the classifications of “development and routine” to the new classifications of “recurrent and investment”, which continues to present challenges. Introducing equally challenging approaches simultaneously is sure to stretch both the central and regional government actors.

Box 10: Planning demands on regional government

- Planning documents:
 - Long-term development plan (RPJPD/*Rencana Pembangunan Jangka Panjang Daerah*).
 - Mid-term development plan (RPJMD/*Rencana Pembangunan Jangka Menengah Daerah*)
 - Regional Government working plan (RKPD/*Rencana Kerja Pemerintah Daerah*)
 - Mid-Term Expenditure Framework (MTEF)
 - Regional Spatial Plan (*Rencana Tata Ruang Daerah*)
 - Working unit plan (*Renja-KN/SKPD/Rencana Kerja Kementerian Negara/Satuan Kerja*)
- Budgeting Documents:
 - Budget Policy, Priority, and Ceiling (KUA, *Prioritas dan Plafon*)
 - Working Plan and Budget (RKA)
 - Regional Budget Document (APBD)
 - Working Plan and Budget Document (DKA)

Ways of reconciling the new progressive elements with retained elements of the system have yet to be developed. For instance, regional planners have very little guidance and preparation to shift from the usual approach to mid-term planning (still valid) to the MTEF. They do not understand the differences, and whether the MTEF entails additional documents (or if it just an approach). Central level policy-makers who set the new rules for the MTEF did so without having any clarity on these matters, and now are ill prepared to guide the regions.

Other challenges evident in regional government planning efforts, and observed during a field assessment in two districts and one city in Lampung,¹⁰² include:

- The General Budget Policy¹⁰³ document, an agreement between the DPRD and the executive, is not prepared or used as expected. It does not become the reference for drafting budget proposals of the regional government units (SKPD). The latter continues on with past patterns of projects;¹⁰⁴

¹⁰² Bandarlampung municipality, Districts Central Lampung, and Tanggamus

¹⁰³ Called *Kebijakan Umum Anggaran – KUA*; previously known as *Arah Kebijakan Umum*, or General Policy Directions in Minister of Home Affairs Decree 29/2002.

¹⁰⁴ The new MoHA decree 13/2006 may address this in principle, but habits die hard unless there is political will and technical support to make the rules stick.

- Inputs from the bottom-up planning process are not given sufficient consideration in regional government planning and budgeting;
- Budget cycles are not followed. For example, the RKPD, RKA-SKPD and General Budgeting Policy are sometimes discussed in parallel;
- The draft APBD is being discussed while the General Budgeting Policy has yet to be approved;
- Insufficient training and other support (e.g. socialization) is generally given to higher echelon staff, but rarely to technical staff;
- Corruption distorts the planning and budgeting process.

Box 11: Participatory planning in NTB/NTT regions¹⁰⁵

A GTZ study in Bima, Alor, and Sumba Timur district revealed the following obstacles:

- Planning was interpreted as 'event'; project proposals prepared in the *Musrenbang*.
- Proposed programs exceeded by far regional budget estimate as the participants lacked information on regional government priorities and budget constraints.
- Proposed programs were mainly village scale infrastructure development, with no effort to place these in any strategic context.
- The planning process was formalistic and mechanistic, with heavy use of forms and tables, and no substantive dialogue.
- Many SKPD didn't participate in planning forums at Kecamatan level, and used their own plans in opaques regional government budget processes.
- Planning fatigue ensued among villagers in view of poor regional government response.

A significant effort has been made, and continues to be made, by donors to introduce participatory planning efforts (see Box11 for illustration). For instance, assistance has been given by GTZ-Promis NT, GTZ-SfDM, and Indonesian Partnership for Governance Initiative (IPGI), and USAID-LGSP. This assistance has been provided both at national level, to shape the policy and legal framework, and in the regions, to develop specific approaches in line with policy¹⁰⁶. Much of the regional government assistance has come in the way of awareness raising or introductory workshops and training. Very little has been done in developing skills in situ, and providing consistent and ongoing support to make the organizational changes necessary to make the new approaches work. This is especially the case for the specific technical skills on performance planning and budgeting, regional development or spatial planning¹⁰⁷.

Other Financial Management Challenges in Practice

Regional governments have yet to make the most of the resources made available to them. This is evident in their treatment of regional government assets. Land and buildings lie idle or deteriorate. Maintenance is haphazard. Disposal of regional government assets is often below market price.

¹⁰⁵ Study on Local planning and budgeting effectiveness and efficiency at some NTB and NTT regions (GTZ-PROMIS 2003).

¹⁰⁶ The substantial involvement of donor agencies and local NGOs in this field were indicated by MoHA official in focus group discussion organized by DRSP on February 22 2006.

¹⁰⁷ Support to performance budgeting was provided by USAID-PERFORM, and USAID- Building Institutions for Good Governance (BIGG), and is now continued through USAID-LGSP. Though these projects covered many districts/cities, they only reached a small proportion of the regions, and have not yet provided intensive and comprehensive support in each partner region.

Procurement standards have yet to be fully implemented, and unit costs that can safeguard against abuse are not adequately determined or applied. The traditional model (single entry book keeping, cash basis model) is still the dominant accounting system, with little preparation for the anticipated transition.

Regional governments generally do not have qualified human resources in financial management. Staff sent to Jakarta to join the socialization and training programs, are not usually those in charge of arranging and managing local finances.

The recruitment for key positions is not undertaken with any rigor; there is insufficient testing and screening of candidates. There is therefore a lack of accounting diploma graduates or full-fledged accounting degree graduates (*sarjana*). Standard software has yet to be developed to facilitate the shift to more sophisticated approaches to financial management. The intent of MoF to increase professional positions in financial management has yet to be felt in practice.

Financial probity at the regional government level has few incentives to develop. The BPK is thinly staffed, and is weak. The Regional Controlling Boards (Bawasda), now referred to as Regional Inspectorates, are likewise weak. The central government internal auditor (BPKP) intrudes on regional government as well, with no formal division of labor with the Baswasda¹⁰⁸. Moreover, the BPKP reports to the central executive, not to the regional executive. Given the lack of dissemination of audit results to the public, and the lack of awareness of the public of the audit agencies, there is very little pressure for follow-up to audits. The ADB concluded that “Indonesia has an audit sector that is costly, ill structured, ineffective, and inefficient.” (2004: 3) It is unlikely that proper audits will be undertaken in all regional governments in line with the stipulations of Law 17/2003.

Support for financial management in regional government is being provided by CIDA-GRSII, particularly in Aceh’s district, city and province level government. In 2003-2004, the World Bank (through the Dutch Trust Fund) supported development of the Regional Government Financial Information System (SIKD) through a pilot scheme in 19 regional governments. This is now being followed up through a loan program (ADB, 2005). The latter program will also support MoF in creating and certifying new positions for local government financial administrators to implement reforms related to budget execution, asset and liability management, and accounting (as required by the Law 17/2003). An additional ADB program, initiated in 2004, is seeking to build up the audit agencies conducting audits on regional government, through the State Audit Reform Sector Development Program (STARSDP).

¹⁰⁸ The BPKP has been criticized for this intrusion, and there is talk of it being absorbed within the BKP and regional audit bodies, but this has yet to happen, and the Presidential decree 9/2004 adjusting the role of some central government agencies appears to give the agency a continued role in the audit of regional government (see Article 114(4)).

Policy Options and Recommended Action

Policy Options

There is room for central government action as well as for regional government to use the existing space given by the framework (while it evolves). Continued reforms or improvements could include:

Synchronizing laws and regulations. There is the need to rectify the worst conflicting provisions, but also to close gaps and lighten the planning load and transition to new planning approaches on the regions. MoHA, MoF, and Bappenas in particular will need to better coordinate their policy and legal drafting efforts.

Simplifying and sequencing the new progressive elements being introduced in regional planning and budgeting, particularly:

- Performance Based Budgeting; with a focus on performance indicators (e.g. MSS) and how these are inserted in mid-term, annual plans and budget documents.
- Mid-Term Expenditure Framework (MTEF); clarifying the actual period, and connection and sequence to other plans and budget documents.
- Pro-poor budgeting, a concept which is widely supported but not well defined. The scope (a poverty fund, or entire budget) with appropriate tools of analysis are required¹⁰⁹.
- Gender Equity in Planning and Budgeting, which, like pro-poor budgeting, needs the scope of the analysis and methodology to be made clear.

Enhancing capacity in technical domains of planning. Regional government planners should also be supported in gaining technical expertise in critical areas of performance based budgeting, MTEF, regional economic analysis, and spatial/zoning planning. More integrated and streamlined organizational structures to address planning and budgeting at regional level should be encouraged. Preceding this step, or simultaneously, central level technical staff in key ministries/agencies must also increase their knowledge and skills, so that they in turn can provide credible guidance to regional actors (including non-government actors).

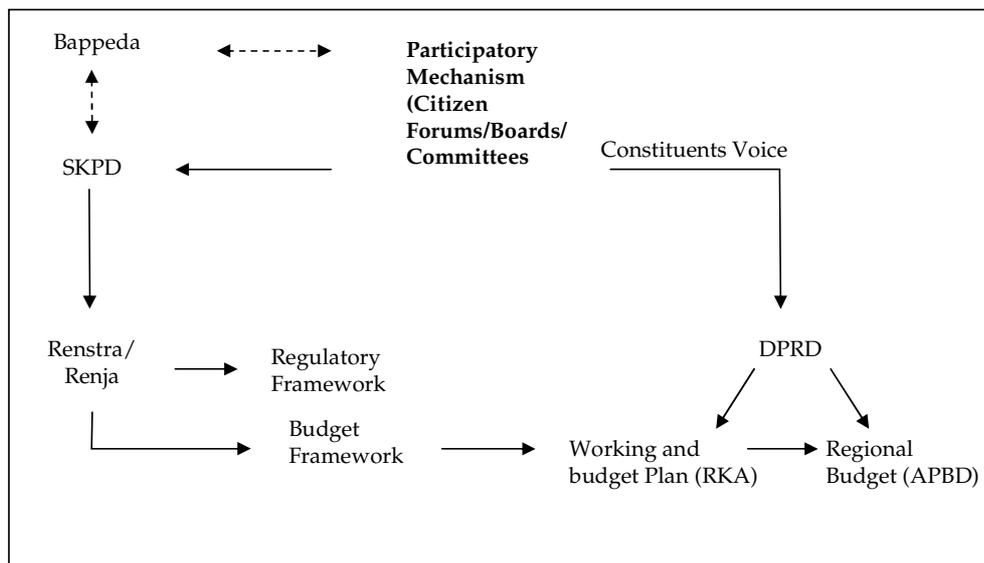
Enlarging the definition of planning and how stakeholders can influence the process. There is a need to move away from large annual events to approaches that are more issue and sectoral, with their own set of effective organizations and channels for communication. In this respect, more emphasis needs to be given to the potential role of specialized forums operating at various levels (e.g. Regional Education Council, Parent-school Councils, Health Center Committees, Health Councils, Housing Council, etc.). These can find roots among service users/public, and effectively influence the regional government units undertaking planning in the sector/issue. Some adjustment in terms of the SKPD relationship to these bodies may be needed, to ensure there will be receptivity to ongoing interaction¹¹⁰. These

¹⁰⁹ An example of a budget wide approach is that of Jembrana district, where shifts in budgets within and between sectors have occurred to focus on the new poverty focused initiatives in education and health sectors.

¹¹⁰ Regarding the MoHA/Bappenas Circular Letter, SKPD's forums are the vehicle for sub-district and sectoral delegation to discuss the proposal programs that will be proposed by SKPD for next fiscal year.

bodies can therefore influence the planning process and development/service policies, and put forward concrete program and project proposals where appropriate (see Figure 11).

Figure 11. A Broader Way of Understanding Participatory Planning



Expanding the scope for regional budgets by reducing deconcentration funds that limit the role of the regional government in implementing functions they have been given. This is foreseen in Law 33/2004, and needs to be undertaken with consistency. Having these funds channeled through the APBD would give regional government greater scope for responding to local needs appropriately.

Rationalizing the budget process within the room given, to expedite approval of the budget and allow for earlier spending¹¹¹ and reduced levels of surpluses (unspent funds¹¹²). Admittedly, GR 58/2005 is not helpful in this regard, making the budget process rather rigid and complex, seemingly removing local solutions to budget preparations and deliberations. This GR may need to be revisited in the longer term.

Intensifying financial management training and technical support. The quality and quantity of offerings need to be greatly increased in the field of planning, budgeting, procurement procedures, accounting standards and computerized systems.

Making donor support more strategic and coordinated. The support work on national level policy and legal framework is essential, but has to be better coordinated, ideally from the GoI side. It is not uncommon for donor-supported TA in one ministry to be unaware of a conflicting/competing effort in another that also has donor TA support. Efforts to develop

¹¹¹ As an example, The Head of Bappeda in Nangro Aceh Darrusalaam complained that they just discussed the APBD for Fiscal Year 2006 on February due, in part, to the lateness of the DAU and DAK information, received in January 2006 (comprising more than 80% of APBD).

¹¹² These have grown substantially in 2005, and likely will grow even more in 2006 in view of the increase in transfers received by the regional governments, see Lewis, 2006.

capacity in the regions are also too often disconnected from the core actors and systems, leading to low sustainability of curriculum and training approaches.

Recommended Action

Immediate action (mid 2006):

- Take the first step in synchronization by ensuring that the current draft GR on Regional Planning fills gaps, and harmonizes where possible
- Provide concrete guidance (e.g. manuals/training on MTEF, gender analysis, pro-poor budgeting) to regional planners and financial administration staff in a larger capacity development strategy (emphasis, linkages, sequence) that also incorporates donor support, strategically oriented to institutions that can ensure national coverage and sustainability of the capacity development effort.

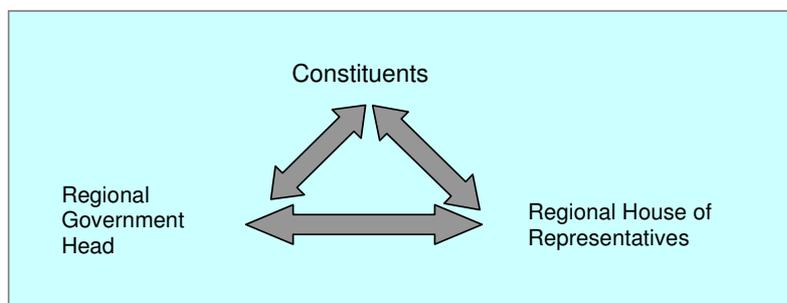
Mid to long term action (beginning early 2007):

- Monitor regional government practices in planning, budgeting, and other aspects of financial management that will yield feedback to central level policy makers.
- Undertake a longer term effort to harmonize, simplify and elaborate the policy, legal and guidance framework on regional planning, budgeting and financial administration.

Political Accountability: Regional Government Heads

State/Government Reform Objective

With the advent of more genuine democratization and decentralization in Indonesia, greater attention has been given to a working system of checks and balances within the system of governance.



Disappointed with the relationship between the Regional House of Representatives (DPRD) and the Regional Head following the initial 1999 reforms, the state has set out to rebalance the relationship by reworking the Regional Head's accountability to the DPRD and by giving the Regional Head a more independent political base through direct election. Now both bodies are expected to "articulate and aggregate" the people's interests (Grand Strategy, Chapter VII 2005: 23).

Legal Framework

Political Accountability to Citizens

In Law 32/2004, political accountability at the regional level now includes the accountability of the Regional Government Head (*Gubernur/Bupati/Walikota*) to both the constituents, via direct elections, and to the DPRD. Vertical accountability in the form of reports from the district/city government heads to the Governor and to the Ministry of Home Affairs, covering technical and administrative aspects of governance, has also been reworked through this law.

Starting in June 2005, the Governor, Bupati and Mayor are now elected directly (*pemilihan kepala daerah langsung*, shortened to *pilkada langsung*¹¹³). This current arrangement, built into Law 32/2004, is a response to demand for greater democracy at the local level, and represents a significant change from the approach seen in Law 22/1999, where the DPRD was dominant in representing the people and selecting the regional head. The change was seen as necessary in view of the wide-spread allegation that DPRD members, and political parties, abused their powers by “selling” the regional head office to the highest bidder.

A combined regional head and vice-regional head ticket can be put forward to the Regional Election Commission (KPU) by a political party, or an amalgam of parties that has reached a certain threshold¹¹⁴. The new rules also encourage parties to open the candidacy to persons either within the party ranks or from the larger community, and for the party to conduct the selection in a democratic way.

Political Accountability to DPRD

Law 32/2004 provides for an accountability framework where the Regional Government Head (RGH) accounts for his/her duties to the DPRD, the central government, and to the people through a mechanism of regular reporting. The DPRD may also ask the RGH to account through the exercise of its oversight function, mostly concerning implementation of programs and projects funded by the annual regional budget, and the implementation of regional regulation (*peraturan daerah* or *perda*). This relationship stands in contrast to the predecessor Law 22/1999, where the accountability of the RGH to the DPRD was accentuated, as it was the DPRD that elected a Governor, Bupati or a Walikota, and he/she had to account annually to the DPRD. The latter could impeach the RGH if it felt unsatisfied with his/her performance.

The above reworking of RGH accountability to the DPRD are intended to go hand in hand with a strengthened accountability of the RGH to his constituency, through the direct election mechanism. The RGH may have a somewhat stronger position versus the DPRD, reducing the likelihood of impeachment (at least based on the annual performance reporting to the DPRD), but his power is kept in check through direct accountability to the electorate; he must now expand more thought and energy in reporting to his electorate and maintaining their support.

¹¹³ Law 32/2004, Art.56-119.

¹¹⁴ Law 32/2004, Art. 56 and 59.

The provisions in Law 32/2004 on the annual accountability report of the RGH (*laporan keterangan pertanggungjawaban*) to the DPRD¹¹⁵ do not elaborate the issues/results to be reported by the RGH. There are also no details on how DPRD could respond to the report and make the regional government head accountable for the report or for issues not reported. As with many substantive issues in the current legislation on regional government, details are to follow in an implementing regulation, and this is currently being drafted by the Ministry of Home Affairs.

Duties, Authorities, and Responsibilities of a Regional Government Head

Once in office, the RGH is immediately immersed in performing the many responsibilities detailed in Law 32/2004. Some functions are broad in scope¹¹⁶; fostering democracy, providing basic education and health services, preserving the environment, improving the people's welfare, implementing clean and good governance principles, and being accountable for the region's finances. In fulfilling these responsibilities, the RGH is guided by a complex set of central government framework laws and regulations. Together with the DPRD he/she must enact policies within this framework and make these operational through his/her own regulatory instruments. Policies are enshrined in plans and other ordinances that dictate rules and processes pertaining to public services, structures and processes of regional governance, and regional finances. A key joint policy and operational instrument created with the DPRD is the annual budget.¹¹⁷ The deputy RGH also has additional duties to follow up findings from internal auditors, and to foster women and youth welfare and local culture¹¹⁸. The RGH has the authority over the financial management of the regional government, and may delegate some or all of the authority to other officials.¹¹⁹

In organizing regional government to perform its various functions and duties, the RGH works with the DPRD to set the civil service establishment (*formasi*)¹²⁰ and qualification for civil servants to fill the determined posts. The RGH appoints agency heads and, sub-district heads (*camat* and *lurah*) from the civil service pool, based on the recommendation of the regional secretary. The secretary of DPRD secretariat is also appointed by the regional head. As for the regional secretary, the most senior civil service official in a region, the appointment is made by the president for the provincial level, and by the governor for the district and city level. The governor provides his/her opinion with regard to the senior appointments made at the district/city level. (More details on the civil service issues can be found in the chapter on civil service reform)

In discharging his/her responsibilities, the RGH must (of his/her own accord or in concert with the DPRD) generate a considerable number of plans and report, for regional and higher level institutions. The RGH must present a strategic plan before a DPRD plenary session within three months of being elected¹²¹. He/she must also ensure that the regional planning board prepares the basis for a medium-term development plan (*rencana pembangunan jangka menengah daerah* or RPJMD) that incorporates his/her vision and that of the DPRD (as the latter must approve it) and programs promised in the election campaigns. The RPJMD must

¹¹⁵ Law 32/2004, Art. 27.2.

¹¹⁶ Law 32/2004, Art. 22.

¹¹⁷ Law 32/2004, Art. 25.

¹¹⁸ Law 32/2004, Art. 26.1.

¹¹⁹ Law 32/2004, Art. 156.

¹²⁰ Which will later need approval from the central level (see section on CSR).

¹²¹ Law 32/2004, Art. 27(1)k, and the elucidation section.

also refer to a 20-year development plan, and both plans must consider the respective national planning documents¹²². The RGH is then required to submit reports to the Ministry of Home Affairs and DPRD, and to inform people of the region regarding the conduct of regional government.¹²³ The reports to the central government are the basis for “evaluating the performance” of a region and central government “guidance”¹²⁴. (Details on the planning and budgeting can be found in the respective section of this report).

Current Situation on the Ground

Political Accountability to Citizens

From June 2005 through May 2006 there have been 232 direct elections of regional heads country-wide, of which 9 are governors, 33 mayors, and 190 Bupati. Most of these elections were heavily contested; 153 elections were contested by 4 to 7 candidates, and only 28 regions saw a two-way race. In these contests, 124 incumbents were re-elected, with 56 winning in either two- or three-way races. Even in heavily contested elections, more than half of those who won more than 35 percent of votes were incumbent, with Bupati Rustriningsih of Kebumen notably being re-elected with 77.48% of votes in a four-way race. However, a significant number of incumbents (in 86 of 210 elections) were defeated in the contest. Even so, these results suggest that incumbency is an important advantage in RGH elections. These results may indicate that voters were satisfied with the performance of the incumbent, but does not rule out the possibility that incumbents were able to exert undue influence over the bureaucracy and other elites to gain campaign advantages.

The role of DPRD and political parties are more prominent in the direct elections than might be expected. Candidacy, for example, requires support from a political party or an amalgam of parties to pass muster¹²⁵. These rules do open up the possibility of individuals without previous party affiliation to seek candidacy, but nonetheless require that these individuals court political party(ies)¹²⁶. Indeed, a wide array of people came out in 2004 to try to seek candidacy. The party’s decisive role in determining candidates has raised concerns and allegations of “money politics” which continue to cast a shadow over the integrity of this process. A new expression has emerged among those political hopefuls that are “*beli tiket kapal*” – literally translated as “buying the boat ticket” - to signal what is entailed in gaining support from a party.¹²⁷ A candidate wishing to run in a district or city must contribute (buy her ticket) not only to the party, or parties, at that level but also to the party at provincial and even at the national level.

Another significant feature of the *pilkada* is the role of a regional electoral commission or *komisi pemilihan umum daerah (KPUD)* in organizing and administering the entire process,

¹²² Law 32/2004, Art. 150.

¹²³ Law 32/2004, Art. 27.2.

¹²⁴ Law 32/2004, Art. 27.4. See also, Rancangan Peraturan Pemerintah Republik Indonesia tentang Laporan Keterangan Pertanggungjawaban Kepala Daerah kepada Dewan Perwakilan Rakyat Daerah dan Informasi Penyelenggaraan Pemerintahan Daerah kepada Masyarakat, Departemen Dalam Negeri, Jakarta, 2006.

¹²⁵ Law 32/2004, Art. 56.2, 59.1

¹²⁶ Law 32/2004, Art. 59.3-4.

¹²⁷ See, Pratikno, “Political Party in Pilkada: Some problems for democratic consolidation”, paper presented at the workshop on Pilkada: The local district elections, Indonesia 2005, Asia Research Institute, National University of Singapore, May 2006.

from voter registration to final vote tabulation when the winner is announced¹²⁸. However, unlike in the 2004 national election where the Electoral Commission was fairly independent and well-funded, making the results reasonably democratic and legitimate, the KPUD's mandate and resources are vulnerable to interventions from DPRD, regional government, and even the central government. In an attempt to make *pilkada* a local affair, DPRD assumes the role in overseeing the process by having the KPUD accountable to the council, in forming the electoral supervisory committee, and in endorsing the final result. The regional government and DPRD finance the *pilkada* through provisions in the regional budget – though the regional government has little experience in devising the elections and has limited funds to spare.¹²⁹

Having designated the *pilkada* as a regional governance affair – as expressed in Law 32/2004 – the central government has nonetheless found ways to influence the process through layers of regulation and its bureaucratic machinery. Such tampering puts in question the integrity and legitimacy of the process. These concerns also arise in the case of the regional electoral organization and administration (KPUD). This has prompted advocacy for a more independent body whereby the national electoral commission (KPU), which is considered fairly independent, has a more significant and decisive influence over the administration of *pilkada*. Even the Constitutional Court, while upholding the government's stance that *pilkada* is part of the regional government regime, thereby affirming its regulatory mandate over the matter, suggests that the election organization could be done through a more independent institutional framework that falls within the regulation of *pilkada* as a part of the election (rather than regional government) legislation¹³⁰.

The dispute resolution mechanism in the *pilkada* regime entails a decisive role of the judiciary, where its decision over disputes on final vote count is final and binding¹³¹. However, ambiguous language in the regulations and questions over the courts' integrity, have led to controversy in the mechanism, as seen in the Depok mayoral election. The decision of the West Java High Court to overturn Depok KPUD's final tabulation based on questionable counts has raised doubts about the ethical conduct of the judges, prompting the Supreme Court to overrule the decision and reinstate the KPUD's counts. The legal process, however, has not always been the sole recourse of the losing candidates in the election. In Kaur, Bengkulu and Tuban, East Java, the losing candidates or their supporters provoked mobs to rampage through town, razing public buildings, such as the Bupati office complex and KPUD office, and private property of the winning candidate. The protesters alleged wide-spread violations at voter registration and counting. Furthermore, they point to instances of vote buying that were not properly investigated, and KPUD actions that favored some candidates. Although criminal prosecution of those involved in the violence must be pursued, a thorough examination must be done to see how grievances in all steps of the process could have immediate redress instead of leaving them to fester and run the risk of violent reaction.

Once elected, even with a plurality vote or a small-margin result, the RGH is expected to serve the entire constituency¹³². His/her legitimacy depends very much on performing while in office, rather than by the proportion of votes he/she receive in the election or the number of the seats his/her party (or amalgam of parties) has in DPRD. Once elected, it is paramount

¹²⁸ Law 32/2004, Art. 57.1-2, 60.3-5, 61-64, 65.4, 66.1-3, 67, 75.9, 81.3-4, 83.2-7, 84.2-6, 99-102.

¹²⁹ Law 32/2004, Art. 112.

¹³⁰ Constitutional Court Decision, 072-073/PUU-II/2004, 22 March 2005.

¹³¹ Law 32/2004, Art. 106.

¹³² Law 32/2004, Art. 25, 26, 27.1.

that the RGH make her first task that of coalition building, to ensure that he/she is seen to be concerned with all citizens. To do otherwise is to invite opposition and reaction that will hamper the RGH's work, as seen in the case of Bupati Banyuwangi who faces threat of ouster by the DPRD (see Box 12 for detail).

Political Accountability to DPRD

With regard to the Bupati's accountability to the DPRD, even if impeachment is no longer possible (with reference to the accountability report), the DPRD can offer critical commentary on the annual report, and the follow-up actions in response to them are then consolidated at the end of the RGH's term. The reports then can become a major part of a score card on the performance of the RGH¹³³. The score card contains valuable information for voters in the election. For a RGH that wants to seek re-election, attaining satisfactory performance throughout his/her term and reporting will remain a key concern. However, for those already in their second term, and with no ambition for other political offices, such a performance record may have much less political value. In any case, such tracking is a very valuable experience for key actors and voters in strengthening accountability of office holders.

Box 12: Banyuwangi Bupati under threat of impeachment

Ulamas in Banyuwangi on 4 May 2006 organised a mass rally to demand the Bupati Ratna Ani Lestari resign within 24 hours for allegedly blaspheming Islam. The rally was attended by supporters of the Muslim organisation Nahdlatul Ulama and the Islam Defenders Front. All political parties in the DPRD are supporting the demand, except PDI-P, which only recently supported her after its candidate lost to her in an election in 2005. However, none of the 18 parties which had supported her during the campaign won any seats in the council. Observers point to political interests and dissatisfaction with a number of decrees in the bid to oust the regent. After the DPRD decided in a plenary session to dismiss her, it is up to the Supreme Courts to decide over the case. Before that, a special investigation has to be conducted and the results been forwarded to the court. The Governor of East Java has no authority to replace a Bupati.

An impeachment process of a regional government head is still possible on the basis of political or policy issues¹³⁴, but it is regulated so that a high threshold of council members must be in favor of a motion to impeach, and then the Supreme Court must decide in favor of the motion; lastly, the president must agree to the motion. These measures make any impeachment attempt very difficult. Even so, political opposition can nonetheless exert pressure on RGHS. The recent controversy in Banyuwangi illustrates this well; severe political instability can result, crippling government functions in the district (see Box 12).

¹³³ Interview with a DPRD *kabupaten* member, Bogor District, 10 May 2006.

¹³⁴ Law 32/2004, Art. 29.2.d-e, 29.4.

Duties, Authorities, and Responsibilities of Regional Government Head

Decisions in planning, budgeting or reporting still elicits little controversy in the course of preparations, deliberations, and implementation. This is perhaps because key stakeholders are in a consensus on the subjects of decision, or because the decisions were made by a small circle of local elite while other stakeholders, i.e. the people or civil society, are unaware of the process and the decisions until their impact affects them in a tangible way.

Box 13: The Zakat case in East Lombok, NTB

Through a decision of the *bupati* in East Lombok, civil servants' -who profess Islamic faith- have a percentage of their salary deducted, as a form of *zakat* -Islamic tax. Thousands of teachers in district organized a strike to protest this decision, as it was made without any consultations with them. Even if consulted, the teachers would have been opposed to such regulation as they felt that their already very low income should not be further reduced. More importantly for the teachers, they felt such religious obligation should not be regulated or organized by the government. The DPRD responded to this huge expression of discontent by initiating a probe into the decision and came out recommending the impeachment of the *bupati*, prompting the provincial government and MoHA to try to mediate to resolve the controversy.

In the planning process, for instance, a newly elected RGH must oversee the preparation of the RPJMD. This document is to be used as a basis for the annual reporting, and can be used by voters and stakeholders to measure achievements. The RGH can adhere to the central government procedures and yet fail to meet the spirit of participation and other good governance principles. In many regions, this pro-forma adherence may elicit little reaction, but where civil society is gaining strength, this approach can spark wide-spread discontent and opposition from the public.

There is increasing resistance to closed decision-making that is dominated by only a few key actors, and in particular to decisions deemed by the public to be infringing on their rights and livelihood. Examples for this resistance are the strike by teachers in Lombok Timur, and protests against the regional regulation on prostitution in Tangerang City (see Box 13 and Box 14).

The two illustrations underline substantial problems in managing political relationships among key actors. Even as regional governments have made decisions that they consider to have been made in accordance with the legal framework, thus within their purview to regulate, those affected by these decisions or regulations may well seek to reverse these decisions or undermine their implementation. In the case of East Lombok, the RGH may be able to find compromises, adjusting his own decrees to the pressures that arise from refashioned accountability mechanisms relating the DPRD and constituents. In the Tangerang case, where decisions were made with DPRD agreement (Perda) and in anticipation/perception of wide constituent support, political accommodation

Box 14: The anti-prostitution regulation in Tangerang

In Tangerang city, a *perda* on anti-prostitution has caused wide-spread protests from women and civil rights activists for its indiscriminate provisions that potentially violate the constitution. The issue came to light when a female factory worker was arrested and charged with lewd behavior for being out in public. She was suspected of being a prostitute. She was on her way home, waiting for public transportation when a group of *polisi pamong praja* - the municipal public order officers - arrested her and brought her to a night court where she was fined and rebuked for violating the *perda*. Women's and rights activists then assisted her in filing a civil suit against Tangerang city for violating her constitutional rights. The activists also filed for judicial review to the Supreme Court, after MoHA, which has jurisdiction in supervising and revoking *perda* under Law 32/2004 failed to act decisively against the *perda*. Despite such opposition, Tangerang district and Depok city are preparing to enact a similar regulation.

is likely to be more challenging, and the RGH may find himself less willing or able to compromise, but more subject to external intervention, from national institutions concerned with the protection of human rights, i.e. the supervisory executive organizations (e.g. MoHA) and the judicial branch of government. Navigating in these more complex and turbulent times poses greater challenges to RGH than those seen in the New Order period.

Reform Efforts

As with political reform of any kind, developing effective checks and balances between political institutions requires pressure from stakeholders who demand the necessary changes. In this respect, the issue of balanced accountability between the RGH and DPRD attracts minimal attention at this time. Those closest to the action, such as DPRD members and political parties, have little incentive to clamor for revisions to the laws to strengthen accountability or checks and balances. And civil society is not well organized to mount an effective effort to attain further reform. Notwithstanding the above reality, modest progress can be achieved through practices such as devising a score-card of RGH performance and providing it to voters at election time. This may move elected officials to be more informative and communicative with their constituent.

In the RGH elections civil society pressure has looked promising. Where extensive monitoring of the process has been conducted, critical issues have been brought to the fore. The Jaringan Pendidikan Memilih untuk Rakyat – JPPR (People's Voter Education Network), a coalition of faith-based organizations with grassroots networks has proved highly-capable and credible in monitoring elections. Their monitoring has allowed stakeholders to scrutinize the election process, in terms of voter registration, campaigning, polling stations, voting day, and tabulations. The scrutiny seeks to uncover both illegal and unethical behavior by key actors. Donor support for JPPR has come from The Asia Foundation, USAID and the Australian Indonesia Partnership. Its greatest strength is its link to grassroots actors and its effective coordination of these actors, and it is this connection that is most critical for sustainability and dissemination.

Policy Options and Recommended Action

Progress in political accountability tends to be made incrementally. Even when significant changes are made in the formal rules of the game, as with the switch from indirect to direct election of RGHs, the actual improvements in accountability are realized over time, over several iterations. Appropriate frameworks are important, but equally important are the further growth and strengthening of civil society organizations, involved citizens, voluntary codes of ethics, strict enforcement of legal rules, and new attitudes among the public and key actors can realize the potential of promising frameworks.

The roles of civil society organizations and DPRD have been mentioned in this section, and will receive specific treatment in separate sections of the report). Focusing on the RGHs themselves, Indonesia can make further improvements in RGH accountability by refining the legal framework. These modifications are achievable technically, but do not have sufficient support as yet among policy-makers, and support is likely to only be generated through increased pressure and argumentation from non-government actors.

Donors can play a catalytic role in supporting a dialogue on the refinements that can still be made in the legal framework for RGH elections. Evaluations of past approaches and international experiences can be prepared and packaged by Indonesian academic institutions and NGOs for effective discussions with policy makers. These would be useful in exploring:

- Development of a more capable and independent electoral administration to ensure integrity of the *pilkada* process, including provisions for more effective avenues to address grievances.
- Requirement that political parties apply democratic and participatory means in selecting candidates.
- Regulation of parties to avoid illegal favors from would-be candidates, with strict enforcement.
- Possibility of non-party candidates to contest in the RGH election to allow for more competition and expand the choices for voters.

Political Accountability: Regional Houses of Representatives (DPRD)

State/Government Reform Objective

Political accountability at the local level further includes the accountability of the members of the Regional Houses of Representatives (DPRD) members as elected representatives to their constituents. The basis for this accountability includes the way DPRD members perform their duties and how they communicate the result of their actions to their constituents. To a lesser extent the obligation to deliberate draft budgets in a timely manner, to enable the executive to get on with implementation, is part of the accountability triangle noted in the previous section. The state has rebalanced these relationships through the revised decentralization framework with the intent to introduce checks and balances (Grand Strategy, 2005: 23).

Legal Framework

The design of the national parliament and regional councils is anchored in the constitution. The members of the regional councils are given the rights of interpellation, petition, speech, questioning, giving suggestions and immunity. The constitution further defines the DPRD as part of the regional governance system, with its members to be elected from candidates fielded by political parties. As for the role, functions, and rights, both for the institution and its members, the constitution does not provide any detailed provisions, thereby leaving national institutions, like the DPR and Ministry of Home Affairs, to define them through political and administrative decisions in the form of Laws and Government Regulations. One significant area that is affected by this is the DPRD and its relation to regional heads, including the annual accountability report.

In the first decentralization regime of the reform era, regulated by Law 22/1999, the DPRD played a decisive part in “representing and advancing the people’s interests”. The DPRD was accorded with the powers to elect the regional government head from candidates proposed by

political parties, and make the regional head accountable annually through the presentation of his accountability report. A Ministry of Home Affairs endorsement of the short list or elected candidates was no longer required. The arrangement, though, soon was abused, with DPRD members widely accused of extorting financial and other favors at every turn in the relationship between the legislative and the executive branch at both provincial and district/city levels. With the change in Law 32/2004 to the direct election of regional heads, the annual “impeachment threat” has been removed; the DPRD is now struggling to find a new balance in its relationship with the executive head.

There are 33 provincial and 440 district/city DPRD in Indonesia. The roles, functions and rights of the DPRD and its members are regulated in Law 22/2003 on the Structures and Positions of the MPR, DPR, DPD and DPRD (Susduk Law). Besides the overall role of representation (a poorly defined function for DPRD members, who are evidently beholden to their party, even if the last elections had a kind of “open list” system¹³⁵), DPRD core functions are the drafting of regulations, preparing the local budget, and conducting oversight. It is important to note that the DPRD has the right of initiative for regional regulations, as specified in Law 32/2004, Article 44¹³⁶, and Law 10/2004, article 26¹³⁷. The roles, functions and rights of DPRD appear to be very similar to those of the national DPR. Yet the law leaves wide powers to the national executive to further define the character of the DPRD, through regulations on its standing orders and internal budgeting. Law 22/2003 is part of the core political laws, together with the law on political parties and the law on elections. This law is being deliberated during the intervening years between elections. The DPRD is included in these laws because of its similarities with the DPR¹³⁸.

Additional provisions on the roles and function of the DPRD can be found in Article 41 of the Law 32/2004 on Regional Government. Here the DPRD, together with the local government heads and the local government, is put into the context of being part of the system of regional governance. The DPRD has the core functions of regulating, budgeting, and oversight. However, the revised specific powers of the regions are still being deliberated and will be set in a government regulation. As mentioned, the former powers of the DPRD in electing the government heads and making him/her regularly accountable has been abolished, making the government heads directly accountable to the citizens. Consequently, the DPRD is left on unsure footing in its dealing with the regional government head and his bureaucracy. An upcoming government regulation on the annual accountability report by the regional government head to the DPRD is expected to provide clearer guidelines for this relationship¹³⁹.

¹³⁵ Observers have noted that the conditions for the open list ballot system used in the 2004 elections were so restrictive as to lead to results that would have been reached through a closed list ballot system, leaving the DPRD members under the influence of the party, see (EU, 2004).

¹³⁶ “The members of DPRD are entitled to submit draft regional regulations.”

¹³⁷ “Drafts for local regulations can be initiated by members, commissions, joint commissions or special committees that handle legislation of DPRD.”

¹³⁸ Like at the national level DPR, the members for the DPRD are elected in the same election held every five years, and the candidates must come from a political party.

¹³⁹ See, Rancangan Peraturan Pemerintah Republik Indonesia tentang Laporan Keterangan Pertanggungjawaban Kepala Daerah kepada Dewan Perwakilan Rakyat Daerah dan Informasi Penyelenggaraan pemerintahan Daerah kepada Masyarakat, Departemen Dalam Negeri, Jakarta, 2006.

Situation in the Regions

Despite having the right of initiative, the drafting of local regulations has been primarily done by the local executive (administration) and then sent to the DPRD for deliberation. Few DPRD have made use of the right of proposal. In some cases, DPRD committees take the initiative by asking the executive to prepare draft regulations. The reason frequently given for why DPRD rarely use their right of initiative is the limited resources and drafting expertise of committees and council secretariats. As a practical alternative, the DPRD prod their counterpart in the executive to draft a regulation for them, after having outlined and discussed the principle issues. In later discussions of a draft, the council secretariat's own legal department is employed to determine if the bill meets the DPRD position¹⁴⁰.

Regional regulations, when motivated by political, religious, ethnic or other interests, can become contentious, particularly when they are seen to undermine basic rights and the principle of non-discrimination. Such contention reveals the urgent need to go beyond building technical capacity on legislation – although indeed many *Perda* are poorly drafted – toward a more substantive support that would enable the DPRD to adequately address issues of protection and promotion of human rights.

The regional budget drafting process is one that is largely under the control of the executive. It undergoes many steps before it reaches the DPRD for final discussion; from start to finish it is expected to take nine months, and in practice even longer. After the draft budget has been agreed to by the DPRD, it still needs to be “evaluated” by the central government, for provincial budgets, with the Governor being delegated to evaluate the draft budgets in the case of districts/cities. This central government role is seen by many DPRD members as reducing their independence, since their initial budget decision is not final. However, it is not yet clear how, or to what extent, the central government/Governor will change the substance of the draft budget.

An issue that emerges with regard to the involvement of the DPRD in the budget process is that DPRD members find it difficult to translate their political promises, which often stretch for five years, into the political realities of the one-year budget cycle¹⁴¹. One way of overcoming this is through communication by members with their constituents during the DPRD recess period, to generate input for their discussions on the annual budget. These inputs often are very similar to the suggestions made during government's own planning-process, which is a comforting confirmation to have¹⁴². However, it is not always clear how discrepancies should be addressed, and the legal framework on planning is marred by inconsistencies regarding the status of the mid-term plans (if they should be regional regulations, therefore approved by DPRD, or just a regional head decree).

The oversight function so far is the weakest function executed by the DPRD, a situation comparable to that seen in the national DPR. Commonly, the oversight of government is conducted by inviting the RGH before committees and to DPRD plenary sessions. The RGH

¹⁴⁰ Interview with district DPRD member, Bogor District, 10 May 2006.

¹⁴¹ This point assumes that DPRD members will seek to follow Law 32/2004 stipulations that a regional regulation is the means of formalizing the mid-term plan. This choice of legal instrument implies that the DPRD members must approve the policies of the plan, and can influence the content of the plan. The plan therefore, within the context of Law 32/2004, could combine both a regional head (executive) and legislative vision.

¹⁴² Interview with district DPRD member, Bogor District, 10 May 2006.

is expected to annually deliver his accountability report, but the DPRD, through its various committees, also has the right to question the RGH (*hak interpelasi*) as needed. The regional government may also provide information to the DPRD through the office heads (*Kepala Dinas/Badan*). According to the new draft government regulation, the regents have to prepare their accountability report three months after the budget approval¹⁴³. The DPRD has one month to prepare a plenary session and to invite the RGH to deliver an accountability speech. These sessions are some of the most anticipated by members, the media and the public alike. After the accountability speech, party factions or individual members might raise questions which have to be answered by a given date. However, more elaborate supervision mechanisms are still absent and often it is unclear how detailed questioning of the executive can and should be done. Capacity building to enable DPRD members and related stakeholders to deepen their analysis and policy development is in short supply. Recently, ADKASI commissioned a handbook for DPRD members on how to improve on their oversight function.

Most of the criticism towards the DPRD relates to the way it operates, and the broad issues of responsiveness and communication – all issues that form the basis for political accountability. The media and public have been criticizing both DPRD members and the DPRD as an institution. The criticism focuses mainly on the following issues: (a) a perceived slow responsiveness to the people; (b) an uneven balance of authority between the DPRD and the RGH; (c) the relationship between the elected DPRD members and their respective political parties; and (d) the organizational support for the DPRD to execute its functions.

- Much criticism by the public is directed towards the DPRD for its alleged lack of responsiveness to constituents. The common perception is that DPRD members rarely visit their ordinary constituents and do not pay enough attention to their expectations and needs, focusing instead on good relations with business people and members of the executive. Accusations of “money politics” and corruption over infrastructure contracts are frequently voiced. Some of the accusations have been proven, and DPRD members have been fined and sentenced to jail terms¹⁴⁴. The financing of council members and the activities of the council secretariat are thorny issues in many regions. Furthermore, there are few legal provisions drafted by DPRD to make all regulations, draft regulations, the internal budget, and other documents easily accessible to the public. The initiative for greater transparency is now even more in the hands of the DPRD itself, as the provision to hold certain DPRD meetings open to the public found in Law 22/1999 have not survived in Law 32/2004. Although a number of local regulations on transparency (*Perda Transparansi*) have been passed, their implementation is pending a change of political culture. DPRD standing orders, as well as the government regulations GR 24/2004 and GR 25/2004 in their current versions, must be further improved to

¹⁴³ See, Rancangan Peraturan Pemerintah Republik Indonesia tentang Laporan Keterangan Pertanggungjawaban Kepala Daerah kepada Dewan Perwakilan Rakyat Daerah dan Informasi Penyelenggaraan pemerintahan Daerah kepada Masyarakat, Departemen Dalam Negeri, Jakarta, 2006. ADKASI is participating in discussions with the ministry to refine the draft regulation.

¹⁴⁴ The 2004 Report by Indonesian Corruption Watch has recorded 62 cases of corruption committed by DPRD members throughout Indonesia. The predicted loss was Rp. 475,283,000,000, mostly related to the wrong use of the Regional Development Budget (APBD). Kompas (2006) also reports that the Minister of Home Affairs acknowledged to the DPR on March 23, 2006 that 1,062 members of DPRD at provincial and district/city levels had been investigated for corruption. Nearly all these were based on non-compliance with GR 110/2000, which has been struck by the Constitutional Court.

make public information an important aspect of the communication with citizens¹⁴⁵.

- Turning to the relationship between the DPRD and the regional executive, substantial variation can be found. In some district cases the executive dominates. Aided by an experienced administration, the RGH head will make liberal use of decrees (*Surat Keputusan*) to govern the region. In other cases, the DPRD is on a more even level, helping to build a more sustainable governance system based on regional regulations, and executing its supervisory function in a more professional way. The history of regions is an important factor in determining the relationship. Newly created regions are less balanced in their executive-legislative relationship than older ones. Moreover, the political affiliation of a directly elected RGH and the composition of the DPRD of the same region affect the balance in the relationship of the two branches. For example, Syaekani H.R as the Bupati of Kutai Kertanegara or Rustriningsih, Bupati of Kebumen, both enjoy strong support from their respective DPRD. The DPRD are dominated by the same parties that have supported the RGHs during their election. On the contrary, Ratna Ani Lestari, Bupati of Banyuwangi, suffers strong opposition from the DPRD, to the point of attempted impeachment. During the election, this Bupati was backed by minority parties, none of which have seats in the DPRD (see also Box 12).
- An analysis of the relationship between DPRD members and their political parties reveals that party branches give little support to their elected members. Even the central board does not give much guidance to their elected DPRD members. Hence, party programs on the local level are underdeveloped or simply follow national policies, leaving DPRD members struggling to adjust them to the local environment. On the other hand, political parties require that DPRD members pay part of their salaries and allowances into the party coffers and make special contributions during election campaigns to secure a promising position at the top of the party list. This practice favors wealthy party members or members with an influential sponsor. (See also sections on Regional Government Heads and Political Parties at the Local Level).
- The functioning of the DPRD is to a large degree dependent on the institutional support provided by the Council Secretary (*Sekretaris Dewan* or *Sekwan*) and council staff. Law 32/2004 stipulates that the regional government has to support the DPRD by authorizing officials to organize all official arrangements. In many regions, the civil service position and authority of the Council Secretary has created problems for the effective functioning of the Council Office. Given that the staff of this office are civil servants under the authority of the regional government, their independence from the regional government is questioned¹⁴⁶. The mind set of the secretariat itself may be enough to undermine the support that should be given to the DPRD¹⁴⁷. Sometimes this issue of allegiance can become more problematic if the DPRD is dominated by a different party than the party of

¹⁴⁵ Government Regulation 24/2004 was recently amended through GR 37/2005 and GR 25/2004 likewise through GR 53/2005. However, a second amendment to GR 24/2004 is about to be issued very soon.

¹⁴⁶ Article 123, no. 2 of Law No. 32/2004, mentioned that: "The DPRD Secretariat as referred to in paragraph (1) shall be appointed and terminated by the Governor/ District Head/Mayor with the approval from DPRD".

¹⁴⁷ Even it is found that some Sekwan officials did not know that their functions were mainly to support DPRD members.

the regional head¹⁴⁸. Furthermore, the position of Council Secretary is often perceived by civil servants as a less prestigious position and filled with less experienced people, thereby influencing the capacity of a DPRD office¹⁴⁹. Existing training for newly appointed council secretaries by the regional government is short, incomplete, and not regular.

Reform Efforts

The process of developing accountable, local executives as well as responsive regional legislatures is subject to extensive central government guidelines and provisions, with little opportunity for input by the actors at the local level. The central government seems rather hesitant in relinquishing power to the local level. In the recent reforms, the state evidently wished to rebalance accountabilities by strengthening the power of the executive *vis-à-vis* the DPRD, and taming the power of the DPRD. The central government seems more comfortable with keeping power within the executive side of regional government, indicating that the executive, and vertical links, are seen as important means of safeguarding national unity¹⁵⁰.

In spite of institutional weaknesses, some district and city DPRDs have contributed positively to governance reform by becoming more transparent and open to public participation during the deliberation of regional regulations. Examples are the DPRD in Bima, Solok, and Sidoarjo, to name just a few. In such cases, the DPRD are working together with local groups and actors, like ethnic and religious leaders or non-governmental organizations. Although, until now, no local political parties exist in Indonesia, local particularities can emerge in the DPRDs that nurture connections with constituents.

But public participation is only one aspect of improved governance. Another is the durability of local directions and innovations; regional regulations are likely to fare better in this regard than decrees by regional government heads. DPRDs need to more forcefully discharge their regulatory function to initiate, deliberate and pass regulations. While some DPRDs pass only the legally required regulations on their internal structure (e.g. establishment of commissions and factions, or the appointment of their chairs), a growing number of DPRDs also pass regulations that deal with development and service issues.

DPRDs throughout Indonesia are required to pass internal code of ethics and set up internal ethic councils.¹⁵¹ However, the nascent work of these ethic councils was undermined recently through the amendment of Government Regulation GR 25/2004. The new GR 53/2005, article 51B (2)I stipulates that research and investigation results by the ethics councils must be delivered to the DPRD Speaker to be discussed in a DPRD session. The matter can therefore simply die in the DPRD, without further action or recourse (Article 51B (2) (e)), diminishing the role of the ethic councils¹⁵².

¹⁴⁸ Syamsuddin Haris, interview, 23 November 2005.

¹⁴⁹ This view is shared by the, Konrad Adenauer Foundation, as well as the DPRD association ADKASI. For example, many staff in the Council Secretariat can not operate the Internet which is an important means to gain and distribute information.

¹⁵⁰ Issues regarding “national consciousness for national unity” are handled by the Ministry of Home Affairs Directorate General of National and Political Unity. The directorate is also involved in supervising political parties (*Media Otonomi*, 2005).

¹⁵¹ As regulated in PP 25/2004 in its amended form PP 53/2005.

¹⁵² See also Kompas, 2006.

One of the points of contention between DPRD members and central government is the remuneration of DPRD members. The controversy has arisen in part due to the lack of a proper budget for constituency relations. DPRD members must fund many of their constituency activities through their own resources (including pay as DPRD members). The current regulations, as interpreted by MoHA, even require DPRD members to pay the membership dues to ADKASI and ADEKSI from their own pocket. Increasing DPRD remuneration has in part been driven by the latter's attempt to obtain more resources to properly undertake their function, whereas central government (and public) perceptions have almost entirely seen this as a form of corruption.

Even if the framework on DPRD functioning is weak or inconsistent, there is much interest among DPRD members and council staff themselves to upgrade their capacity. They are particularly eager to learn more about the drafting, evaluation and deliberation of local regulations. Some organizations cater to these needs and provide specialized trainings on this issue, like PSHK, the University of Indonesia, ADKASI and ADEKSI¹⁵³.

In May 2006, the Association of DPRD Secretaries was established. Besides creating a forum for the needs of DPRD secretariats and their staff, the association might advocate for a separation of the DPRD Secretary from the local executive. Many DPRD secretaries believe that the DPRD should have a greater say in the selection of their secretaries¹⁵⁴.

Donors have been helpful in strengthening the DPRD's and building the capacity of their members. The Friedrich Naumann Stiftung (FNS) has been supporting the capacity of DPRD members and political parties since 1999. The program covers comprehensive aspects of DPRD capacity building in the areas of the DPRD main functions, political communication and coalition building, and resource management. FNS uses local intermediaries to conduct the trainings. Under its outreach strategy FNS sends "how to do" materials to all DPRD offices and conducts training to improve members capacity and party performance.

The Konrad Adenauer Stiftung (KAS) has been supporting ADEKSI to strengthen the capacity of this organization. According to KAS, both DPRD members and executives need to have a common framework in developing the regions. Therefore, there should be an approach within the capacity building program that increases partnership approaches. By providing members with guidance in this area, ADEKSI is increasing its credibility and roots in its membership. KAS also uses Indonesian intermediaries to conduct its trainings. KAS also adopted the approach of increasing the capacity of members of the legislative and executive to think in economic development terms. Currently, KAS is helping DPRD's and local executives in Aceh in regional development strategies.

The USAID funded Local Governance Support Program (LGSP) has a component on DPRD capacity and political accountability. The program aims at improving the aspect of representation through political outreach. In West Sumatra, LGSP is developing an index of DPRD performance and is anticipating developing a similar index for regional government. Currently, LGSP is developing a website with a list of service providers for DPRD's, as a strategy to assure the sustainability of capacity building. LGSP understands that the relationship between DPRD members and their political parties is an area that is crucial for improving DPRD performance.

¹⁵³ From the government side, training on regulation drafting for the DPRD is provided by the Ministry of Justice and Human Rights.

¹⁵⁴ Interview with Iwan S. Soelasno, Executive Director of ADKASI, Jakarta, 12 June 2006.

Policy Options and Recommended Action

Reform of the DPRD is likely to require a long-term perspective. This is valid for both the DPRD as an institution and the actors within it. Making the DPRD more functional and responsive requires several initiatives:

- i. Enhanced knowledge and skills in the substantive issues faced by the DPRD
- ii. Greater attention to processes and structures of the DPRD
- iii. Greater civil society oversight on the DPRD
- iv. More helpful ties between DPRD members and their parties.

The most practical and immediate way to accelerate the improvements in DPRD performance is to work directly with the DPRD members, recognizing that many of the members change every five years. This turnover requires constant means to orient and support DPRD members, particularly on regulation drafting, communication and supervision. The DPRD is all too often seen as an extension of the regional government, rather than an independent institution. Particularly, the work of DPRD and its commissions has to be disseminated more widely. Options for activities should include:

- Expanded capacity building and trainings on *Perda* drafting and draft evaluation for the executive, the council secretariat, and council members, considering the subject of the protection and promotion of constitutional rights.
- Planning support for communication strategies for councils and members on issues of the regional budget, regional policies, and regional regulations; public information on DPRD session and committee meeting schedules, outcomes of meetings, decisions and statements.
- Advocacy support for the development of supervision mechanisms to increase accountability for party factions, the media, and civil society; with special focus on financing of government projects, councilors, and DPRD activities.

The valuable work of foundations and donor projects need to be continued, and greater reliance on Indonesian intermediaries (ADEKSI, ADKASI, Universities etc.) should be pursued. This is the intention of donors/foundations. What is needed is a more purposeful assessment of these intermediaries and how they can be supported to better serve their DPRD constituents/target groups.

A more challenging effort to assist the DPRD is to bring about further changes in the working of the factions, committees, special committees, and DPRD secretariat. Some initiatives to be considered are:

- A major review of these structures and workings with one aim being to better discern what degree of freedom should be given to the DPRD to set their own structures and procedures.
- A more transparent “operational budget” of the DPRD members with expectations regarding the activities these are to subsidize (research, communication with constituents)

With respect to the DPRD Secretary, consideration can be given to the following adjustments:

- The office of the DPRD Secretary should be made independent from the influence of the regional government. The DPRD should have a say in the selection and termination of the DPRD Secretary. The DPRD Secretary should report to the DPRD Speaker.
- Professional staff for DPRD Secretariats should be recruited from inside or outside the regional government structure. On the technical side, the central government should encourage the regional governments to support better-skilled and resourceful DPRD Secretaries.
- To introduce consistency and sustainability, the current practice of rotating and shifting of the DPRD Secretary together with other regional office heads should end. Equally, to create a professional service to council members, civil servants of council secretariats should not rotate to other offices in the region. This will increase expertise and create commitment to the council. A rotation to other DPRD in the province should be possible.
- With regard to the most adequate structure and working areas of committees, there are no clear options developed yet. Possibilities need to be explored further, including how to embrace regional particularities.

The third option mentioned (greater civil society oversight on DPRD) has the longest time horizon of all four options mentioned in this section, and is probably most difficult to nurture through external support, by donors and foundations. Yet it is this oversight that ultimately nudges central and regional government to find particular solutions to sub-optimal structures and procedures, and scrutinizes the implementation of these changes. Special attention to civil society roles in governance is treated in Section IV.7 of the study. For the purpose of the DPRD-civil society relationship, the following initiatives are worthy of consideration:

- Regulating that DPRD members must be residents of the region¹⁵⁵.
- Encouraging that the information provided to the public by the regional head on the “implementation of regional government” (Article 27(2) Law 32/2004) as well includes DPRD performance.

With respect to the last policy option mentioned, many initiatives on capacity building should include political parties at the local level. Up to now, the discussion on party development is still underdeveloped, though it could lead to some crucial improvements in the performance of councilors. Capacity building of DPRD members and faction work ideally should go hand in hand with political party reform at the local level (see next section).

¹⁵⁵ PP 25/2004 Art 4 (3).

Political Accountability: Political Parties

State/Government Reform Objective

After having allowed for the possibility of local parties in Nanggroe Aceh Darussalam by virtue of the Helsinki Accord of August 2005, the Government of Indonesia is considering whether this model might be appropriate throughout Indonesia's regions. It is being encouraged to give a favorable response by proponents of regional autonomy, including members of the Regional Representative Council (DPD)¹⁵⁶. The issues of local parties' affiliation with national parties and the party membership are currently debated in political and academic circles¹⁵⁷. Village level political life in Indonesia is not formally conducted in terms of political parties, and international experience for the regional level politics is mixed – revealing instances of both national and local parties.

Legal Basis for Parties

Law 31/2002 on Political Parties is the main legal reference for political parties in Indonesia. Up to now, all parties have to be *de facto* national parties, with branches in at least half of the country's provinces and district branches in at least half of the districts/cities of these provinces.¹⁵⁸ Party headquarters have to be located in the capital and there are no local political parties yet, though many analysts consider that local parties would have a positive impact on representation and local welfare (see Silalahi and Kristiadi, 2005)

Party Organization and Current Situation

It is a common feature of the political parties in Indonesia that their internal governance is dominated by the central boards, rather than by their members¹⁵⁹. The party law regulates that it is up to the statutes of the parties to elect their executive boards in a *democratic* way, and different parties have developed different mechanisms to do so. It is reported that local party branches at times reject the directives from the centre regarding the selection of candidates for senior party posts (Suara Karya, 2005; Kompas Cyber Media, 2003, 2004). In this case, branches select their own candidates for the top positions. There are various motivations behind the deviation, with economic interests of party branch officials as a main reason (Nankyung, 2004). Party "money politics" is as much an issue at the local level as it is at the national level. It is an open secret that members have to make payments to the party to be considered for party board positions. The placement and ranking of party candidates on election lists is also very much at the discretion of the various party boards and often dependent on the amount of money paid by the interested members.

Party finances are a critical issue that impinges on the possibility of establishing local parties and for running party branches. Finances are regulated in party internal guidelines (*Anggaran Dasar Partai dan Anggaran Rumah Tangga Partai*). All parties rely heavily on donations and contributions from individuals. In general the party finances and assets remain secret, with

¹⁵⁶ For instance, see the comments of La Ode Ida, The deputy Chair of the DPD, Bincang Bincang program, The Habibie Center, May 23, 2006.

¹⁵⁷ See for instance reports in the media, e.g. Kompas, 2006.

¹⁵⁸ Law 31/2002 on Political Parties, Article 2 (3)(b).

¹⁵⁹ The centralistic nature of political parties was identified as a main problem at a recent national seminar sponsored by LIPI (2006), see also, Sanit, 2006.

financial reports closed to the public and even common party members. Financial transparency, accountability, and professional financial management are perceived as threats by the party boards; they fear losing control over party finances and with it influence within the party¹⁶⁰. Internal party regulations on financing and donations are underdeveloped and party treasurers have to follow directives from board members. Moreover, there are no reporting standards on the opening and reporting of party finances at the various party levels. The party law does not specify assets and financial reporting standards, nor does it foresee sanctions.

Frequently, DPRD members are criticized by the public for their lack of knowledge on important governance issues or policies. This criticism is related to a problem that exists between the members and their respective political parties. In democratic governance, political parties ideally should support their elected members. This should not only be for the purpose of expertise, but also for promoting party popularity and constituency relations. Views provided by key informants in this study indicate that almost no party on the district level has clear policies on how to support their party members in the DPRD¹⁶¹. This is a serious issue since the DPRD as an institution is lacking the resources to adequately support party factions and legislators in their work. The reason for this lack in party support lies in the centralistic party internal regulations that limit party officials in developing their political party branches according to the local context.

In addition to this deficiency, most political parties do not have a reliable system of political communication with their constituents. This is hardly surprising, since the party messages and party policies often remain unclear, and distinguishing between different parties based on their messages is difficult. As a result, after an election it is very difficult to identify the party/DPRD member “constituency” among the citizens or which groups lent their votes to the party. Parties so far have not developed internal guidelines on how to develop and cultivate relationships with constituents, and to build strong grass-root support (see LIPI: 2006: 9). Relations are mainly short-term, unsystematic and based on individual contacts of party members¹⁶². Long-term two-way relations between parties and constituents that go beyond short-term mobilizations and election campaigning remain to be built.

Where special affiliations have been developed, these have tended to be among the youth, and youth dominated security groups that have many of the features typical of para-military organizations. The party guidance of these groups appears to be misguided (the most benign view might be that it is insufficient), with the result that these groups often act counter to democratic ideals. This paramilitary connection was in evidence in the 1999 elections (The Strait Times, 2003), and in political activism thereafter, particularly by para-military groups supporting “Islamic parties” or traditional religious elites (Jamaludin, 2000; ICG, 2003). Due in part to early 2004 regulations by the Indonesian Electoral Commission, imposing restrictions on the use of party affiliated paramilitary groups during the campaign period, the feared violence was avoided during the last DPR/DPRD elections (Wilson, 2004) but the

¹⁶⁰ See section on financing of political parties; Forum Komunikasi Partai Politik dan Politisi untuk Reformasi, 2006.

¹⁶¹ Interview with Tom Cormier, Director of Governance Program, National Democratic Institute, 8 March, 2006; Interview with Sri Indah Wibi Nastiti, Acting Director of Indonesian Municipal Council Association, 23 February, 2006; Interview with Nur Rachmi, Program Assistant, Friedrich Naumann Stiftung, 24 February 2006.

¹⁶² See section on the pattern of constituent relationship of political parties; Forum Komunikasi Partai Politik dan Politisi untuk Reformasi, 2006.

groups and affiliations persist and the threat against democratic life continues in between elections.

At the regional level, similar to the national level, many political parties seem uncohesive, comprising of a rather loose union of many social elements (Riswanda, 2005). In general, parties in the regions appear to be very elite-centered, with many DPRD members holding high positions in their party branches. As the party leaders are busy with their work in the DPRD, the work in the party branch offices becomes neglected. Empty branch offices and limited outreach activities involving citizens are the consequence. The image of parties at the local level is tainted further by conflicts that keep appearing among national party leaders (Kompas, 2005). The evident lack of policy directives from the party center to their branches hampers party initiatives at the branch level. Moreover, organizational weaknesses as well as leadership problems make it difficult for parties to fulfill their conventional functions, namely representing people's interest, conducting political education, and the mediation of interests.

Some confusion for citizens arises from the various coalitions parties undertake, either within the DPRD or in support of a particular candidate for the post of RGH. Throughout Indonesia, parties align with various other parties, seemingly regardless of their stated political ideology. Therefore, coalitions are less based on political commitment than on opportunistic calculations. Strategic alliances are forged to support preferred candidates as DPRD speakers, other important posts, or Bupati/Mayors. For the voters it is often confusing to see parties align with parties of a similar ideology and sometimes with parties from the opposite end of the political spectrum¹⁶³. Groups of voters traditionally giving their votes to the same political party during elections are decreasing. Parties are more willing to engage in coalitions and compromise on ideological issues, the less their prospects for gaining council seats.

Reform Efforts

Some parties have realized the importance of consistent programs and policies. They are starting to revamp their training and research departments on the national level and are beginning to design training modules for party members. Increasingly, internal training for "regional"/district party members is offered. The party quite active in this respect is PDI-P, not least because of substantial losses during the last elections in 2004. The party is placing a new emphasis on media training. The provincial branch of PKB in East Java is conducting specialized training on polling, while the Golkar party is also developing new support programs for members at party branches.

So far, little effort is being made to develop training at the district level that would bring together representatives from the (directly elected) executive and legislative. Donor support to local councils mainly focuses on legislators and political parties. NDI is undertaking programs on party training capacity and constituency outreach for legislators at national, provincial and district levels. The program provides opportunities for DPR members to participate in outreach events planned by their political parties in their electorate districts. Specific strategies are developed to include women in outreach efforts. The assistance to women is directly channeled through the women's wings of the main political parties. This

¹⁶³ The spectrum of parties in Indonesia is described to reach from *nationalist (secular)* parties at one end, to *religious (Islamic)* parties at the other. For a discussion of the "left-right" cleavage of Indonesian parties see Evans, 2003.

gender program is conducted through the training of trainers. The participants are party members – they may or may not be legislators.

Since 2004, the International Republican Institute (IRI) has been supporting political parties through programs to improve constituent outreach and the political role of elected members at the provincial level. The institute focuses on organisational improvement. Most training follows requests from provincial party branches where no clearance of the central party board is required. IRI has party support projects in North Sumatra, West Sumatra, East Java, South Sulawesi, Aceh and Madiun city. These efforts focus on the capacity of members to conduct budget evaluation and constituency relations.

The “Communication Forum of Political Parties and Politicians for Reform” (*Forum Politisi*), consisting of reform-minded politicians and supported by the Friedrich Naumann Foundation (FNS), was established in 2005¹⁶⁴. It conducts workshops and research together with specialists on political topics, like political parties, party financing, party recruitment, legislative oversight, constituency relations, and others. Findings, workshop material, and recommendations are disseminated via the forum’s homepage on the internet. National DPR members are seen as valuable agents to give input to the reform of their parties.

Besides the organization of party training, some parties also started innovative outreach programs. For example, the Partai Keadilan Sejahtera (PKS) has developed social programs reaching from the central level down to the local level. Party members and volunteers provide assistance after national disasters like floods or landslides. Some parties set up health posts (*posyandu*) providing free healthcare to the needy, or organize local initiatives for charity projects, like the sale of affordable cooking oil by the Partai Demokrat (PD).

Policy Options and Recommended Action

Party reform ideally includes reform of the party law as well as internal reform. In their study on political parties in Asia, which included Indonesia, Manikas and Thornton (2003) recommended that political will within parties is needed if parties are to play an effective role in national reform efforts. Furthermore, they argue that there must be greater public confidence in political parties’ ability to act as agents for change. It is suggested that effective and sustainable results of institutional and party reform will only take place if donor organizations active in legislative and party development include work with party factions in local legislatures and technical support to political parties in their program portfolio. Donors should not be shy to support programs with intermediary organizations that engage with political parties. Besides the management of parties, the development of internal party statutes and internal democracy are important issues in need of attention. The following options to move ahead are suggested:

- i. Party law reform
- ii. Increased research and dialogue on key party issues
- iii. Capacity development for continued internal party reform

A revised party law is needed. For the time being, there is no network of stakeholders working on an amendment. Ideally, the impulse should come from the political parties. This revision effort is thus a long term effort.

¹⁶⁴ See www.forumpolitisi.org

To generate interest, and pressure for such a revision, it may be necessary to lead up to the revision process with several years of intensified research and discussion among stakeholders. The key issues might be:

- Party financing
- Local political parties
- Lessons from 1999 and 2004 elections and parties' experiences

University and research groups could be enlisted for more objective perspectives, but the research and reflective capacity of the parties themselves is also a justifiable objective.

Capacity development for internal party reform is also important. Some of these reforms will only be widely undertaken if a revised law is issued, but others can come from the parties themselves and current stakeholders' pressure and support. Ongoing party programs should be continued and expanded. Issues might include the following:

- Increasing efforts and commitment to develop party programs, not only on the national level, but also on the district level. Assistance might not only look at the content and scope of party programs but also at their timeframe, distinguishing between medium-term and annual programs. International experience is widely available and should be used.
- Developing further internal regulations of parties, especially those concerned with financial management. The development of reporting mechanisms on party assets and finances to the public and internally to party members should be prioritized. This includes the training of accountant staff on accounting standards. Revised regulations should include annual financial plans, internal audits, and sanction mechanisms. One new rule might be that party members are not allowed to hand out money to constituents.
- The current situation suggests that parties need to manage their members better. The development of membership systems is important for political parties. Party boards need to be better informed about their members and who their supporters are. An increase of the overall party membership and with it the increase of active party members is crucial. Membership cards and the collection of membership duties are practical suggestions. This also includes the development of an innovative recruitment system and guidelines about where and how to recruit.
- The democratic selection of party candidates for top party posts and positions on election lists must become a priority issue. Internal selection criteria and standards can be based, for example, on the length of service to the party, expertise or experience of the member, an own support network, or funds to finance his or her own campaign. In any event, the selection criteria have to guarantee an accountable and participatory selection. After an election to a regional council or board position, the party members must be prepared for the new tasks. The training of skills has to be introduced and become a permanent activity within parties.

- Political parties need to start a dialogue with their constituents between elections. This is important for the development of outside trust and transparency. Direct communication can be conducted between parties and voters, or via the support of the media. Indirect communication with constituents should be built through other organizations, like unions, cooperatives or youth wings; ideally with groups that share similar ideology.

Political Accountability: Regional House of Representatives (DPRD) Elections

State/Government Reform Objective

The collapse of the Soeharto regime ushered in the *reformasi* period of 1998. The first legislative elections were held in June 1999 under election laws written by the last New Order DPR. New political laws were created for the 2004 legislative elections that improved the electoral system and legal framework, and resulted in elections that were viewed as free, fair and competitive, a widely recognized achievement given their scope and complexity (IFES, 2005). DPR leaders have announced their intention to begin in 2007 to review and revise political laws to govern the 2009 DPR/DPRD (and presidential) elections¹⁶⁵.

Legal Framework for Legislative Elections

Elections for members of regional houses of representatives (DPRD) at provincial and district/city levels have a long history in Indonesia, and have been conducted simultaneously with elections for members of the national DPR. DPRD elections in Indonesia were clearly lacking legitimacy during the New Order, when political parties and candidates, campaigning, and the election administration machinery were tightly controlled by the national government.

Elections in 2004 for members of regional DPRD and national DPR were governed by a second set of reform laws; Law 12/2003 on General Elections, and to a lesser extent by Law 31/2002 on Political Parties. These laws and significant changes in governmental institutions made through constitutional amendments adopted in 2001, brought about several important developments:

- Creation of a new national ‘upper house’, the Regional Representative Council (DPD), with four members from each province elected directly by the voters;
- Establishment of a Constitutional Court, whose authority includes resolving disputes regarding election results for DPD/DPR/DPRD;
- Constitutional guarantee that the General Elections Commission (KPU) is a national, permanent and independent body;

¹⁶⁵ Direct election of regional government heads by Indonesian citizens is a new reform instituted pursuant to Law 32/2004. These elections began in June 2005 and are ongoing across Indonesia’s regions. (See discussion in the section on Political Accountability: Regional Government Heads.)

- Revision of the proportional representation electoral system for DPR/DPRD elections, based on new electoral districts electing fewer members per district;
- Provision for ‘open-list voting’ for candidates on political party candidate lists for DPR/DPRD elections;
- Recommendation to contesting parties to include at least 30% of women in their list of candidates;
- Elimination of guaranteed seats for National Armed Forces (TNI) and the Indonesian Police Force (Polri) and granting of the right to vote to military and police personnel (though the exercise of their right to vote was proscribed for 2004);
- Continued reliance upon a hierarchy of Election Supervisory Committees (*Panwas*) to supervise implementation of the election, mediate disputes and process complaints;
- Guarantees of freedom of expression and participation by political parties and candidates in the election campaign, although with considerable regulation upon the timing and methods of campaigning (including restrictions upon campaigning by government officials);
- Prohibitions and limitations regarding sources of campaign funds, and requirements for submitting financial reports of campaign funds.

The general consensus among election advisors and observers is that the legal framework for the 2004 general elections in Indonesia was a major improvement over the laws governing the 1999 elections. However, these ‘political laws’ are not well integrated, continue to be vague and lack specificity in many crucial areas of election administration and regulation, and would benefit from both technical upgrading and substantive reforms¹⁶⁶.

Impact of 2004 Elections Upon Accountability of Regional Legislators

Law 12/2003 on General Elections includes two innovations for elections of members of regional DPRD (and national DPR) that have the potential to improve the accountability of regional legislators: new, smaller electoral districts; and ‘open-list’ voting. The law also contains somewhat improved provisions regarding regulation and reporting obligations for the financial activity of political parties and candidates. However, the efficacy of these technical provisions is undermined by an absence of effective sanctions or enforcement; the provisions are generally ignored by the electoral participants.

‘Localized’ Electoral Districts

Pursuant to Law 12/2003 on General Elections, DPR/DPRD members were elected in 2004 through proportional representation in new multi-member electoral districts. These districts

¹⁶⁶ See, e.g., *Legislative Framework for the Indonesian General Elections 2004*, International IDEA (March 2006); *The Carter Center 2004 Indonesia Election Report*, the Carter Center (June 2005); *2004 Elections in the Republic of Indonesia: Priorities for Democratic Renewal*, IFES (December 2005).

were formed from political sub-units or combinations thereof: electoral districts for DPRD-Province were formed from districts and cities or combinations thereof; electoral districts for DPRD-District/City were formed from sub-districts (*kecamatan*) or combinations thereof.¹⁶⁷ The use of combinations of existing political sub-units simplified the 'districting' (boundary delimitation) process. It also permitted formation of districts with sufficient population to follow the law's requirement that such districts elect three to twelve members, and facilitated observing a one-person/one-vote/one-value equality standard among electoral districts.

Previously, as in the 1999 elections, voting for DPR/DPRD in Indonesia used the entire political unit as the electoral district (e.g., the entire province was one district for the provincial council) and political parties submitted one large candidate list for the entire DPRD. The new electoral district system is intended to introduce a reasonable element of proportionality in awarding seats to successful political parties, and to create more 'localized' districts – more numerous, smaller geographically and electing fewer representatives per district – that would aid voters in knowing the candidates on the parties' lists (IFES, 2005:2).

The new multi-member electoral district system seemed to work well for the 2004 elections. But this system also carries a value beyond conducting elections. The more 'localized' districts offer the potential for drawing closer connections between elected representatives and their constituents after elections and for improving accountability of these representatives in their governance role. However, significant public education efforts will be needed to disseminate the notion that a particular group of representatives (from various parties) represent a particular constituency. Relatively few parties and legislators realize the importance of building strong relationships with their constituents. Absent such efforts, members of DPRD will tend to exclusively work through their party factions at the council rather than serving local interests in their electoral district on a 'multi-partisan' basis, and Indonesia's citizens will have little awareness of their opportunity for holding their local representatives accountable for their performance in office.

'Open-list' Voting System

The 2004 elections followed provisions for an 'open-list' proportional system for candidates on political party lists. Each political party presented a candidate list on the ballots for the electoral districts for the national DPR, provincial DPRD, and district/city DPRD. In addition to voting for a particular party, voters were able to vote for one candidate put forward by that party. [I think this needs to be added, but please do make sure]. Subsequently, the votes for the candidates were tabulated. However, the votes for candidates had no influence on the selection of candidates because of an additional provision. According to the law, seats only have to be assigned to a candidate if the votes won by the candidate are equal to or exceed the quota of votes needed by a party to win a seat in that electoral district under the system of proportional representation. Not reaching this quota resulted in an unchanged rank on the party list determined by the party before the election.

Since reaching a quota in a proportional representation system means winning a very large number of votes, the chance of candidates to be elected via this path remained very slim. Overall, only two candidates for the national DPR fulfilled their district quotas of this quasi closed-list system, having received their seats anyway since they held the top positions on

¹⁶⁷ The KPU created 69 electoral districts for the national DPR, 211 electoral districts for DPRD-Province in 32 provinces, and 1,745 electoral districts for DPRD-District/City in more than 400 districts and cities.

their respective party lists¹⁶⁸. Thus, observers and analysts do not regard the present ‘open-list’ system as a genuine attempt to reflect voter’s specific preferences for candidates (Kleden, 2005).

With regard to the representation of women, none of the political parties contesting the 2004 elections fulfilled the suggested quota of 30%. Law 12/2003, article 65, uses the wording ‘*dengan memperhatikan*’, meaning ‘with paying consideration’ to 30% women representation. In most cases, female candidates were placed in lower positions on the party lists, thereby further reducing their chance of winning any seats (Kompas Cyber Media, 2004; Ellis, ND).

Campaign Finance Regulation and Reporting

Article 9 of Law 31/2002 on Political Parties requires parties to conduct bookkeeping and maintain a list of donators, to submit an annual audited financial statement, and to maintain a Special Election Campaign Account and file an audited financial statement for the campaign account six months after the general elections. Article 18 of the same law sets limitation upon contributions to parties of one hundred million rupiah from individuals and five hundred million rupiah from corporations or other legal entities.

Article 79 of Law No. 12 of 2003 on General Elections sets out a different reporting schedule for political parties (and DPD candidates) to submit audited financial reports of their campaign funds (within 97 days of the general election). Article 78 of the same law also provides for different contribution limits for donations to campaign funds from individuals and legal entities than the political party law. Article 78 also introduces what appears to be a separate, mid-election reporting regime for contributions that exceed five million rupiah.

Thus, the legal framework for the two laws governing regulation and reporting of financial activity of political parties and other electoral participants are inconsistent and not integrated (Law 23/2003 on Presidential Elections adds another layer of regulation). The separation of campaign accounts and non-campaign accounts of political parties are not explained or delimited by time or purpose of use. Nevertheless, the General Elections Commission (KPU), in collaboration with the Indonesian Accountants Association, developed decrees that set forth procedures and guidance for financial accounting systems and campaign fund reporting of parties and electoral participants. Still, most political parties and electoral participants either failed to submit financial reports pursuant to the political laws, or submitted incomplete or unsubstantiated reports (IFES, 2004).

As IFES in its report on the reporting and financial disclosure of political parties describes, the principal flaw in the legal framework, is the absence of serious sanctions and lack of enforcement. While the party law assigns the oversight function of party financial activities to the Ministry of Home Affairs, the law only authorizes the KPU to voice ‘public reprimands’ for the failure of financial reporting by parties. The election law instead empowers the Election Supervisory Committees (*Panwas*) to investigate complaints, and leaves follow-up in the hands of the national KPU and prosecutors. While both laws include severe penalties for presenting false information, they have no sanctions for general failures to file financial

¹⁶⁸ Data for voter preferences for particular candidates on the provincial and district/city levels were not recorded by the national KPU, but it is highly unlikely that many candidates were assigned seats based on fulfilling the quota of votes; interview with Bob Dahl, IFES election expert, Jakarta, 14 June 2006.

reports (IFES, 2004:8)¹⁶⁹. It may also be the case that the reporting periods presently stipulated do not allow for the preparation of complete and reliable reports. Any changes in the laws would need to anticipate the scope and difficulty of the reports in setting reporting periods.

While the overall legal framework for political finance regulation and disclosure was generally improved for the 2004 elections, reporting provisions remained underdeveloped and sanctions absent, leading most parties to violate the regulations by not submitting financial reports to the KPU¹⁷⁰. Therefore, financial transparency for political parties and electoral participants in Indonesia remains inadequate. Refinements to the legal framework could help to clarify funding rules and reporting obligations. But these steps will not succeed in imposing financial accountability upon political elements until the law contains strong sanctions and establishes an effective enforcement mechanism.

Reform Efforts

While the 'open-list' PR system was not a genuine mechanism for putting the candidate in greater relief in voter's minds, many new candidates were nonetheless included on the party lists during the 2004 elections. Compared to the 1999 elections, the majority of candidates were newcomers. The parties selected candidates with a various backgrounds, including entrepreneurs, NGO activists, and professionals (Harris, 2005). Presenting new faces and novel programs allowed particularly new parties to gain votes. The renamed Partai Keadilan Sejahtera (PKS) and the new Partai Demokrat (PD) both entered national politics by winning around 7% of the votes on the national level. In some of the districts and cities they became even more successful. The substantial gains by some of the new parties and the losses by formerly strong parties created the awareness among established parties that they have to reform themselves in order to win votes in the future. After the 2004 elections, the issue of renewal was raised at party conventions of *Partai Golkar* and *Partai Demokrasi Indonesia Perjuangan* (PDI-P). Research departments of these parties take the issue very seriously and it is expected that the discussion of more substantive party programs will be even livelier as the 2009 elections approach.

Since mid 2005, the government has been discussing reform to the election administration in form of a draft law on election administration (RUU Penyelenggaraan Pemilu) to replace the sections of Law 12/2003 on election administration. The revision of the election law is one of the priorities in the National Legislation Program (*Prolegnas*) 2007. The independent organization most active in working on the reform is the Centre for Electoral Reform (CETRO). CETRO, supported by a number of donors, including the USAID-funded DRSP, is leading civil society advocacy efforts on the draft law. The draft prepared by the special committee in the House of Representatives is not yet completed and is still being deliberated in the house working committee (*Panja*). Continued support from CETRO and others will be needed for these activities.

Women's participation in the DPRD remains low, but varies among regions. There is as yet no firm data on women in DPRDs, but in some areas, e.g. districts in North Sulawesi, the

¹⁶⁹ Also interview with Alan Wall, former coordinator of IFES, 22 February 2006.

¹⁷⁰ Interview with Hadar N. Gumay of the Centre for Electoral Reform (CETRO), 6 February 2006. CETRO has analyzed these weaknesses and concluded that the regulations are not precise enough in the mechanism of fund disbursement, definition of the types of contribution, and sanctions.

proportion reportedly reaches 25%. Since democratization, there have been a number of efforts by women's organizations, supported by the national Ministry for Women's Empowerment and by other national and international organizations, to raise the issue of women's representation and prepare women candidates for the election process. Hurdles to women's roles includes negative or unsupportive attitudes of party colleagues and the public about women in public roles, and party lists that diminish the chances of women having electoral success. The rather low showing for women in the DPR/DPRDs in the 2004 elections (in general far below the 30% suggested in Law 12/2003 on general elections) have some stakeholders calling for obligatory quotas for the next round of elections. One suggestion, from the KPU (2006), is to amend Law 31/2002 on political parties to have 30% of the party leadership (pengurus partai) set at 30%.

In preparing the revision to the general election law, attention will also need to be given to strengthening the accountability of the General Election Committee (KPU). The corruption scandals within KPU during the 2004 elections and the conviction of a number of its staff shed a very bad light on this institution. Issues of financial transparency and accountability in election administration must be addressed in the upcoming law/regulations. Of the donors formally supporting the KPU in 2004, including UNDP, IFES, EU and AEC, many are currently absorbed with the new Independent Election Commission (*Komisi Independen Pemilu* or KIP) in Aceh. But it is likely that they would respond to requests to assist the KPU following the 2006 elections in Aceh.

Policy Options and Recommended Action

Future reform of the framework for national/regional legislative elections should be done in concert with revisions of the law on political parties, to attain a clearer and more coherent framework. Substantively for the following reforms should be prioritized:

- A genuine open-list ballot system
- Enforcement of procedures/sanction for campaign financing
- Combined DPRD and RGH elections

A genuine open-list system can be achieved if the quota requirement for candidates to win seats in the DPR or DPRD is removed. Seats should be given to candidates based only on the preference of the voters and the number of votes they have won.

Amended legal provisions on campaign finance reporting by political parties, donation contribution limitations, and public disclosure should include enforcement provisions and sanctions. These sanctions should include fines and penalties that are gauged to the nature of the infractions.

The stock taking study has revealed some tensions between the DPRD and RGH in terms of the development vision and political platform that is translated into regional development plans and budgets. One way to ease these tensions, and work towards the desired partnership (*kemitraan*) desired for these bodies is unite their election schedules. The issues being discussed, and the subsequent plans, can therefore more easily reflect a combined/reconciled DPRD and RGH political vision. To lower the complexity of the combined election schedule, it may be advisable to stagger national level and regional level elections.

More fundamental reforms may need much wider discussions and preparations. Increasing the number of women in the DPR/DPRD is widely supported, but the means to attain this goal are strongly debated. The KPU recommendation to start with placing quotas on the leadership of the parties (*pengurus*) is one way to approach the challenge. Presumably this would translate into a similarly structured candidate party list, and similar proportion of women successful in attaining DPR/DPRD seats. A more direct route would be to attach the quota system to the DPRD, or the party lists. In moving forward with this exploration, the following steps could be considered:

- Examine what has led to women's success or obstacles in entering party lists/DPRD
- Learn from diverse international approaches (e.g. the quota system seen in Pakistan)
- Design discussion forums to attain broader consensus on what is appropriate for Indonesia today

The KPU should continue to be the focus of capacity development efforts, in terms of setting rules and procedures for DPRD elections and preparing the public for the elections. Some efforts that could be undertaken with the KPU include:

- Intensify political education by disseminating more widely the information on candidates, increasing funds for voter information activities in general, and establishing better relationships with the mass media and organizations conducting voter information.
- Continuing technical assistance, especially in light of the soon-to-be-passed law on election administration and the new government regulations on implementing the law. Special attention must be given to the internal requirements for financial transparency and accountability. Equally, the building of voter data under the authority of the KPU should be supported.

Opportunities for Civic Engagement

Introduction and Legal Framework

With the democratization of Indonesia's political landscape in the reform period, the government has increasingly stated its intentions to introduce good governance. Simultaneously, civil society has intensified monitoring and supervisory efforts toward government at all levels, and is increasingly acting as a counterweight to the actions of the state¹⁷¹. The state and civil society have been in agreement on the need for greater

¹⁷¹ This chapter defines civil society widely, including among others NGOs, religious organizations, environment groups, unions, professional organizations, and community organizations. For the purpose of this chapter, focus is on the monitoring and supervision function of civil society, as well as on the participation in governance processes like planning and budgeting. The welfare function and delivery of social services, like health and education are, not subject of this chapter.

accountability on the side of the state and that this should be brought about in large part through greater participation of citizens in the decision making process. Accordingly, input from research institutions and from civil society organizations (CSOs) has been given new value in the negotiation process for new policies and the deliberation of new regulations and laws pertaining to governance. Legal provisions guaranteeing space for CSOs can be found in the constitution, article 28F (3): “Every person shall have the right of freedom to organize, to assemble, and to express opinions”¹⁷². This principle is in part reflected in Law 10/2004 on Law Making¹⁷³. Participation is reiterated as a principle in Law 32/2004 on Regional Administration¹⁷⁴. Further, the participation of civil society organizations has been included in the planning process, through Law 25/2004 on National Development Planning System for instance.

On the local level, civic participation in the development planning process had already been addressed by several policies during the “New Order”¹⁷⁵ era, at the Ministerial decree level (*Keputusan Menteri*). Monitoring and oversight by civil society organizations and the media, however, remained extremely stifled by the authoritarian state. In the reform era, participatory planning is regulated in an annual joint decree (*Surat Edaran Bersama* or SEB), issued together by the Ministry of Home Affairs and the National State Planning Agency (Bappenas)¹⁷⁶. This decree regulates the mechanism for civic participation in the state-driven bottom-up development planning process (*Musrenbang* or *Musyawarah Perencanaan Pembangunan*).

In addition to the decree, sector laws like Law 23/1997 on the Environment, Law 41/1999 on Forestry, or Law 8/1999 on Consumer Protection, have included aspects of public participation¹⁷⁷. Some laws, like Law 24/1992 on Spatial Planning and Law 28/1999 on Anti-corruption, led to more operational Government Regulations (GR) dedicated to the issue of civic participation. Examples include GR 68/1999 on “Guidelines on how to implement civic participation in the governance process”, which was mandated by Law 28/1999, and GR 69/1996 on “The implementation of rights and obligations, structure and guidelines on civil participation in the spatial planning process”, which was mandated by Law 24/1992. The latest government regulation promoting participation in budgeting, transparency and accountability is GR 58/2005 on Local Government Financial Administration.

Civic participation is not only facilitated by government policies for upstream activities, like policy or regulation making, but increasingly also in the monitoring phase of the development process or in program implementation. Civic participation can take the form of well structured and permanent bodies, such as commissions or councils. In summary, the existing policies and regulations give ample room in principle to CSOs to influence the governance and planning process in a number of ways, like advocacy, analysis or monitoring.

¹⁷² Undang-undang Dasar, Pasal 28F(3). This provision was included following the second amendment 2000.

¹⁷³ Article 53 of Law 10/2004 states that people have the right to deliver any input to the law making process, pertaining to laws and regional regulations (Perda), and village regulations (Perdes).

¹⁷⁴ Article 139 of Law 32/2004 guarantees the people’s right to deliver inputs to the drafting process of local government regulations (Perda).

¹⁷⁵ Refers to Kepmendagri 4/1981 and Kepmendagri 9/1982

¹⁷⁶ Joint decrees are issued annually since 2001.

¹⁷⁷ Additionally, the making of Law 31/2004 on Fishery involves fishermen, and Law 20/2003 on National Education includes regional school boards and school committees in the governing of schools.

The basis for the organizational forms of CSOs are Law 16/2001 on Foundations (revised in 2004)¹⁷⁸, Law 8/1985 on Mass Organizations, and the legal provisions on associations (BW see below). CSOs have been involved in the drafting process of the foundations law, but had only limited influence on the subsequent amendment.

Most Indonesian not-for-profit nongovernmental organizations are foundations. They are defined as non-membership legal entities for activities in the ‘social, religious or humanitarian fields.’ Registration procedures are simple and only require a notary act. Previous New Order requirements to register with the authorities are no longer valid. By law, a foundation has three organs, the Governing Board, Supervisory Board, and Executive Board¹⁷⁹.

In contrast to the limited managerial form of a foundation, an association is a membership organization. The legal form of association in Indonesia is derived from old colonial-era laws; the Civil Code (*Burgelijk Wetboek* (BW)) and the Commerce Code (*Kitab Undang-undang Hukum Dagang* (KUHD)) which are still valid in Indonesia today. While foundations are already regulated by a new law, no updating of the legal frame for associations has been done. This is also the case for the legal frame for mass organizations. Other forms of society organizations, like “hobby groups”, “social groups”, or “religious groups”, are still governed by regulations stemming from the colonial period.

¹⁷⁸ Law 28/2004 revision of Law 16/2001 on Foundations. The 2001 law was passed after it had become evident that the regime had siphoned off a large amount of state funds through the use of foundations controlled by the family of former President Soeharto and the military.

¹⁷⁹ An in-depth analysis of the legal framework governing not-for-profit organizations in Indonesia can be found in Council on Foundations, n.d.

Table 7. Differences Between Foundations, Mass Organizations, and Associations¹⁸⁰.

	Foundation (Yayasan)	Mass Organization (Organisasi massa)	Association (Perkumpulan/Perhimpunan)
Law	UU 16/2001 → UU 28/2004	UU 8/1985	Stbld. KB v. 28 Maret 1870-64 BW 22 April 1855
Legal entity	Defined as legal entity	Not defined as legal entity	Multi interpretation: a) incorporated associations with legal personality; b) ordinary associations without legal personality.
Responsibility	Governing Board (Dewan Pembina) overseeing Supervisory Board (Dewan Pengawas) and Executive Board (Dewan Pengurus).	Unclear	To all its members through member's meeting
Fees/dues	-	Obligation of members	Obligation of members
Tax (organization tax)	Subject to income tax like other legal entities (Article 2, section (1) (b), Law 17/2000 on Income Tax). Donations and grants are exempt.	Free of tax on grant and donation	Free of tax on grant and donation

Current Situation in the Regions

Notwithstanding the fact that the regulatory framework for increasing the space for societal oversight and public participation is still developing, it is fair to inquire to what degree CSOs have taken advantage of the available space. This report cannot answer this question definitively, but some observations can be made. An increasing number of civil society organizations are being established at the local level. These organizations engage in various initiatives ranging from community development to advocacy work and oversight.¹⁸¹ These CSO activities can have a direct impact on the people. Regional CSOs usually have a very strong relationship with the communities. Development-oriented organizations are involved in various activities, technical innovation, public service delivery, and a wide range of development projects. A much larger number of faith-based organizations tend to be involved in charity, relief and welfare activities.

¹⁸⁰ Adapted from material of the seminar on Yayasan conducted by PIRAC on 5 March 2002 in Jakarta. The table here only refer to 5 issues, the document refer to 29 issues.

¹⁸¹ According to John Clark (1991), the working area of CSOs can be summarized as DEPENDS, or Development of infrastructure, Economic growth, Poverty alleviation, Equity, Natural-resource base protection, Democracy, and Social Justice. David Korten (1990) and John Clark (1991) categorized the working area of CSOs as (1) Relief & welfare agencies; (2) technical innovation organization; (3) public service contractors; (4) popular development agencies; (5) grassroots development organization; (6) advocacy groups and networks. Pietra Widiadi in his article for the Surabaya Post on 6 June 2000 also mentioned that the first is using charity approach, the second, third, and fourth are using reformative approach and the fifth and sixth are using transformative approach.

The Capacity of CSOs

Before the start of the reform era, larger CSOs were mainly based in the capital Jakarta and other large urban centers. Since 1999, more and more citizens throughout the country are willing to make use of their rights to fight for their interests and to influence policies. A growing number of societal groups on all levels have emerged and have started to become vocal on governance issues. Areas of activism are varied and reach from demanding transparency and accountability for state action, to advocacy for citizens' interests and support for self-help initiatives. Views on democratization and decentralization vary, and so does the language used to communicate with the public and government.

The success of CSOs depends on their internal potential to conduct their work or projects. Successful participation in governance and engagement with local governments require special skills and experience. CSOs range from large mass organizations, foundations and associations, to national or tiny local NGOs. Often, transparency, accountability and internal democracy within CSOs are still underdeveloped. In fact, most CSOs on the local level are barely able to subsist. They suffer from limited human resources and financial support¹⁸². Moreover, their financial management is underdeveloped and their office infrastructure is often limited. These are real challenges faced by CSOs, impacting on their management, representation legitimacy, and networking¹⁸³.

Locally active NGOs are often organized at the district level and rarely have strong local links at village or community level.¹⁸⁴ The absence of links to community level programs has from time to time resulted in a lack of legitimacy in terms of both credibility and substantive connections with the people they purport to serve. Decentralization, has attracted both donor funds and programs, and have been funneled to the blossoming NGOs operating at district levels directly or via more established organizations at the provincial and national level. Financial support tends to be in the form of small grant schemes and is highly project-focused.¹⁸⁵

According to civil society activists, CSOs sometimes have shortcomings in their capacity to develop synergies, external communication, and the ability to interpret situations and context¹⁸⁶. Many organizations commit themselves to advocacy and monitoring of government practices, but their advocacy and monitoring successes on the local level have limited impact beyond the targeted community. The achievements lack spread effects and mechanisms for initiating similar efforts in other districts or at the provincial level. Moreover, intermediary institutions that could link various local initiatives or scale-up are still very

¹⁸² The study by Shield (2005) states that many members of district level NGOs are former student leaders who, on graduation, have joined or set up NGOs. These groups often have limited capacity and struggle to survive.

¹⁸³ The team PLOD UGM in their study "Keterlibatan Publik Dalam Desentralisasi Tata Pemerintahan: Studi tentang Problema, Dinamika, dan Prospek Civil Society Organization di Indonesia" mentions that CSOs have difficulties in wider networking because they do not have enough social capital to build mutual trust. Some CSOs are also trapped in the short-term perspectives, without medium or long-term planning.

¹⁸⁴ See Dermot Shield, 2005.

¹⁸⁵ On the issue of donor support to CSOs see the recently concluded study by McCarthy and Kirana, 2006.

¹⁸⁶ As mentioned in the interview with Abdi Suryaningati of Yappika on 19 December 2005. This information is based on the experience of Yappika in doing civil society advocacy in Indonesia. A similar judgement was given by Diah Raharjo of TIFA in interviews on 20 December 2005 and 23 January 2006.

limited¹⁸⁷. There are few CSO networks that could optimally act as “amplifiers” for the work done on the various levels.

CSO Networks

The strategy of establishing networks for advocacy reflects the CSOs’ belief that networking would strengthen their position. Networks are also expected to facilitate mentoring relationships between well established CSOs and the newer and smaller CSOs. These networks have shown some success, but sometimes have also shown some shortcomings due to diverse cultural influences. Strong patron-client relationships as the base of many local cultures have shaped bonds within district level organizations, limiting the possibility for egalitarian relationship between local partners from different districts and between district and national partners.

The most visible successes of CSOs initiatives, often through networks or coalitions, have been noted at the national level. The coalition on the Freedom of Information Law, the Coalition for the Foundation Law, and the Coalition for the Law on Participatory Law Making are the best known examples. CSOs have launched these initiatives of their own accord or in response to draft policies. Responding to draft government and parliament policies is a reactive stance, but it is operationally simpler than generating initiatives; the government or House of Representatives already have a timeframe and process in mind, and CSOs do their best to find their place within it. In this case, CSOs generally focus on issues evolving from the existing government agenda. In contrast, policy initiatives coming from the CSOs themselves tend to be more ambitious and require more long-term effort to reach results, as seen in the case of the Freedom of Information initiative (see Box 15).

Box 15: Coalition on the Freedom of Information Law

A group of CSOs coalesced under the name *Koalisi Untuk Kebebasan dan Akses Informasi Publik* (KUKAIP) to advocate for a Freedom of Information law. After conducting research for around two years, they lobbied parliament members. They provided DPR members with a study tour of countries with such laws. A series of discussion, workshop, and focus groups discussion were held to enrich the DPR members’ knowledge of the issues. In 2005 (with new DPR members) KUKAIP again took up the work and lobbied for a finalization of the draft that had been started by the previous members; this draft, signed by the Speaker of the DPR, was submitted to the government on 28 September 2005. A month later the President authorized the Ministry of Communication and Information and the Ministry of Justice and Human Rights to proceed. In mid February 2006, the Communication and Information Ministry submitted to the DPR a list of issues to consider.

CSO Interaction with Regional Government

Democratization has given CSOs the space to develop as organizations and to engage fruitfully with government in policy making, concrete planning and budgeting exercises, and public service provision or cooperative arrangements. This space however is not entirely secure yet. Although coded in some legal instruments, it still needs to be realized in practice on the national and local levels. The recent study by the Center for Democracy and Human Rights Studies (Demos, 2005; Pryono et al., 2003) on civil society and democratization in Indonesia concluded that the formerly strong reform movement is now sidelined and that

¹⁸⁷ A similar opinion has been expressed by John Clark (2003) in his “Overview of Civil Society in Indonesia”. He stated that cooperation and coordination within civil society is weak and unstable and that Indonesia also lacks strong national and regional networks characteristic in other countries.

only some legal structures and democratic procedures remain from that initial impulse. There is much room for intensifying the engagement of civil society with the state in the future.

In recent years, CSOs have made a determined effort to enshrine principles and mechanisms for civic participation in all forms of legal instruments, but their efforts have been only partially successful, with the best result being the aforementioned Law 10/2004 (see Box 16). This law provides a beachhead for further gains in the future. For instance, the Coalition for

Box 16: Making space for civic participation

A CSO coalition centered on Yappika (Coalition for Participatory Regulation – KKP), supported the preparation of the Law on Participatory Law Making (Law 10/2004), a DPR initiative. KKP sought to enlarge the discussion to include issues of legal hierarchy and the specifics of the participation mechanisms. They also sought to address all levels of legal products, in terms of people’s right to be involved. However, the passed law only addresses laws and regional/village regulations. It is silent on Presidential Regulations, Government Regulations, and Ministerial Decrees. Therefore, KKP can claim only partial success. These days, KKP takes the opportunity to champion public participation in the development of relevant government regulations and other legal instruments, even though this effort will not have the backing that such public involvement now has in the case of laws and regional/village regulations.

Participatory Regulation (KKP) is now seeking to influence the national and regional parliamentary legislative procedure, and ensuring that a proper schedule of legislative priorities is developed.

Those CSOs who are trying to make use of the space for engaging with the government find that the “depolitization” strategy conducted by the former “New Order” regime has left them with inadequate “political skills”¹⁸⁸. The early days of decentralization have been notable for the lack of initiatives from CSOs to engage with regional governments, particularly in advocacy roles.

As decentralization proceeded, CSOs have been slowly increasing their advocacy on

behalf of marginalized groups. However, CSO participation in the more technical regional government planning and budgeting meetings is still infrequent and could be increased further. Participating organizations are often close to the local elite, and do not strongly represent the concerns of local citizens (Clark, 2003). Regional government perceptions of CSOs have not evolved much. CSOs are generally perceived as adversarial, unfocused and lacking essential knowledge of complicated government processes. As a result, participatory governance is not sufficiently promoted by regional government and few innovations are introduced. CSOs engaging in discussions with officials and local politicians, on the other hand, often feel they are not taken seriously¹⁸⁹. So far, only a few regional governments are open in their processes, making available information on their planning status and inviting CSOs to meetings.

The situation is not entirely bleak. CSOs have helped to improve the quality of public services, and they are making more efforts to better understand governance and support good practices. The fruitful engagement in key co-governance arrangements (e.g. in the forestry sector and more recently in service delivery) is helping CSOs to overcome their former

¹⁸⁸ Political skills here do not only refer to the formal political process, but more importantly to the skills in lobbying, negotiating, and voicing people’s interest so that they can be received by the decision makers. Throughout the New Order regime, civil society was strictly controlled and independent CSOs had no channels to participate in government. See also, Antlöv, 2005.

¹⁸⁹ For example, in the KP3 (Koalisi Perluasan Partisipasi Publik) progress report to TIFA 2003 – 2004, districts of Lampung, Jambi, and the city of Medan, NGOs still face difficulties in gaining access and collaborating with the regional government on planning and budgeting issues.

resistance to work with regional government. They are now more open to forming partnerships with regional government, or bridge the gap between the public and regional government through advocacy work. In some cases, they monitor local government's efforts in service delivery and public finances. The USAID-LGSP and the World Bank funded Initiatives for Local Government Reform (ILGR) support CSOs to take this approach. CSOs either work bilaterally with regional governments, or form special networks with varying composition.¹⁹⁰

Enhancing accountability of the local government to citizens or organizations representing citizens relies on established trust among stakeholders. Citizen's Forum (Forum Warga) are established to give more opportunities to the community for "political activism" and represent informal approaches to affect people's capacity building. The forums provide space for people to address their needs and interests. The capacity of the people raised in these activities can spill over to other governance processes. Donors such as the Ford Foundation and the World Bank have supported such events. Examples of results out of such forums are the introduction of One Stop Services in Solo, where citizens can now enjoy easier access to identity cards or registration permits for micro scale businesses and involvement of street vendors in spatial planning on identifying specific locations for their business. Also in the district of Jepara, regional government participation in the Deliberative Forum of Jepara has made the regional government increasingly proactive in obtaining citizens' views on the development process.

Community Advocacy

Self-organized citizen groups have arisen at the community level, unconnected to prior government dominated women, youth and farmers' groups. These groups have given input to local planning processes and have taken a more active role on specific community needs. These initiatives range from environmental activities to micro economic schemes for poverty alleviation. For instance, people living along river banks in Bandung district have started to organize themselves to combat garbage and flooding problems. In other communities in East Java, farmer and other groups supported by NGOs have attempted to "reclaim" land (see Box 17). Democratization has given farmers the opportunity and "power" to communicate their land problems to the wider public. These groups may stand in opposition to regional government in cases, but the enhanced role for regional governments in the context of decentralization has also provided greater opportunities for local groups to manage local

Box 17: The initiative of Forum Perjuangan Petani Batang in East Java

In 1998, a group of farmers in Batang district, East Java, united to "reclaim" their land now managed by plantations. The farmers then organized a forum under the name Forum Perjuangan Petani Batang (FPPB), consisting of various local farmers' organizations to advocate their case. All in all, seven organizations joined. Activities included mass rallies and street theaters. The biggest rallies brought together three thousand farmers in Semarang, in 2001, and six thousand farmers in 2002. Such actions were impossible during the New Order times. The reform era opened the opportunity for farmers to organize themselves and to make their cases heard.

¹⁹⁰ For example, the Indonesian Partnership on Governance Initiatives (IPGI) consists of NGO activists, academicians, and government officers. Since the initiatives include government officials, they have better access to the government and more chances in influencing public policy. An example of an initiative supported by IPGI is the spatial planning process for Majalaya city. During the process, IPGI supported the involvement of the community in the drafting process, while at the same time they were also encouraging the government to be more open. In the end, the people's needs were successfully integrated into the spatial planning document.

resources, like national parks.¹⁹¹ NGOs such as Pattiro, IPGI, etc also received support from donor institutions to establish community groups like Citizen's Forum (*Forum Warga*), City Forum (*Forum Kota*)¹⁹² and other multi-stakeholder forums (e.g. for the regional PRSP).

Good examples of the expanded governance roles are seen in the experience of Forum Warga in moving beyond activism to joining the planning process (see Box 18) on deliberative forum in Jepara), and the experience of FPPM in supporting the drafting of the 2004 Joint Circular Letter on guidelines for participatory development planning on the local level (Musrenbang)¹⁹³. The positive results from a series of public consultations organized by FPPM were included in the document, especially with regard to the potential participants for deliberative forums on the local level, including village level, sub-district level, and district level.

Box 18: The work of the Deliberative Forum in Jepara district

The Forum Warga Lakpesdam Jepara in collaboration with other local CSOs in Jepara organized a district wide Deliberative Forum in December 2005. The Forum, prepared since early 2005, was attended by around 550 participants. Five main problems faced by the citizens of Jepara were discussed. These problems were uncovered through a random survey of the public (1,000 respondents), with a response rate of 40%. The organization of the Forum involved the CSOs in cooperation with regional government. The Forum is an additional and complementary participatory mechanism to the longer standing public involvement in the district development planning process. The Jepara district government has pledged to incorporate the results of the Deliberative Forum in the upcoming district planning documents. This political statement will be a reference for monitoring work of the CSOs in Jepara, to ensure there is consistent realization.

Reform Efforts

CSO Internal Management

For CSOs to be recognized as reliable partners in supporting local governance they must show expertise and leadership within their own "sector." A way to build trust is to develop internal good governance mechanisms, like annual accountability reports and independent financial audits. These improvements in financial management are crucial if CSOs are to understand and make transparent the impact of their work.

¹⁹¹ For example women organizations in East Java who live around the National Park obtained access to the park. While their husbands help the national park authority with rehabilitation work in the park, the women plant herbs in the park. The women organizations take the herbs and produce medicine (jamu). Another group in North Sumatera, helps the local government to rehabilitate the land by planting chocolate trees (*Theobroma cacao*), and has the right for harvesting the cacao.

¹⁹² The creation of urban forums throughout Java and in some cities off-Java was stimulated in part by a draft government regulation on urban government that was widely circulated in the months after Law 22/1999 was passed. Many of these forums are still active.

¹⁹³ Joint Circular Letter No. 1354/M.PPN/03/2004 – 050/744/SJ.

Several initiatives have been launched to assist these improvements, some initiated prior to decentralization reforms. Sekretariat Bina Desa with 12 other NGOs drafted an NGO Code of Ethics in the mid-1990s. This code was finally signed on 28 July 2004 in Caringin, Bogor¹⁹⁴. Bina Desa also developed a set of mechanisms on how to increase CSO accountability. The mechanisms are not only on internal management, but also on how the voice of CSOs can be heard on advocacy work as well as the work done by CSOs can benefit marginalized groups. The Transparency and Accountability of NGOs (TANGO) scheme by TIFA is open to the participation of any NGO wishing to evaluate and improve the quality of its management systems (TIFA, 2005). The NGO Certificate Program, initiated and conducted by NDI and the University of Indonesia, provides NGOs throughout the country with training on management, financing, programming and networkin¹⁹⁵. On the local level, the Civil Society Development Consortium (Konsorsium Pengembangan Masyarakat Madani – KPMM) in Padang, West Sumatra, developed its own accountability mechanism and also a code of ethics. Further, KPMM has a reward and punishment system for its members¹⁹⁶. These efforts are encouraging, but have been too few to counter the increasingly critical view of the public toward CSOs.

Donors and international organizations are very keen to support efforts of CSOs to improve internal accountability and transparency, and tend to evaluate and engage with CSOs according to these criteria. This donor set of standards and cooperation screening process has given rise to some controversy and internal fighting between CSOs who meet or do not meet the donor thresholds (and thus receive or do not receive donor funds)¹⁹⁷. Donors may need to reconsider how their support can be provided, to avoid creating division among CSOs.

Private Sector Interaction

Another initiative of CSOs has been their engagement with the private sector through the establishment of a Corporate Social Responsibility (CSR) network¹⁹⁸. The network helps to build trust between CSOs and the corporate sector. Some of the initiatives resulting from the collaboration between the CSOs and the corporate sector are already proving to yield significant impacts, especially in poverty alleviation programs. A good example are revolving fund programs supported by businesses and implemented by CSOs that help communities to generate additional income such as Kemala in Papua, Sulawesi and East Java, BRI (Bank Rakyat Indonesia), the Indonesian Business Link (IBL) in Yogya, Bandung and Jakarta. Philanthropy initiatives have started in various sectors. Since 1998, the Depok based Public Interest Research and Advocacy Center (PIRAC) is dedicated to research, surveys, and training on this issue¹⁹⁹.

¹⁹⁴ Kritik dan Otokritik LSM: Membongkar Kejujuran dan Keterbukaan LSM Indonesia; PIRAC; 2004; p. 7.

¹⁹⁵ Satunama, an NGO from Yogyakarta has a similar certification program.

¹⁹⁶ KPMM or “Konsorsium Pengembangan Masyarakat Madani” consists of 12 local NGOs that work in West Sumatra. They already agreed on their code of ethics namely “Pedoman Prilaku” that regulates their way to prove their public accountability. Another network at the national level with similar objectives is the LP3ES-PIRAC-Yappika network.

¹⁹⁷ Clark (2003: 13) mentions as an example the BaKTI network which was attacked by outside organizations claiming that networks of this kind are a way to control NGOs by donors, or in this case the World Bank.

¹⁹⁸ Yayasan Kehati and Indonesian Business Link (IBL) are involved in this kind of initiative. www.ibl.or.id and www.kehati.or.id.

¹⁹⁹ Info on PIRAC can be found on www.pirac.or.id. Together with universities, since 2002, PIRAC has initiated and managed the Philanthropy Research Award.

Policy Advocacy Initiatives

The majority of civil society organizations have been grassroots groups helping their members – self-help organizations. These organizations are now becoming involved in advocacy. This is possible not only because of the guarantees provided by the legal framework, but also because of the more open political environment. Groups that had been working on micro economic schemes are now conducting advocacy for economic policy; groups that had been conducting emergency relief work are now involved in policy advocacy in the context of the drafting of the Draft Law on Disaster Management (*RUU Penanggulangan Bencana*). Although overall impact is still small, these activities illustrate the trend of CSO to become increasingly involved in policy advocacy work.

The policy advocacy initiatives of CSOs can be found on all levels, with regional level efforts in part being shaped by national frameworks; within these there, in the context of decentralization, there is considerable room for policy initiatives. CSOs are in some regions engaging in policy support for the preparation of regional house of representatives standing orders (*Tata Tertib DPRD*). They are providing this support on their own, or in concert with national level CSOs/networks²⁰⁰. Similar policy advocacy efforts can be seen in some regions in the drafting of regional government regulations. Recent examples include the draft regional government regulation on Public Service Delivery in Sumedang district, and the Forum Jatinangor that advocates policies on development planning in this same district. But not all of the CSO supported regional government policies can be regarded as successes. CSOs sometimes do not have sufficient knowledge on higher regulations or lack access to policy makers on upper levels. In this line for example, a regional regulation on forest management in Wonosobo was cancelled²⁰¹.

Options and Recommended Action

A Better Legal Framework

The constitutional guarantees like the freedom to organize and the right to assemble need to be translated better into the regulatory framework for civil society. With regard to the organizational form of CSOs, the 2004 revision of the Foundation Law is only one step. Since most CSOs do not classify as foundations and need to register as associations instead, it is also necessary to revise other legal provisions, especially the old regulations on associations and on mass organizations still relating to the Dutch times.

Capacity Building and Financing of CSOs

Block grants to organizations instead of project funding could help to build strong institutions that navigate in accordance with established mandates and objectives. Stability of funding, covering core costs would enable CSOs to build expertise and develop strategic plans that

²⁰⁰ For example, the Commission of Legislative Monitoring (Komite Pemantau Legislatif or KOPEL) network in South Sulawesi is involved in DPRD monitoring and advocacy.

²⁰¹ The drafting process of Regional Regulation 22/2001 had been conducted in a participatory and interactive way, including all stakeholders. Its substance was based on the needs of farmers and their commitment to rehabilitate the land. Regulation number 22 of 2001 on Community Based Forest Management in Wonosobo District was revoked by the central government through Decision of the Ministry of Home Affairs (Kepmendagri) number 9 of 2005 on Cancellation of Perda Wonosobo number 22 of 2001.

allow for activities that have better prospects of reaching their objectives²⁰². The expertise that needs to be developed by CSOs includes ways of injecting inputs (or facilitating) the official development planning meetings (Musrenbang), analysis of regional government regulations, and proposing measures to increase regional government transparency and accountability.

There is an apparent need for a better connection between the more capable and influential national level CSOs and the CSOs located in the districts or working in the more remote regions. Successes of national level initiatives can serve to inspire local level efforts, if appropriate vertical linkages exist. In turn, local level CSOs can inform policy and training efforts at national level. More mentoring and sharing of experiences are needed to realize this vertical synergy. In this way, the seemingly isolated or unrelated efforts of CSOs will also reveal optimal connections. For instance, in pushing for changes in the regional government law it is necessary to consider implications for sectoral laws, such as forestry, water management, health. CSOs have yet to put together a sufficiently comprehensive view of the policy changes required. Also, efforts that work at cross-purposes, such as the support given to both the draft Public Services law and the draft Administrative Procedures Law (see chapter on Service Delivery) can be avoided.

Balancing Between Networking and Individual Action

While there is a widely held assumption that networking and support for it is a good thing²⁰³, the experience in Indonesia gives no clear answer regarding the benefits of the strategy. It is not clear if more intensive networking will simply increase transaction costs, with little increased effectiveness to show for it. There is a need for Indonesian CSOs (and their supporters) to examine international experience in this regard, to note where networking is fruitful and when it is simply a drain on resources²⁰⁴. Beyond this broad perspective, a case-by-case evaluation is also necessary for eventual donor support to networks or coalitions. It may well be the case that the transaction costs in a more intensive networking approach will pay-off, provided that the members learn how to effectively engage with each other and with government. Even so, it may be worthwhile to examine other means of exerting influence as these may be more productive in some instances. CSOs may be more nimble if they use individual approaches that make use of highly specialized expertise, or conversely they may be stronger if they unite only in loose fashion as needed, forming quick and temporary alliances that can mobilize constituents or the wider public directly.

Research on Sustainability of Initiatives

Because the way forward seems not immediately clear, capacity development efforts for CSOs in the future, particularly if supported by donors, will require some more diagnostic work, strategic discussions, and careful execution of new approaches. Guiding questions should be, among others, which successful initiatives to increase and regulate the space for civil society activity are or were supported by donors and what can make the initiatives sustainable? From 2003-04, the World Bank initiated ILGR program supported a citizen's

²⁰² See also McCarthy and Kirana (2006).

²⁰³ They are seen as better able to represent disadvantaged strata of Indonesian society, facilitate the building of trust and confidence between government organizations and CSOs, see for instance Osswald K., 1999.

²⁰⁴ See for example the experiences of Ghana, in Akwetey Emmanuel (2006). Engagement or empowerment? Experiences with networks in Ghana, *Capacity.Org*, Issue 27: 4-6.

forum in Bandung district to advocate the drafting of a regional government regulation on transparency (*Perda Transparansi*). The advocacy succeeded and the regulation was promulgated.²⁰⁵ Despite of this, it is still very hard for NGOs and citizens to access information and documents from the Bandung regional government. Even the citizen's forum that was involved in the drafting process of the regulation was denied copies of regional policy documents, including the data of the regional budget (APBD).

Research on Policy Areas for Oversight and Civic Participation

Future support for CSOs and networks and identification for assistance should also ask what kind of policy areas are adequately "covered" by capable CSOs, and what is left out. The activities of CSOs and networks frequently covered by donors suggest that attractive advocacy fields are among others the environment, the judiciary, human rights, education, the media, anti corruption, and service delivery. Issues less covered are for example decentralization, legislative processes, religious freedom, policing, and defense. Besides the capacity and expertise of CSOs on an issue, the history of their relationship with the executive and legislative is equally important. Some departments have since long been engaged with CSOs, like the Department of Environment, while others have had little experience, like the Department of Religion or Department of Defense.

Focus on Constitutional and Human Rights

The growth in the number of *Perdas* with strong cultural / religious connotations indicate that it is to be expected that local issues or cultural/religious issues will dominate policy processes much more in the future. The government is dependent on the input from society. Therefore, support to democratic decentralization has to increase and more attention to minority/majority issues must be given. CSOs and networks active in supporting democratic rights should be prioritized for support.

Specific Recommended Action

- Building on the newly conducted study commissioned by the DSF (see McCarthy and Chandra, 2006), a diagnostic set of studies should be launched to study:
 - International experiences in CSO networking (including where these involve government)
 - International and Indonesian innovations and lessons in CSO-regional/local government interaction
 - CSO role in mitigating or aggravating human rights violations in regional government policies
 - Capacity building possibilities, especially in key areas (e.g. budget processes of regional government, anti-corruption)
- The sponsoring organization for the studies could be the DSF, in collaboration with interested CSO networks.

²⁰⁵ Regional Regulation 6/2004 on Transparency, Bandung district

Village Governance Reform

State/Government Reform Objective

The village level does not have a formal status in the Indonesian Constitution, but the state recognizes and respects the cultural identities (Article 28I (3)) and customary rights of traditional communities (Article 18B (2)). Law 22/1999 indicated the government's intent to develop democratic village governance within the context of regional governance, with the district playing the guiding role. The successor Law 32/2004 on regional government shifted the focus to improving service delivery as part of efficient village governance at the expense of democratic principles in village governance. Following pressure from stakeholders for a review of village governance as brought about by Law 32/2004 the government has indicated its openness to review its policies.

Legal Framework

In the two decades prior to the reform era, villages were governed through a separate law (Law 5/1979). Whatever progressive elements may have been contained in this law, these were overshadowed by debilitating provisions or gaps. In practice, the heads of the nearly 63,000 villages in Indonesia were the extended arm of the national government and, thus, positioned tightly under the authority of the sub-district (*kecamatan*) and district. New village boundaries were drawn and uniform administrative structures replaced most traditional forms of self-governance. The introduction of uniform community organizations served to place even the village community under national level control. Although throughout the New Order period village heads were already elected by their communities, the election process was not free of intimidation, bribery, patronage and intervention by district level government and the army. Village leadership was thus commonly authoritarian in nature, with no significant accountability mechanism in place. Cases of misappropriation of funds from government programs were rampant.

Making a clear break from the past, Law 22/99 provided villages with strong democratic principles for self-government, reversing decades of restricted democracy at village level. It gave room for diversity, local aspiration and responsiveness. Villages were able to go back to traditional organizational structures and could maintain their "traditional autonomy" (e.g. as in the case of the *nagari* in West Sumatra or the *kampong* in Kalimantan).

The major change introduced by the 1999 reforms was the introduction of an elected community representation, the Village Representative Councils (*Badan Perwakilan Desa*, BPD), in order to channel community aspirations and exert control towards the village head. Village heads were accountable to the village population through the newly elected BPDs and prepared an annual accountability report to be reviewed by the BPD. The BPD approved the budget and monitored village governance. Together with the village heads, the BPD had the authority to develop a normative framework for the community life by issuing village regulations. Hence, the authority of village heads and their village officials were limited to their executive functions. For the first time there was a separation of power in the community and the village head was no longer all-powerful (*penguasa tunggal*).

While there were still some weaknesses in manifesting good village governance (e.g. accountability mechanisms, supervision of village regulations, limited resources, clear outline

of competences), overall the changes introduced by Law 22/1999 were regarded as a big step forward towards democratic and more accountable village governance.

More recently, Law 32/2004 and its follow up regulation GR 72/2005 are working to again introduce substantial changes. The dynamics created at village level by introducing democratic institutions and mechanisms were perceived by central government as hampering effective village governance. Therefore, the focus of the revised decentralization legislation shifted to improving service delivery and efficiency - at the expense of accountability and checks and balances in village governance. These changes caught many stakeholders by surprise as they had not been aired by the government, and the problems that they were to address were not felt by many to be properly understood and addressed in the changes.

The principles of the revised framework for village governance cannot be said to veer from the constitution - which is rather silent on village governance - and some of its statements seem progressive, for instance

“The village...has the authority to organize and manage issues of interest to citizens, based on traditional customary rights...” (Article 1, GR 72/2005).

Law 32/2004 introduces a more formalized transfer of funds to the village level. The village block grant (*Alokasi Dana Desa*, ADD) could provide much needed resources to villages in order to offer valued services and respond flexibly to pressing needs. However, as the actual functions (competencies) of the village are not clearly defined, it leaves the villages in limbo how to effectively make use of the increased funds²⁰⁶.

The revisions also aim to improve village administration. The village secretary is to be appointed by the district government and recruited among civil servants (or granted civil servant status). The shift to “efficiency” is also seen in the changes made to the village councils (BPD). In order to prevent disputes and contentions that are natural concomitants of a democratic polity, BPDs are returned to consultative bodies of appointed members, determined by consensus among village elders. The BPD has little authority to exert supervision or control toward the village government. Horizontal mechanisms of accountability towards the citizens through the BPD are replaced by upward accountability towards the district head via the head of the sub-district.

The current members of BPD were predominantly elected in 2001 or 2002 and as their term of office is six years, the revised framework will first apply for the next elections in 2007/2008. It is evident that the changes will turn the clock back on some of the democratic advances offered in Law 22/1999.

²⁰⁶ The authorities (*kewenangan*) of the village were also unclear in the past, and admittedly even in Law 22/1999. The paragraph of Law 32/2004 concerned with village authorities (Paragraph 206) reduces the definition to ‘functions’ only.

The Situation in the Villages

Village Democracy

The impact of Law 22/1999 on the nature of village democracy all over Indonesia was manifold. In some regions especially young, well-educated and critical villagers were elected as members of the village councils and were outspoken in demanding a change in leadership style. In regions with more traditional social structures and practices still alive the new elected positions tended to be filled with traditional elites, pointing to the possibility of strengthened feudal structures under the guise of democratic renewal.

In other cases pre-New Order traditional community institutions were filled with new life and a democratic spirit. The overall political change also encouraged communities to stand up against both village governments and BPDs, as evidenced by reports of community action against collusive village heads and BPDs (see Boxes 19 and 20).

Box 19: Revitalization of Banjar System in Lombok

The *banjar* in Lombok used to be a council of elders based on common genealogical roots. At the end of the New Order period its role was reduced to rituals during important events of the life cycle.

In a few cases the *banjar* has been bestowed with new life and meaning. The head of *banjar* as well as the secretary are elected by the community. Compulsory membership fees are used to channel loans and scholarships. The *banjar* also conducts awareness raising, such as public discussions about issues in education, or negotiates better conditions with health care providers for its members. It also has turned out as an institution of social control – in one case coordinating a community response to thwart the village officials' attempt to divert resources targeted for the poor.

While Law 22/1999 did in many regions indeed result in a fractious local polity, some observers felt this increased tumult to be healthy, and viewed any excesses as temporary and the natural outcome of years of repressed political life. In other words, there may have been, and even continue to be, a “deficit of politics” at village level²⁰⁷.

The new law also allowed for the formal reestablishment of traditional forms of governance (as for example already realized in West Sumatera, Kalimantan, Bali, Toraja/South Sulawesi) that often rely on elites or traditional leaders. While these structures are approved by many in village

Box 20: ‘Community Trial’ of Village Head and BPD Keboromo, Kabupaten Pati

The district government had given compensation of Rp. 89.8 Mio to the village government of Keboromo for using village-owned land for a ring road. Instead of directing the funds into the village cash box it was shared among the village head, village apparatus and BPD members. Hundreds of community members furiously demonstrated in front of the village office. One community figure was appointed to lead community deliberations. The community decided the perpetrators had to return the money within a few days; they had to be sued according to prevailing law and both village head and members of BPD should be dismissed. (Kompas, January 17, 2002)

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²⁰⁷ Hans Antlov, formerly directing village level programming at the Ford Foundation, 1998-2005.

society, they often tend not to be sufficiently inclusive towards women or marginalized groups in the village community (e.g. ethnic minorities)²⁰⁸.

Under both Law 22/1999, and the new Law 32/2004, the village is a sub-system of the regional government. But the basic concept regarding the level of autonomy of the village (i.e. rights and obligations in conducting their own affairs), remains blurred in both laws. The actual nature of village governance and its functions is left to the district to be determined. But districts tend to want to maintain their own roles and do not put service delivery and other development considerations first and foremost in decisions to delegate functions, and especially finances, to the village level. Few districts have so far taken the initiative to develop innovations in village-related policies or respond creatively towards local conditions. The majority of districts await guidelines from national level or at best copy local policies from neighboring districts. Law 32/2004 determined the need for 18 regional government regulations. The corresponding implementing regulation GR 72 was issued in 2005 but it is only now that districts are beginning to review existing regional regulations regarding the village, prompted largely by the pressing need to update the legal framework for upcoming village head elections. But with regard to an outline of functions and a significant and formalized transfer of funds to the village level, most regions are still inactive. The village is therefore in practice unclear about its functions and poorly resourced²⁰⁹. This situation alone reduces the meaningfulness of local democracy.

Of equal concern are the democratic institutions themselves. With the change to a consultative and unelected village council (BPD), membership will be most likely restricted to representatives of the village elite, further sidelining especially disadvantaged groups such as women and the poor. There are already indications from stakeholders that this body has lost credibility and legitimacy. The reduced accountability of the village head and the BPD towards their citizens will most probably further reduce community participation at large, making village development efforts less likely to be successful and less open to scrutiny. Political education and internalization of democratic values generally take place within the scope of daily social interaction. Limited transparency, accountability and access to decision-making at the lowest level, means at the same time a serious set-back for the growth of democracy as a whole in Indonesia.

General and direct village head elections are the cornerstone of village democracy. In the New Order period, village heads had already been directly elected by the communities. But usually elections were not free from intimidation, vote-buying and intervention from military and district government to pre-select politically acceptable candidates. The situation has profoundly changed since then as the operational responsibility in organizing and conducting village elections has been completely transferred to the village level. Nevertheless, both in the current policy framework as well as local practices there are a number of shortcomings with regards to fostering the further development of village democracy.

Law 22/1999 limited the total time in office for village heads to ten years. But the law was ambiguous in determining the actual term of office; whether five years with the possibility of reelection for a second term or an immediate term of ten years with no reelection options. Many districts especially in Java, therefore, decided for the second option in response to strong protests by village heads that five years were not enough to recover expenses related to village elections. According to Law 32/2004 the term of office was extended now to twice six

²⁰⁸ In the 229 villages of the District Timor Tengah Selatan (TTS), NTT, for example, no female village council members are to be found and only three female village heads.

²⁰⁹ By the beginning of 2006 only 41 districts had formalized the transfer of block grants to the villages.

years. Based on the argument, that village elections are part of village autonomy, districts provide little if any financial contributions to expenses related to village elections (ballot papers, logistics, compensation for election committee, etc.)²¹⁰. Candidates therefore usually must pay a considerable registration fee.

Moreover, campaigning involves huge costs for the candidates. Vote-buying in terms of distributing cash and presents is still a common feature, even if sentiments are sometimes turning against it (see Box 21). Candidates commonly feed and entertain hundreds of villagers (*slametan*) during campaign period, resulting in campaign costs of up to several hundred million Rupiah. Candidacy is therefore mostly limited to well-off village elites who can afford campaigning or people who manage to rally strong investors behind them.

Since Law 32/2004 and GR 72/2005 were issued, no village elections have yet been held as the corresponding regional regulations are still being revised. A MoHA Circular Letter (SE No.140/537/SJ from 17 March 2006) urges the district governments to appoint a temporary village head from either village secretaries or community leaders where the terms of office of local village head has already expired.

Box 21: Village regulation prohibiting 'money politics' in village elections

In the village of Penggalang, District of Cilacap, campaign expenses for village government positions had gotten out of hand. In the run-up to elections for village head in 2001 the expenses per candidate had reached up to 300 Mio Rp. Villagers became concerned that in the future no real competition for village position could take place as only a very limited number of interested candidates could afford the campaign – and not necessarily the most suitable ones. The local Forum Warga together with the BPD initiated a village regulation that prohibits the distribution of cash. Non-compliance would be sanctioned by canceling the candidacy of the perpetrator or even revoking election results in case proof is provided after the election. The regulation didn't have the support of all villagers, but was eventually passed with a majority of the BPD. During the following election for hamlet chief no cash distribution took place - but the next elections for village head are yet to come.

There is concern that the creation of the village secretary as a civil service post, a common feature in many other Asian countries (India, Cambodia, Thailand, Philippines) will further undermine the sole democratically elected position in the village – the village head. The fact that the secretary is expected to report directly to the district level on some matters might orient the secretary's loyalty toward the district rather than the village. The village head is likely to feel "supervised" by the village secretary, creating a dynamic that is not healthy to team building and effective governance. Village heads are responding by also asking for civil service status, a response that may not improve matters on the whole.

Since 2000, village associations (associations of village heads, associations of BPDs or joint associations of village heads and BPDs) have formed all over Indonesia. These associations have been used to exchange information and experiences, but also to advocate village-related policies at district level; the provision of increased block grants, options for village-owned enterprises (BUMDes) and other issues. To some extent these advocacy efforts have been successful, but in general village associations only gained considerable strength if they were backed by a local NGO or if participating BPD members had an NGO background.

²¹⁰ Expenses can vary between Rp. 5 Mio. and 30 Mio. based on the number of villagers and the geographic conditions.

Village government associations do not automatically represent the interests of the village community, as seen in the challenges posed to efforts to bring forward issues such as genuine community representation and participation in village- and higher level decision-making. Thus, in different parts of Indonesia *Forum Warga* (citizens forum) have emerged, mostly aiming to influence policy decisions at district (and partly even national) level²¹¹. But at the same time they have developed as important platforms for channeling villagers' aspirations towards the BPDs or village government, or exerting pressure on the BPDs to act on their behalf. Farmer's organizations such as the *Sundanese Peasant Union* (Serikat Petani Pasundan, SPP) in the District of Garut, West Java, or the umbrella organization *Federation of Indonesian Peasant Unions* (Federasi Serikat Petani Indonesia, FSPI) are community organizations with the longest tradition in Indonesia. SPP for example has a membership of about 15.000 farmers who are organized in village-level peasant organizations, sub-district coordination committees and at district level. Their main concern lies with protecting farmer's rights with regard to land or natural resource-related issues (agrarian reform, food sovereignty, the promotion of genetically altered crops by transnational companies, etc.) and their main advocacy arena is therefore the national level. As after 2000 a lot of SPP members were elected as members of village representative council their organizational structures were more and more used to also advocate village-related policy decisions at district level. Much less, though they are an effective platform for community involvement in village governance. A number of donor-funded projects, for example UPP (*Urban Poverty Project*) or KDP (*Kecamatan Development Program*), also aim at the formation and strengthening of inclusive community institutions that can represent the interests of the wider community at village and higher level²¹².

Representation of village interests at national level, however, is somewhat more problematic. In 2003, the national association of BPDs, ABPEDSI,²¹³ was founded with facilitation by the NGO Laperla. They actively advocated for the revision of Law No. 22/1999 with the aim to further strengthen aspects of decentralization and village autonomy. ABPEDSI for example conducted regional seminars, was involved in elaborating an academic draft for a revised law on regional autonomy and conducted a hearing with the national parliament. A first national association of village heads²¹⁴, though, was only founded in April 2005. Contrary to the initial intention to unite with the national BPD association in order to join forces and create a stronger bargaining position, the merger was then rejected since Law 32/2004 had taken away much of the BPD's legitimacy. ABPEDSI was no longer considered an equal partner to the emerging village head association. Consequently, the village head association, APDESI, is rather positive towards Law 32/2004. Following the issuance of GR 72/2005 the *Parade Nusantara* (*Persatuan Kepala Desa dan Perangkat Desa Nusantara*) was founded. This union of village heads and village administration is firmly against the enlargement of democratic institutions in the village. The *Parade Nusantara* received a lot of publicity in March 2006 when about 7000 village heads staged a demonstration in Jakarta to demand civil service status for village heads and village apparatus, an increase in salary, the abolition of

²¹¹ A number of NGOs supporting the formation and strengthening of *Forum Warga* have formed the network *Caucus 17*. Member organizations are located in Central Java, Bukittinggi, Manado, Lampung and Kupang.

²¹² The World Bank-assisted *Urban Poverty Project* which is implemented by PMD supports BKM (*Badan Keswadayaan Masyarakat* – Community Self-Help Organization), elected community bodies to become focal points for activities related to poverty alleviation. A network of BKM is also represented at municipal level where it engages with the local government and works towards the development of partnerships with the private sector. KDP supports the institutionalization of inter-village cooperation through the formation of elected inter-village cooperation bodies.

²¹³ ABPEDSI: Asosiasi Badan Perwakilan Desa Seluruh Indonesia.

²¹⁴ APDESI: Asosiasi Pemerintah Desa Seluruh Indonesia.

restrictions for village heads to become political party leaders, costs for village elections to be covered from the district budget and their terms of office to be extended to ten years. Looking at the situation of village heads outside of Java, where village-owned land (*tanah bengkok*), a source of income for village heads, largely doesn't exist and village heads often receive remuneration below the regional minimum wage, some of their demands seem well founded. But all in all the list of their demands give evidence of the nature of this association – it seemingly represents the individual interest of village elites and has not shown a commitment to advocate for the recognition of village and villagers' rights at national level.

Responding to the demands of the *Parade Nusantara*, the Ministry of Home Affairs at the request of the President prepared the previously mentioned Circular Letter (SE No. 140/537/SJ from 17 March) pressing the regions to move faster ahead with the revision of district regulations concerning the villages (and stipulating consultation of village governments in the process of regional regulation revision) as well as the allocation of district funds for village elections.

Acknowledging the importance of representing village interests at higher level the MoHA Directorate General for Community Empowerment (PMD) intends to prepare a guideline (*Pedoman Umum*) on establishing village level associations.

Village Functions

Prior to decentralization (under Laws No. 5/1979) villages generally carried out only simple administrative tasks and mobilized labor for small community projects (*swadaya*)²¹⁵. This continued under Law 22/99 where an average of Rp. 10 Mio, were provided by the districts to each village to cover mainly administrative tasks. Donor funded projects aiming to reduce poverty provided a testing ground over the last 15 years to determine an expanded role of villages with active participation of communities and their institutions in providing services and managing their own development. Projects such as the World Bank-assisted *Kecamatan Development Program* (KDP), the ADB-funded *Community and Local Government Support Program* (CLGS) and the JBIC-supported *Rural Development Program* (*Program Pengembangan Desa*, P2D) have delivered evidence that the transfer of funds to communities, along with a delegation of decision-making can have a significant impact on improving villagers' wellbeing. Moreover, basic rural infrastructure that is planned, built and maintained by communities themselves also has proven to be generally more cost-efficient and of better quality. These findings are all the more significant for communities that are isolated, far from markets and basic services, and are rarely reached by government development programs.

In principle, Law 32/2004 (article 206) squares well with the above empirical observations. The law seems to enlarge the scope of village governance functions substantially, determining four types of functions (*urusan*):

1. Functions that are based on village original rights (*hak asal-usul*)
2. Functions received by districts/cities that are transferred (*diserahkan*) to the village

²¹⁵ The term "swadaya" is literally translated as self-help. In the context of village-level development it can have the meaning of forced contributions to village projects in the form of compulsory fees or voluntary donations – be it in cash, kind or labor – according to what people can afford.

3. Assistance tasks from central government, provincial government or district/city government
4. Other functions that according to the laws have been delegated (*diserahkan*) to the village

However, more than a year later, there are few changes apparent at village level in terms of services or scope of self-managed development. Perhaps it is too early to expect much movement, but it appears that the institutional pre-requisites (especially guidance to districts to transfer tasks and authorities) to realize the above possibilities have not yet been put in place.

Contributing to the lack of progress on this front is the lateness in issuing the government regulation to replace GR 25/2000 on Central and Provincial Functions. The draft appears to be stuck in inter-ministerial discussions. This necessarily means that the delegation of functions between villages and district cannot be finalized since district functions must first be officially determined. Of course, this delay need not stop the districts from using the existing GR 25/2000 as the basis for the regional regulation, or preparing a draft regulation based on the latest draft of the replacement for GR 25/2000.

Solok district in West Sumatera is the most prominent example of a district that has moved ahead with functional delegation, outlining a total of 110 functions to be delegated to the *nagari*.²¹⁶ West Sumatra, on the other hand, cannot be taken as a model to be adopted by other regions, as the *nagari* is comparable to small sub-districts, combining several villages. West Sumatra also has very long traditions of self-governance, separation of powers and inclusive decision-making that were easily revived after the enactment of Law 22/1999²¹⁷.

As villages are mostly still deprived of resources and functions to manage their own affairs they are widely dependent on district level intervention and programs to answer their most pressing needs. The main mechanism for influencing district decisions is an elaborate bottom-up process of development that is supposed to feed directly into the district budgeting process, but in practice has proved to be rather rigid and not very responsive. (see section on Local Planning and Budgeting).

On paper, the bottom-up planning approach with its basic principles of participation and transparency is appealing. The round-table discussion of development planning at village level (*Musrenbang Desa*) is given a central place and annual guidelines are issued to support its implementation.²¹⁸ But actual implementation of the annual participatory planning process in the regions falls short of the ambitious, and rather mechanistic, guidelines. In practice participation in the village and sub-district round table discussions is still mostly limited to the village elite, successful village proposals average less than 10% of the district budget, and district agencies still implement their programs without consulting villages. The scarcity of resources at village level, and poor response from district level, has engendered already apathy or cynicism among villagers. In this regard, the introduction of significant block

²¹⁶ SK Bupati Solok No 16/2001 ttg Pembagian Urusan Kabupaten kepada Nagari.

²¹⁷ Districts in West Sumatra decided after Law 22/1999 not to have elected bodies of community representation at *nagari* level, but allocated quotas to certain community groups that are then filled through deliberation and consensus at hamlet level.

²¹⁸ The *Musrenbang* is described annually in a joint circular of the National Planning Agency (Bappenas) and Minister of Home Affairs with the last one to be No. 0259/M.PPN/I2005-050/166/SJ dated 20 January 2005. The circulars refer to Law No. 25/2004 on the National Planning System.

grants for village as part of the changes in Law 32/2004 could be an effective way to overcome the lengthy and ineffective development planning process. Its size, prompt disbursement by the district along with effective accountability mechanisms will be key in villagers regaining trust and ownership of a meaningful village planning effort.

Village Finance

As part of the effort to make village governance and administration more efficient, Law 32/2004 stipulated the allocation of a block grant to villages from district budgets. This part of the revised framework was welcomed by many stakeholders. It needs to be noted though how precarious it is to increase funding for villages while reducing mechanisms of accountability (see elaboration of village councils).

GR 72/2005 and the Circular Letter 140-640-SJ from March 2005 outline the calculation and allocation of the village allocation funds (*Dana Alokasi Desa*, ADD) and set a formula for distribution among villages. According to these guidelines districts are expected to allocate 10% of the district budget (APBD) the ADD after deduction of expenses for district staff. It is further emphasized that districts will also implement provisions already stipulated in Law 34/2000 on Taxes and Levies to allocate 10% of the district income from shared taxes and revenues to villages. Hardly any district in Indonesia has so far implemented this provision.

The following calculation (see Table 8) gives an example of the size of ADD if the district followed the national guideline:

Table 8. Exemplary Calculation of ADD for Bima District, NTB (2005, in Rp. 1000)

APBD	Staff Expenses	APBD – Staff Expenses	Shared Taxes and Revenues	ADD (APBD-Staff Expenses + shared taxes and revenues) x 10%	
				Total ADD	ADD per village (150 villages)
187.272.370	148.736.660	38.535.710	12.641.460	5.117.717	34.118

The calculation shows that even villages in districts with relatively limited fiscal capacities would be eligible for considerable block grants, in the case of Bima about Rp. 34 Mio²¹⁹. This amount needs to be contrasted to prior allocations to not their significance, and to the potential functions that could be undertaken at village level²²⁰. It may well be that even if Bima district transferred the Rp. 34 Mio it would still be much less than the resources needed to discharge functions that could fall to the village level. Districts are of course not prohibited from providing additional resources to match delegated functions.

²¹⁹ Bima district has yet to fund the ADD for its villages.

²²⁰ The general principle of subsidiarity could be applied, entailing above all an analysis of containment of benefits and costs of the functions, administrative and technical capacity.

GR 72/2005 also provides for guidelines on the use of ADD. Accordingly, 30% should be allocated for village administration and operational costs, whereas 70% are supposed to be used for village development. The MoHA Circular 140-640-SJ underlines the role of ADD in reducing poverty and consequently suggests a formula of uneven distribution among villages based on parameters such as poverty incidence, education and health indicators, accessibility, community participation in village development as well as economic potentials²²¹. In order to strengthen capacities of village governance as well as mechanisms of accountability and participation the guidelines stipulate that the management of ADD at village level has to be integrated into the general village budget (APBDes) and that there is one unified participatory planning process for the use of the village budget. Proposals that exceed the means of the village are to be forwarded to the district-level development planning process.

Box 22: The Case of Perda on ADD in the District of Kebumen

Since 2000 the local NGO Formasi, together with a village government association, advocated for the allocation of village block grants. In 2004 the district regulation No.3 was passed stipulating the allocation of 10% of the APBD (without prior deduction of staff expenses) to be allocated as ADD to the 449 villages. This would mean an allocation of 70 to 90 Mio Rp. per village (based on a formula depending on number of residents, poverty and accessibility). The Perda laid down a number of requirements that had to be met before the funds would be released. District government had to prepare the communities through training. Villages had to pass village regulations outlining a participatory planning and monitoring process, transparent and accountable management mechanisms, and a village mid-term development plan. The year 2005 was used for preparations, but in 2006 the implementation was postponed again – except for a small number of pilot villages – as the communities were still regarded to be unprepared. The major advocates in the government were rotated to different positions in the meantime. A sustainable concept from the district government on how to facilitate the villages is still missing. In the meantime the DPRD is questioning the Perda, voicing that it is no longer in line with the revised legal framework.

There are a number of noteworthy examples of districts that have already committed themselves for a considerable allocation of village block grants, some exceeding even Rp. 100 Mio per village. They have developed their own distribution formulas and are guiding the management at village level²²². Appendix 14 gives an example of village activities largely supported through ADD in Sumedang district. The majority of districts in Indonesia, however, are still reluctant to provide for considerable village block grants or struggle with the development of an effective design, indicating that such a major reform requires accompanying capacity building and facilitation (at both district and village level). A number of districts are cautiously approaching in a pilot mode to learn what the reform entails and how it can best be shaped. It will take some time for them to prepare permanent Perda guaranteeing the right of the villages to the ADD and its sustainable implementation. The

²²¹ A share of 60% of ADD is suggested to be distributed evenly as a minimum block grant to the villages, whereas 40% would be allocated based on different indicators to be adjusted to the local conditions by the districts. Some districts (e.g. Magelang) also include parameters such as the amount of local taxes (PBB) collected by the village as an incentive. Accordingly it would be conceivable to develop indicators stimulating practices of good village governance such as the involvement of disadvantaged groups into decision-making, the level of transparency on village finance and the publication of the village head accountability report.

²²² Among those are the following: Malang, Selayar, Bogor, Bandung, Sumedang, Garut, Indramayu, Banyumas, Tegal, Brebes, Wonosobo, Magelang, Semarang, Kebumen, Purworejo, Boyolali, Ngawi, Tuban, Sidoarjo, Malang, Gunungkidul, Lombok Timur, Dompu, Sumbawa Barat, Limapuluh Kota, Selayar, Kutai Timur, Kutai Barat.

Directorate General PMD has set the deadline of end of 2007 for all districts to have district policies regulating village block grants.

The pace of experimentation and institutionalization will depend in part on local pressure. Those districts that are more proactive and progressive on the issue of the ADD are mostly characterized by strong commitment and interest from the side of the Bupati, coinciding with significant pressure from civil society organizations.

Central level guidelines are useful and necessary, to ensure for instance that the ADD is incorporated in the APBDes. On the other hand the uncritical adoption of national guidelines without exploring in how far they are congruent with local conditions and needs can also create problems. The provision to use 30% of ADD for village administration and 70% for development activities might not suit all districts where salaries for village heads for example are already paid from district budgets or considerable village-owned assets. It will be important to find the balance between central policies and room for local-level innovation and creativity.

Village Economic Development

In many villages moneylenders and informal village microfinance institutions (MFIs), that are not banks or cooperatives, are the main source of lending for villagers. They are also the main source of access to credits for the poor. Small banks such as the branches of the *Bank Rakyat Indonesia* (BRI) are only found at sub-district level. In order for MFIs to thrive they need to be able to mobilize savings from the community - but the current banking laws do not allow non-bank institutions and non-cooperatives to do so. A national policy for non-banking institutions and non-cooperatives is still lacking. Districts are therefore still reluctant to introduce regional regulations for informal MFIs. A recent Presidential Regulation sets a deadline for the development of a national policy and strategy on the Investment Climate Package for October 2006. This will be the base for further steps in legalizing MFIs.

Law 32, Article 213 and GR 72/2005 (Articles 78-81) foresee the formation of village-owned enterprises (BUMDes) as an independent source of income for villages. Details on how they are to be managed are expected to be outlined in district regulations. With the support of GTZ-supported Profi Project, districts in NTB are piloting ways to turn local microcredit units at village level (UPKD)²²³ into sustainable microfinance institutions. Important element of the strategy is to strictly separate between professional financial management and the social orientation of MFIs. Village government is expected to set criteria on eligibility for subsidized interests, with the rest paying market rates. Village government would also decide on the use of UPKD profits. This effort could significantly contribute to financial transparency and village solidarity²²⁴. The most successful example of a village-based MFI that is able to combine social orientation and sound financial management is the *Lembaga Perkreditan Desa* (LPD) in Bali. As seen in Bali, the local culture plays a significant role in creating effective social control, making replication problematic or a careful exercise at least.

Initiatives are already on the way to turn public recreation sites as well as village-owned infrastructure that was built in the context of donor-funded projects (such as irrigation,

²²³ Formed under the World Bank-financed *Nusa Tenggara Agriculture Area Development Project* – those that continued their operations after the closure of the project.

²²⁴ I Ketut Budastra et al., *Regional Microfinance Development – Nusa Tenggara Barat, 2005*.

drinking water systems or microhydropower systems) into BUMDes. But so far pilots are not well established yet and further steps await future evaluations of these pilots.

District Government Support to Village Governance

The way the district government fragments its village oversight and support functions is one cause of ineffective village support. The boundaries of villages, for instance, are managed by the Governance Section, while organizational issues are managed by the Village Governance Section, (*Bagian Pemerintahan Desa*, under the District Secretary). Village development and community empowerment again is managed by the Agency for Community Empowerment (*Badan Pemberdayaan Masyarakat*). This fragmentation is not overcome through compensating coordination. As a result, village processes (annual budgeting in the village, strategic five-year plan, village oversight as well as institutional capacity building and work mechanism between the village government and other institutions) are not adequately supported. It is not unusual for district capacity development efforts to be limited to the village level participatory planning. In the meantime, several pressing issues also need to be addressed. For instance, with the shift from an elected to a consultative BPD, it is now not clear what rights and obligations fall on the BPD in village governance, and how this body should function.

Lacking adequate district support, most villages have not been able to fashion their own procedures for self-government. In Dompu district, by 2004 only one in three villages had prepared village regulation. In some districts (East Sumba in the East Nusa Tenggara Province), entrenched elites in the traditionally stratified society make use of traditional institutions (rather than village government) to dominate the village development as well as access to information.

Sub-district – Village Relationship

Under Law 5/1974 the Camat was regarded as Head of the sub-district (*kecamatan*), with considerable power to control the villages. Under Law 22/1999, sub-district heads lost much of their influence as the sub-districts became the de-concentrated units of district government, mostly fulfilling administrative functions and acting as a coordinator towards the village. Their main tasks were the coordination of the annual bottom-up development planning process and issuing permits and personal documents.

Under Law 32/2004 sub-districts are strengthened again. According to Article 126 the sub-district plays a supervisory function over the village apparatus, supports service delivery, and coordinates activities for community empowerment. As the village heads deliver their accountability report through the sub-district head to the Bupati, their control function towards the village government becomes significant. GR 72/2005 especially focuses on the facilitating role of the kecamatan towards the villages, for instance, in strengthening village governance, supporting a participatory planning process, community empowerment and cooperation between villages. If endowed with clear guidelines, responsibilities, necessary funding as well as committed government staff, the sub-district could play a significant role in supporting village empowerment and strengthening good village governance.

Government Reform Efforts on Village Governance

The Ministry of Home Affairs (specifically the Directorate General for Community Empowerment, PMD) has signaled its intention to revisit the government's policies on village governance as they have been set in law 32/2004 and its implementing regulations. It has also indicated its interest to collaborate with a broad network of non-government organizations concerned with village governance.

It must be assumed that the government is willing to consider the objections that have arisen over some of the changes in Law 32/2004 that in many eyes have worked to reduce democratic life and the checks and balances necessary for a well functioning village governance system. The potentially disruptive introduction of civil service status and vertical reporting of the village secretary may also be open to review. There is clearly an intent to clarify the functions of the village government²²⁵.

There are calls from several quarters for a return to a special law for village government, and there appears to be two camps on this matter (not neatly divided by government or non-government). PMD has contacted some CSOs (under the network of FPPD) with the offer to collaborate in drafting a separate law (from the regional government law) focused solely on village governance²²⁶. Some would like to keep the close connection between district and village governance seen in Law 22/1999 and Law 32/2004. Those that do not agree with such a tight link see a separate law as a way of ensuring greater village autonomy and prospects. Some in the separate law camp would like to maintain the close district-village link, but see a separate law as a means of giving adequate attention to all aspects of this relationship, and expect that the government/legislature would be more hesitant in the future to make sudden and undebated changes in a dedicated village governance law than would be the case for add-on changes to a revision of a regional government law (as happened in the process of passing law 32/2004).

Several donors have provided support for village governance efforts in the past GTZ-PROMIS (Poverty Alleviation and Support for Local Governance Program in NT) and GTZ-PROFI (Regional Microfinance Development Project), USAID-LGSP (Local Governance Support Project), USAID-DRSP (Democratic Reform Support Program) and before USAID – Perform, AUSAID – Australian-Indonesia Partnership for Reconstruction and Development (AIPRD) in areas like planning, budgeting, legal drafting, strengthening community based organizations, micro-credit and improving the regulatory framework along these lines. The Working and Learning Group on Village Governance, which in the past has actively supported the formulation of Law 22 has been revitalized end of 2005 and now has members from PMD, FPPD, AUSAID, USAID, and GTZ. There are many CSOs active in village governance, many of them receiving support from Ford Foundation²²⁷. A network (FPPD) focusing solely on village governance was formed in 2003, combining CSOs, research institutions, academicians and the government.

²²⁵ As voiced by a representative of the Directorate for Community Empowerment at the Village Governance Focus Group session for this study, held in the DSF facility, Jakarta, 15 March 2006.

²²⁶ The Partnership for Governance Support is supporting Universitas Brawijaya to produce a tentative evaluation of the present law, and its implication for village governance, as an important input into this process. The Directorate General concerned with villages in MoHA intends to formulate the law in a comprehensive way, doing away with the usual reliance on numerous follow-up regulations.

²²⁷ Some active CSOs are Institute Pembaruan Desa, Forum Pembaharuan Desa, Komite Pemuda Pembaruan Desa, Lingkar Pembaruan Desa, Yappika, TIFA, VECO, LP3ES, LAPERA Indonesia or the FPPM.

Donors have indicated that they may be willing to support the GoI, and the CSO network, in the review of policies and legal strategy for village governance. Before a full revision takes place, clarity needs to be achieved on which direction a revision of the law should take. It is important that a consensus emerges early on in the process regarding the scope of the review, and the legal instruments being fashioned.

Reform Options

There is little doubt that village governance in Indonesia has long been a neglected element of subnational governance. The changes made in village governance in the recent revision of the regional government framework have focused on improving the administrative efficiency, bringing services and funds closer to the people. In doing so, the government has ignored important dimensions of democratic life, reducing the democratic rights of the rural population. In moving forward, it is necessary to undertake a more fundamental assessment of what is desired of this level of government and to carefully shape policies and a legal framework that is more promising and sustainable and at the same time accommodating towards diverse local realities and traditions. Subsequently, a redoubled effort will also be needed to raise village democratic governance capacities in line with the established vision.

The GoI/national legislature needs to determine what model of democratic village governance is required today. It needs to consider the following issues:

- How can villagers and their interests be protected?
- How can democratic village governance allow for traditional forms of self-governance while at the same time safeguards democratic rights of its citizens?
- How can meaningful representation of villagers in decision-making at village as well as district level be attained?
- What degree of autonomy is the village to have? And how is that different from the regional level?
- How tightly bound to the district level should the village be? What should be the role of the province and the central level be toward the village?
- Which role should the sub-district play toward the village?
- What degree of uniformity/diversity and flexibility in governance systems is desirable (e.g. traditional elements, size/scale of villages, financing models, and organizational models)?
- What functions must be carried out, and what additional functions could be carried out depending on local interest and capacities?
- What does it mean to have assistance task or autonomous functions at village level? And what mechanisms are needed to acknowledge/delegate functions?
- What financing mechanisms are needed to reflect the functional load and allow for appropriate discretion?

- What economic development/income generating vehicles can be established by the village to generate funds for development and village governance?
- What capacity development efforts are needed for village government and the public to make a success of village governance?
- How can village interests be adequately represented in the national policy-making process?

If the district is to have a prominent role in setting the frame for village governance, then it must also bolster its oversight of village governance:

- Districts need to be encouraged to establish Coordination and Facilitator Teams to provide technical support and build up the capacity of villages in fulfilling their new requirements, like in drafting of village regulations, annual budgets, technical reports of the village head, and establishing work mechanisms between the village government other institutions and civil society.
- Districts should facilitate the collection and dissemination of good practices on village functions and use of ADD, encouraging experience sharing.
- Districts need to give urgent attention to the formulation of guidelines on the role of sub-districts, and to support this level in playing an augmented role.

Villages themselves will need to find ways of increasing their own capacities, and projecting their voice at various levels. Village associations are a new and promising phenomenon, but they will need more support and exploration of appropriate composition to ensure that they combine the many legitimate interests of “villages.” Existing village associations should be mapped, and support extended to clarify their vision and objectives, mode of operation and financing. PMD will need further support in drafting the planned guidelines on Village Government Associations (Village Councils and Village Heads).

To spur village economic development, there is a need for a conducive, regulatory framework for competitive microfinance and rural finance institutions and cooperatives, which clarifies the status of the informal MFIs and Cooperatives and provides detailed instructions on village-owned enterprises (BUMDES).

Recommended Action

Short Term Until Mid-2006

The GoI should clearly establish the scope and process of the revision of village policies and legal instruments, and ascertain the support needed from donors and how this will be provided. It also needs to identify its vision of village governance.

Mid Term Until the end of 2006

The GoI targets to have an academic position paper prepared by October 2006. A preliminary diagnostic stage is required to understand the development of the village over time and regions of Indonesia, noting the challenges and opportunities the village now faces. Donors

should support the GoI in the development of its vision through a number of interactive and participatory processes involving stakeholders. After having clarified a broad vision of the village, additional information, e.g. from good practices, international experience, public consultations involving the different stakeholders concerned is needed to formulate the position paper and later the new law (or portion of a revised regional government law).

V. THIRD PARTY SUPPORT

Role of CSO and Universities as Intermediaries in Decentralized Governance

Introduction

Civil society organizations (CSOs) in this report are understood to include a wide variety of non-government organizations (e.g. large national NGOs, regional NGOs), faith bodies, media organizations and research institutes. Universities are also treated in this section although some are technically part of the civil service structure. CSOs and universities in decentralized governance expand the space for civil society in local governance (individual citizens and their associational forms) and take advantage of this space to further development, of their own accord or in cooperation with government. Universities approach this with a methodology that stresses knowledge generation and application.

Donors also have an interest in development-oriented CSOs and Universities²²⁸ in the field of decentralized governance. They desire to strengthen these organizations so they can be more effective in providing capacity development to local actors (government and otherwise), and advocating on behalf of local groups (e.g. the poor) at all levels of government. Donors have a stake in building individual CSOs and universities and their networks as a strategy for strengthening policy development processes and development partnerships, offering an eventual exit for donors (replaced with mutually advantageous peer to peer partnerships between countries).

Current Situation

The Flowering of CSOs in Decentralized Governance

CSO²²⁹ involvement with regional and village government precedes decentralization, but was heavily constrained prior to decentralization reform. CSOs generally operated apart from regional government. Their contact with regional government was most visible in donor supported efforts. For instance, the Ford Foundation has been a steady supporter of CSOs engaged in activities such as participatory planning, service delivery, village autonomy. Donors involved in area development projects (like the former Sulawesi Regional Development Project funded by CIDA) used NGOs to prepare and organize communities to take up the operating and maintenance costs of local infrastructure, or to undertake bottom-up planning. These efforts pushed the envelope for what the central/regional governments were willing to encourage or tolerate. However, the efforts were limited and transitory, and did not result in a sustainable CSO community involvement in decentralized governance.

In the pre-decentralization era, Indonesian NGOs did make efforts to network, spurred by a desire to learn from each other. But networking was kept very informal and was not

²²⁸ It needs to be stated here, that numerically, the largest number of Yayasan in Indonesia are the very small mosque-based ones that do mostly religious charity work. They have no real connection to the reformasi movement or decentralization, governance, etc.

²²⁹ The focus is here on development-oriented CSOs who are active in the field of governance reform.

considered a priority, and was seen to be risky in some respects, for the following reasons offered by Bina Swadaya (1994: 3):

- local NGOs were afraid that they would be dominated by the big Jakarta-based NGOs;
- NGOs feared repeating their former experience, when a number of associations became mass organizations involved in political activities;
- NGOs feared they might lose their independence once they became tied to a network;
- it was thought that it would be easier for government to take over the entire network.

Nonetheless, larger NGOs established ways of partnering and channeling funds to smaller NGOs²³⁰. The latter worked largely in isolation of regional/local government however, with some groups even priding themselves in this regard. This tendency was strongest for the smaller and newer NGOs formed in the 1980s.

With “era reformasi” came a flowering of CSOs of various legal forms, sizes, and focus (see section III/7 Opportunities for Civic Engagement). CSOs became specialized, taking up local governance issues such as local corruption, social safety net program monitoring and service delivery. Some began to work more intensively with regional government itself. As alluded to earlier, donors figured prominently in many efforts. They strengthened particular CSOs and encouraged networking amongst CSOs and with regional government. Some notable examples include the AusAID funded ACCESS²³¹, the PACT funded DINAMIS in Sulawesi (expanding on the previous DFID funded DELIVERI project)²³², the USAID funded CSSP²³³ and LGSP²³⁴ and the USAID/TAF supported PROMIS²³⁵ and the CIDA/TAF implemented IBESS. In some cases, donors built Indonesian capacity internally within their projects, and then spun off an NGO as their project work expired, with the hope of attaining sustainability²³⁶. Generally donors created “development NGOs,” working directly with local communities on issues of water provision, health, education and other basic needs or improving service delivery such as through the establishment of One Stop Services. These

²³⁰ These Civil Society Resource Organizations (CSROs) already relied heavily on international official bilateral assistance (ODA) and northern foundations and NGOs; about 70% of the CSROs received funding from official ODA sources in the pre-decentralization period (Winder 1998: 3). Although some NGOs have tried to generate own resources and diversify funders, the situation is unlikely to have changed much in the post-decentralization period. CSOs, directly or indirectly (via CSROs) likely continue to rely heavily on donors; the dependence today may be even more pronounced in the field of decentralized governance as donors have flocked to support both government and CSOs in this area recent years.

²³¹ The Australian Community Development and Civil Society Strengthening Scheme seeks to “create an environment of collective learning between the community, organized groups in society (such as NGOs and CSOs) and the leadership within the appropriate government bodies” (AusAID, 2005).

²³² Decentralized Innovation and Action for Managing Improved Services, operating in 2001-2003.

²³³ The Civil Society Support and Strengthening Program worked with 200 CSOs—including NGOs, media outlets, business associations and educational institutions in connection with all levels of government (Chemonics, 2004).

²³⁴ The Local Governance Support Programme, executed by RTI, involves about 500 NGOs (RTI, 2005).

²³⁵ PROMIS and IBESS are both executed by TAF.

²³⁶ See for example the case of GTZ-NT-PROMIS, a project that gave birth to a number of regional NGOs in NT (East Lombok, YP2M; Dompu GAGAS NT; Bima CEDES, Ende KOPERASI).

NGOs do on occasion interact with regional/local government and advocate to regional/local and national government on issues of importance to marginalized groups.

The mass media also picked up decentralization issues with greater intensity and incisiveness. Media interest picked up as attention turned to the functioning of the regional legislatures. A focus of the media has been corruption and money-politics in regional government/DPRD. There is perhaps less analytical capacity on other aspects of regional government, such as budget analysis and service issues.

Regional government, or officials of regional government, also developed more NGOs, although these “red plate” NGOs continued to be viewed with suspicion by the larger NGO community. They are seen as vehicles for gaining additional income and support by officials and to give regional government legitimacy by claiming cooperation with the NGO “sector.”

NGOs have coalesced in networks for greater impact. An example of a coalition that has had some success is the FPPM (Forum Pengembangan Partisipasi Masyarakat or Forum for Popular Participation)²³⁷. One of FPPM’s activities is promoting participatory planning and budgeting. It has influenced the preparation of the joint decree of MoHA and Bappenas on the development planning process. FPPM continues to do advocacy work in relation to several government regulations in ministerial decrees mandated in Law 32/2004 on regional autonomy and Law 25/2004 on national development planning²³⁸.

The University/Research Center Scene in Decentralized Governance

Many universities were involved in decentralization prior to decentralization reforms. However, their work was heavily constrained; on many occasions researchers were working solely for government bodies or were co-opted conceptually by the dominant ideologies and state interests. The case of the “capability rating” of regional government in the late 1980s and early 1990’s reveals how a potentially valid scientific approach was subverted by government for its own purposes. The measurement of regional capacity (often with inappropriate indicators that were most reflective of central government inaction or failure) was used to give a scientific sheen over the entire government decentralization effort, while effectively putting the brakes on decentralization (Beier and Ferrazzi, 2000).

Donors were barely active in decentralization at this time, with some notable exceptions. German aid to the Institute of Technology Bandung to establish a decentralized planning Masters level program in the early 1990’s was ahead of its time in terms of content and the networking principle it sought to employ. This program made ITB the nucleus for a network of regional universities (Association of Indonesian Planning Schools – ASPI) that strengthened programs and collaboration in upgrading efforts and knowledge sharing (GTZ-PMPW, 2001). This network is now still operating, albeit at a lower level of intensity.

Freed of government influence in the reform era, universities were rather slow off the mark to take advantage of new opportunities to support regional governance in tandem with central or regional government²³⁹. Perhaps bruised by the experiences of two decades of academic intrusion and suppression, many academic institutions stayed on the sidelines as the

²³⁷ FPPM is an open forum for NGOs, government, community groups and academic organizations that aims to promote participation in development programs.

²³⁸ In this he presently receives support by DRSP/USAID.

government went about changing the framework on decentralization/regional government. However, over time, some universities began to establish specialized centers to examine decentralization issues, or to bolster this theme in existing departments and centers (some examples are provided in Annex 15).

The work of Komite Pemantauan Pelaksanaan Otonomi Daerah – KPPOD (Regional Autonomy Watch), initiated by a consortium of universities, research centers and mass media,²⁴⁰ made its mark beginning in 2000 by providing evidence of regional performance based on local perceptions of the business environment and infrastructure quality.

With the advent of reform, donors backed knowledge institutions in a more intensive way, undertaking, for instance, independent assessments of decentralization issues. They built local capacity through local staff and consultants to implement studies and programs, and initiated greater cooperation with universities and existing research centers. They also (in a similar way to the creation of “development NGOs” mentioned in the previous sub-section) spun off the SMERU Research Institute²⁴¹ and the Centre for Local Government Innovation (GLGI, now Yayasan Inovasi Pemerintahan Daerah - YIPD)²⁴²; both of whom conducted assessments of local government issues/capacities, although CLGI tends to be more practice oriented rather than knowledge focused.

Several donors have assisted university networks. Beginning in the early nineties and stretching to 2001, GTZ supported a district focused planning program in the ITB Bandung, and this University became the nucleus for extending the program to regional universities. More recently (2000-2002), The Center for Institutional Reform and the Informal Sector (IRIS) of the University of Maryland and the Institute for Economic and Social Research (LPEM) at the University of Indonesia combined to draw together 22 universities across Indonesia for a two and-a-half year program focusing on issues of fiscal decentralization.

Another notable effort in generating knowledge of decentralization’s progress was the set of regional investigations conducted in the Indonesian Rapid Decentralization Appraisal (IRDA), funded by USAID through The Asia Foundation (TAF)²⁴³. Numerous universities and research centres throughout Indonesia, were linked to provide a general framework for all of them. In doing so a modest measure of capacity development was achieved through exchanges between members of this loose network and via external experts who gave the research direction on substance and methodology.

²³⁹ Many universities throughout the country had long developed research centers and extension programs to support villages and local communities, many of them organizing student work experience in villages primarily. However these efforts were ‘community development’ oriented and generally did not seek to change governance practices or frameworks at regional or national level.

²⁴⁰ KPPOD’s founder were the national Chamber of Commerce (KADIN), Committee for National Economic Renewal of KADIN, Centre for Strategic and International Studies (CSIS), Institute for Economic and Social Research - Faculty of Economics University of Indonesia (LPEM-FEUI), Sekolah Tinggi Manajemen Prasetiya Mulya, The Jakarta Post, Bisnis Indonesia and Suara Pembaruan.

²⁴¹ The Social Monitoring and Early Response Unit (SMERU) was started as a collaborative multi-donor effort led by the World Bank, with contributions and technical support from AusAID, the European Union ASEM Fund, and the USAID. Its original objective was to provide quick qualitative information on crisis-related conditions and on the operations of social safety net programs in urban and rural areas. As an independent research centre it has expanded its work to local governance issues, and deepened its research.

²⁴² CLGI, now an independent foundation engaged in capacity development for local government, began as a USAID funded project.

²⁴³ See for instance The Asia Foundation (2004).

The six regional government associations (RGAs), established on the heels of Law 21/1999, also act as research and advocacy bodies for their members. These bodies have seen some growth and increased effectiveness over time, but also have experienced setbacks, and are on the whole rather weak. Donors have provided considerable support to them, though this has not been sufficient to overcome weaknesses, some of which relate to their fragmented structures (see the sections on RGAs below).

Use of CSOs and Universities as Intermediaries in Aid Assistance

The notion of developing local institutions is part of the aid effectiveness discourse, and is reflected in the Paris Declaration of 2005, albeit in general terms. Currently, several donor supported projects place CSOs and universities (and private sector entities) front and center in their assistance strategies. CSOs are increasingly used to disseminate new concepts and ideas, to introduce innovations, public consultation processes in reforming regulations and policies, to encourage responsive governments find channels for access to information, increased citizen participation and to deepen the democratic process. The ADB-funded Sustainable Capacity Building for Decentralization program is focusing on use of a wide range of national and regional capacity building service providers to support regional government. GTZ-ASSD-GLGL, launched in 2006, is making use of intermediary organizations (IOs) a pillar of its new approach in supporting policy processes and regional piloting efforts. USAID-LGSP and DRSP are exploring ways of strengthening networks active in decentralized governance, and using them as intermediaries to accomplish reforms and engender innovations in the field. TAF is working with CSOs in introducing innovative systems such as ‘One Stop Services’ in 25 regions or the introduction of the ‘Regulatory Impact Analysis’ (RIA) in 18 regions. BIGs in Bandung supported by Ford Foundation focuses on the introduction of accountability measures such as the introduction of Budget Transparencies or Customer Satisfaction Surveys and Citizen Charters; or FPPM with a focus on civic participation in decision making processes and in the formulation of regional regulations.

Besides working through national CSOs, donor agencies like e.g. TAF or CIDA increasingly try to build up capacity in the regions. They work through local associations and other existing networks to support them in their cooperation with local NGOs²⁴⁴. They also provide

At the donor-GoI level, the notion of working through intermediaries is less visible, perhaps reflecting the lack of dialogue on the larger question of donor exit strategies. Indeed, within government, the strategy of working with CSOs and universities is often still seen with great ambivalence. There is a pattern of selecting a few “trusted” organizations to work with government in the preparation of the academic draft (*naskah akademik*)²⁴⁵ or for particular analysis²⁴⁶, and there is certainly a desire on the part of government (as well as CSOs and universities) to receive donor funds to facilitate this cooperation. There is considerably less enthusiasm for three way cooperation, where donors seek to build up a broader range (and

²⁴⁴ E.g. TAF supports a local CSO in East Java to build a knowledge center from which it provides technical assistance to local CSOs on issues such as the establishment of One stop service centers.

²⁴⁵ This document is prepared to guide/justify the content of laws or regional regulations.

²⁴⁶ For example, the Ministry of Finance has typically used the University of Indonesia for analysis on the general allocation fund (*Dana Alokasi Umum*). A regional example of cooperation would be the regional parliament of Takalar –South Sulawesi and the University of Hasanudin in Makassar in the development of standing orders and code of ethics.

more able set) of possible contributors to government in a process that is transparent and accountable. There is a need of change of mind set for the government.

Reform Efforts

CSOs and Universities have on many occasions stated their desire to diversify funding and reducing their dependence on donors. They often are adamant in their statements that donor funding should not mean donor dominance of the reform agenda and control over local actors. These are worthy goals and cautions. But many CSOs and Universities seem in practice to be quite comfortable with the current contractual arrangements that joins them to donors and regional government. They are either happy to do the donors' work, or seek to obtain the funds and arbitrarily limit donor involvement. Neither approach is likely to yield maximum benefits for the three sets of actors.

On the donor side, there is some commitment to working effectively in this triangular relationship. CIDA is exploring ways of working with regional government-civil society networks in Sulawesi for instance²⁴⁷. USAID hopes to "strengthen Indonesian strategic partners' ability to increasingly assume responsibility for capacity building activities with non-USAID resources." (2004: 29) TAF has conducted a more systematic approach and conducts regular coordination meeting and capacity building program with its partner CSOs on the national level and in the regions. But there are no concrete strategies offered in the official guiding documents of donors that would indicate how the partnership is expected to function better than in the past.

Improvement Options and Recommended Action

Improvement Options

It is too early to tell if there is a qualitative change in how CSOs and Universities and donors will interact to be more effective in supporting decentralized governance. The mentioned projects (aside from ADB-SCBD) have yet to sufficiently unfold to reveal any differences in approaches, and the statements of principles have remained vague in the main. Only time will tell whether the three actors, government-CSOs and Universities-donors, will build relationships that allow for greater impact and for a reduced role for donors in the long run. If improvements are to be seen in CSO and university effectiveness, donors will need to put increased emphasis on capacity development, and avoid the following:

- Working in isolation, or with government agencies, and then asking CSOs and Universities to "disseminate" the successful innovations
- Engaging CSOs and Universities to work with government when the parties are ill prepared to make an effective partnership
- Alternatively, accepting the selective approach of government and funding the few "trusted" CSOs and Universities selected by government

²⁴⁷ This orientation is particularly visible in the report of the appraisal of the proposed project "BASICS", prepared for CIDA in 2005.

- Working with both government and CSOs and Universities simultaneously and in the same setting, but without recognizing the challenges that this dual assistance entails
- Working with individuals from CSOs and Universities as if working with the latter as organizations, with no organizational spillover to the CSOs and Universities
- Resorting to contracting CSOs and Universities to fulfil narrow project goals that do not feed into those organizations' objectives or capacity plans
- Approaching the coverage challenge (reaching all regional governments) without a game plan that would see a proper division of roles over time between the three sets of actors

It is very unlikely that there will be a blanket solution. However, there is a need for a more systematic and broad scaled approach. More intensive discussions, aided by more rigorous evidence from practice, is likely to support changes. These discussions should have the following character:

1. Be based on a sound conceptual base in terms of capacity development.
2. Be oriented toward the longer term goal of making a developmentally rational donor exit.

With respect to the first point, it is important to go beyond the capacity development menu approach, where donors give equal legitimacy to the entire range of capacity development options, including “gap filling”, without discerning the contextual factors that can inject judgments on which may be best, or what sequence is needed and in what time frame. Some donor cohesion on principles and practice is required.

In the second point, what is required is an appreciation for how long it takes to build local institutions to play the roles now being played by donors. Indicators need to be developed to assess when the state has entered into a new “contract” with civil society, and when current donor roles can give way to more equal and mutually beneficial forms of collaboration between countries. The exit strategies seen in Indonesia prior to the economic crisis were weak in this respect, and did not stand the test of time. Early attempts to refashion these in recent times do not seem to have come to grips with essential institutional/governance considerations.

Recommendations

Short term (2006): It is essential for donors to increase and improve efforts to support CSOs and Universities, their networks, and their linkages with government. This emphasis is needed to increase local ownership and leadership of the entire decentralization process, for both implementation and public participation objectives. To the extent donors are not convinced or comfortable with this shift, an in-depth review of CSOs and Universities role in decentralized governance, placed in international context, is needed. This review should answer, or be useful in answering, some of the critical questions that GTZ-ASSD-GLG set for itself in exploring more intensive work with CSOs and Universities as “intermediary

organizations” (IOs) (see Appendix 15) and should provide some means to strengthen the GoI/CSO-University/Donor interaction in showing possible engagement channels for CSOs.

Mid term (2007): Government and donors could benefit from discussions on the objectives and approaches to supporting CSOs and Universities active in decentralized governance, and the division of labor between government and donors. These discussions should center on exit strategies for donors, and how CSOs can begin to take on a more sustainable leadership role in key sectors and functions.

Role of Regional Government Associations²⁴⁸

Introduction

In the context of the 1999 decentralization reforms, the GoI encouraged and guided the formation of individual regional government associations (RGAs) to separately represent the interests of the regional executive and of members of regional house of representatives for districts, cities, and provinces. The six associations were, in a general way, acknowledged in Law 22/1999.

The current objective of the GoI with respect to the RGAs is unclear. The RGAs are not included within the revised framework law (Law 32/2004). The GoI intent must therefore be inferred from practice, and indications are that the Ministry of Home Affairs, the key central government organization mandated to guide and support regional government/ RGAs, is ambivalent about the role that RGAs can or should play.

In view of the ambivalence in the GoI’s stance toward the RGAs, the following analysis will refer largely to the potential role RGAs can play. Recommendations revolve around reforms needed within the RGAs themselves, the pattern of donor support, and the relationship between MoHA and RGAs.

Legal Framework

Six independent sub-national (regional) government associations were formed in Indonesia following the introduction of Law 22/1999, their introduction and design (number and representation) having been largely a result of central government design:

- Association of Indonesian District Councils (ADKASI)
- Association of Indonesian City Councils (ADEKSI)
- Association of Indonesian City Governments (APEKSI)

²⁴⁸ It is common in international contexts to refer to “Local Government Associations,” and generally these are understood to mean any combination of council/councillor and executive/administration membership. The term “Regional Government Association” (RGA) used in this section should be understood to mean associations that are either council based or executive based. The term “regional” is used specifically to distinguish these from the recent arrival of village level associations. Regional refers to both provincial and district/city regions, but in this section only the district/city level associations are treated, and any reference to the provincial level will be made explicit.

- Association of Indonesian District Governments (formerly APKASI – now Cooperative Board of all District Governments (BKKSI))
- Association of Indonesian Provincial Governments (APPSI)
- Association of Indonesian Provincial Councils (ADEPSI)

The government's interest in establishing the provincial and district/city level associations was evident in the impetus given to them by MoHA. Legal acknowledgement in Law 22/1999 came in the form of their membership on the Regional Autonomy Advisory Board (Article 15(2)). The explanation in Article 115 (2) stated that the "Regional Government Association shall be the organization established by Regional Governments in the context of inter-provincial government, inter-District Government, and/or inter-City Government co-operation based on the guidelines issued by Government²⁴⁹ [author's emphasis]." If somewhat intrusive, the above provision at least acknowledged the potential contribution of the RGAs to national regional autonomy policy making. This in itself was a marked departure from the pre-decentralization days, when only a very tightly controlled BKS AKSI (Inter Indonesian Municipal Organization) was allowed to exist.

This situation changed with the advent of Law 32/2004. The DPOD was placed on shaky ground (it "can" be formed), and the provision for RGA participation on the DPOD was removed. As stated earlier, no mention of the RGAs can be found in the law.

This uncertainty in the GoI's stance toward RGAs has caused much concern among the RGAs. APKASI reacted by seeking to latch on to the reference in Law 32/2004 to "cooperation agency" (*badan kerjasama*), a provision actually placed in the law as a vehicle for inter-regional cooperation between two or several regions. In any case, APKASI changed its name to BKKSI (*Badan Kerjasama Kabupaten Seluruh Indonesia*)²⁵⁰. It appears that MoHA officials supported this name change. The Minister himself is said to have resisted opening the annual meeting of APKASI unless a name change was put forward. Apparently, in MoHA's eyes, the name change was an acknowledgement that the RGA is directed toward internal cooperation issues, rather than forming a common platform for dealing with the central government. In the eyes of some observers then, APKASI was seen as having bowed to MoHA pressure. It is clear that APKASI's actions have fractured relations among RGAs.

Though equally concerned, other RGAs did not follow suit with a name change, unsure whether the RGAs would be any more "acknowledged", and what the acknowledgement would mean in practice. Regardless of the names of the organizations, the legal reality is that the RGAs are independent organizations established under Indonesian law. They have the legal right to address their internal needs and to lobby the government. How the government decides to view them and receive them is a political decision that carries consequences for both the RGAs and government. The donor community is unified in its belief that the RGAs can and should play a vital role as contributors on policies and regulations that shape regional government mandates, procedures, and resources, and as a source of support and capacity development for its members.

²⁴⁹ Kepmendagri 16/2000.

²⁵⁰ The provincial legislative RGA may have followed suit with a similar name change.

The recent shift to direct elections for regional heads is also noteworthy. This framework change may generate some new dynamics, as the Mayors and Bupati obtain greater independence from the regional councils. It is too early to tell what significance this change will have on the workings and effectiveness of the RGAs. It could conceivably cause APEKSI and BKKSI to compete with ADEKSI and ADKASI for channels of communication and influences, or it may make it easier to find common ground as all the members will be directly elected.

Efforts of the RGAs

Development of RGA Services to Members

The RGAs vary considerably in their capacity and efforts towards members. This variation reflects their relative strengths but also their particular position. The provincial level RGAs do not function as typical RGAs. Governors tend to have their own links to central government policy makers, and they have more occasion to meet in groups or as a full community. The DPRD members at the provincial level do not seem to have felt the need to develop their RGA, although the reasons are not clear in their case. It may be that the scope of representation (only the chairs of the councils are part of the association) places the association members in a similar position to the Governors in relation to national actors.

Regarding the district/city level RGAs (the focus of this review) their advocacy and service to members also varies. They have all gained some capacity over the last five years, but in fits and starts, and with some significant slips as well. It is widely acknowledged that APEKSI and ADEKSI are the strongest members presently. APKASI (now BKKSI) was perhaps the leading RGA for a time, but has lost some momentum. ADKASI has the largest membership, but has not been on the forefront of activities, nor has it received the same attention from donors as other RGAs.

The RGAs suffer from inconstant or uneven leadership at the board and directorship levels. The members do not always pay their dues, or pay them on time. Although they have in the past allowed their membership dues to increase, these are still low²⁵¹. They are unlikely to accept significant increased membership dues in view of the uncertainty about the value of the work of RGAs. The DPRD-based RGAs furthermore fear that in the current uncertain legal context, paying dues to the RGAs from regional government funds could place them in legal jeopardy.

It is obviously difficult in these circumstances to support or improve significant member services. Even so, the RGAs have tried to develop training, seminars, and workshops, produce guidebooks, and even provide some technical assistance. Most efforts are quite limited. The most common services are the provision of information (e.g. on draft or new laws and regulations and good practices) through newsletters or websites.

It is important to note that the Centre for Local Government Innovation (CLGI) was supported by the RGAs (although it is not clear if this was institutional or individual board member support). But CLGI never became the extension of the RGAs that some RGA

²⁵¹ ADEKSI, for instance, increased its dues in 2005, and finds that members are willing to pay for the complete costs of some seminars/workshops. The membership dues however are far below what is needed for the associations to function adequately.

members imagined it would be, and from early days acted quite independently from the associations. Instead, CLGI serves essentially as a specialized consulting firm supplying its service to donor supported projects, regional governments and businesses wishing to undertake community development efforts in their locality. With its organizational change to be an independent foundation (*Yayasan Inovasi Pemerintahan Daerah*), and its focus on Aceh, the CLGI/YIPD is unlikely to be a significant vehicle for the RGAs. However, the RGAs could still effectively engage the CLGI/YIPD in capacity development efforts for its members, and in research on governance issues that could feed into advocacy efforts.

The RGAs have tried to bolster their efforts, and have found their location in Jakarta to be an obstacle in serving far flung regions in the vast archipelago. To counter this geographic obstacle, ADEKSI and APEKSI have together established six regional offices (*Komisariat Wilayah – Komwil*) to bring services closer to the members. BKKSI has 30 Provincial Regional Coordinator Offices. ADKASI is also intending to establish Provincial Regional Offices.

Some sense of belonging and appreciation for the role of the RGAs by the membership can be seen in the response to the tsunami. The RGAs facilitated the delivery of financial and in-kind assistance from members to the regions of Aceh (for instance, BKKSI facilitated donations of Rp. 4 trillion).

Advocacy Efforts of the RGAs

The flowering of RGAs was promising, but the fragmentation among the associations (particularly at district/city level, and between the DPRD and executive) has dogged the development of the RGAs since their inception. In the main, they have not sufficiently cooperated among themselves, and have therefore not been able to mount effective advocacy or services to their own members.

Some modest steps toward informal and institutionalized collaboration have been taken. This has been done through the use of RGA resources, as well as through external support. The RGAs established the *Forum Asosiasi*, involving all four district/city level associations. This forum sought external expertise to gain a deeper understanding of the legal framework, held internal deliberations, forged some common positions on the revision of Law 22/1999, and communicated these to the central government and the national legislature. While the views of the RGAs were not well incorporated in the revision of Law 22/1999, this cooperation established linkages between the RGAs and provided a workable model. The Forum offered an alternative to the calls from some donors for the merger of the four district/city RGAs, an option the RGAs deemed at the time to be premature, difficult, or not desirable.

The work of *Forum Asosiasi* unfortunately flagged following the introduction of Law 32/2004, precisely when views and energy were needed to influence important new government regulations on many issues of interest to the RGAs. Only belatedly did the RGAs try to get on board, after MoHA provided an opening for APEKSI's participation in the revision of functional assignment regulation. The RGAs did not cooperate as broadly as in the case of *Forum Asosiasi*²⁵², but the efforts of APEKSI (the only RGA invited) were significant, sending city government and APEKSI staff to sectoral workshops addressing

²⁵² BKKSI and APEKSI did cooperate on forwarding their views on the assignment of functions pertaining to land issues to the Ministry of Home Affairs.

functional assignment, and mounting their own workshop to give an overall response to the draft regulation, attended by some government officials (Ferrazzi, 2005).

Donors have tried to support the advocacy role of the RGAs, although pressure exerted by some for RGA merger was rejected, and resented. The donors most involved in advocacy support have been USAID-BIGG/ICMA²⁵³ (completed) and VNG (Netherlands)²⁵⁴. The advocacy support has been modest so far, in part due to the weakness of the RGAs themselves to make use of ideas and technical support. APEKSI and ADEKSI are currently exploring the possibility of establishing technical working groups as a base for stronger analysis for RGA policy positions and advocacy. Several donors have indicated they may be interested in supporting this effort.

Donor Support for RGAs

A long list of donors have supported the capacity building activities of the RGAs, relating to the members as well as the RGA secretariats (see Appendix 17). The pattern of support appears to be uneven, but overall quite plentiful. It may well be asked why the RGAs remain very weak after five years of support from donors. The ambivalent stance of MoHA toward the RGAs has something to do with the limited success of the RGAs. The Associations, leaders and members must also take a fair share of responsibility. It must also be acknowledged that it takes time to build up capacity in such a complex field as centre-region relations and capacity development for regional government.

It is also likely that the slow progress seen in the RGAs has some connection to the form of assistance provided by donors. The two dominant modes of assistance have been:

1. Workshops and short training events (many donors) for the secretariat and members
2. Longer term placement of advisors (e.g. CIDA, GTZ/CIM, UNDP)

The first kind of assistance has been episodic and fragmented, particularly as it relates to the RGA secretariats. It has not been anchored to a comprehensive capacity development analysis and framework to guide it. Donors have all chipped in, recognizing the great need, but have not yet “harmonized” their approaches to get the biggest bang for their effort.

The second kind of assistance has been “capacity gap filling.” Advisors have been provided by several donors, for a period of a few months to several years. Currently there are three long term placements. They are generally located in the RGA secretariats and become involved in a wide range of activities, primarily as “doers”.

Both forms of assistance have their place in the donor menu, but there are risks in using them inappropriately (such as prolonging dependencies), and these risks may be exhibiting themselves at this point. Donors have not discussed the appropriateness of current support strategies to the RGAs in any systematic way, with the RGA leadership or within the donor community.

²⁵³ International City/County Management Association (ICMA)

²⁵⁴ Both the USAID funded project Building Institution for Good Governance/International City/County Management Association and the VNG support ended in late 2005.

Government's Likely Stance in the Future

The Ministry of Home Affairs is evidently unsure how to deal with the RGAs, with some officials willing to give openings, even if restricted, and others more hesitant to give the RGAs legitimacy as representatives of their members. Most MoHA officials, and perhaps central government organizations in general, prefer to maintain direct relationships with individual regional governments. These direct connections have their advantage as far as the central government is concerned, but they don't need to be exclusive relationships. Having more representatives and opinions at the table should be viewed as a positive step forward, so it is hoped that "space" can be provided for the RGAs to develop a useful role as representatives of the regions. Because MoHA sets the tone for the central government's stance toward the RGAs, how officials in MoHA relate to the RGAs is critical to the latter's future development.

As seen in Appendix 17, donors have given considerable assistance to the RGAs, even if the approaches can be questioned in some regards. No significant technical donor support has been given to the central government on the issue of RGAs since the 1999 effort when GTZ-SfDM and others indicated the international experiences/models that might be considered in facilitating the establishment of RGAs in Indonesia.

Without greater RGA pressure, and a purposeful donor stance on the issue of central government policy with respect to RGAs, it is unlikely that the government will take up the issue of government-RGA relations on its own accord.

Improvement Options and Recommended Action

Improvement Options

Recognize the limits of current donor support: Assistance provided to the RGAs to date seems to not be achieving the desired result, or not fast enough. Indeed, some of the RGAs are currently not able to respond to offers of assistance or cooperation. Even requests (with subsidies) to join donor-managed project appraisals aimed at regional government are given an inadequate response. Capacity building for the RGA staff itself might be viewed as more of a distraction than a help in view of the systemic/structural challenges facing the RGAs.

The placement of advisers in the RGAs has been very helpful in keeping the RGAs operating with some semblance of functionality at certain times – internal operating systems have seen improvement, bridging to donors and other parties has been facilitated, resources have been attracted, and a more strategic approach has been nurtured. However, often the advisers appear compelled to act on behalf of the RGAs, and find it difficult to empower the management of the RGA secretariats. The presence of the external advisers at this stage of the RGA development, may therefore serve to mask or mitigate structural challenges that need to be addressed head on if the RGAs are to thrive.

Support structural reform of the RGAs: It is an open question whether RGAs have been able to put forward the interests of the members within the frame of furthering the interest of the regions (*daerah*). As researchers from Gadjah Mada University (2005) have pointed out, the RGAs see themselves as essentially "professional" lobby groups. The fragmented nature of

the RGAs, and their limited membership coverage (e.g. BKKSI does not represent the district executive body, only the Bupati) is probably the main cause for this identification with specific roles rather than with a more holistic view of the region. What is often lost in the efforts of the separate RGAs is a sense that their representations reflect the collective interests of the regional government (DPRD and executive bodies) and their constituents, i.e. the concept of “*daerah*”²⁵⁵.

As an indication of the RGAs parochial or more limited orientation, the legislative RGAs have spent a great deal of time and energy over the last few months dealing with the financial remuneration for their members and procedures for budgeting their operational costs²⁵⁶. This debate was proceeding at the same time that the government was deciding what the role of the regions will be in the future. Only APEKSI made a reasonable effort to influence this vital process.

The RGA fragmentation has also been a factor affecting the dynamics within the RGAs themselves, with the inactive majority failing to restrain the political opportunism of a small minority. The lobbying success of a minority, without taking into account the interests of the majority has been seen in particular on issues of regional financing. These dynamics become apparent to the membership and work to undermine the legitimacy of the organization.

To be more effective, the RGAs need to fashion stronger bonds, or indeed bring about mergers of the various associations (at least the four district/city level), so that the regional perspective comes through in a stronger and more representative way. Only after returning to this renewed sense of purpose will there be prospects for more effective advocacy and capacity building services for their members. Donors have pressed for more RGA cooperation, and indeed mergers, but this was probably too early in the RGAs’ life to strike a chord. Donors need not try to precipitate mergers, but they should consider making their support conditional on joint efforts at the very least.

Donors may also want to reconsider the use of advisor placements where it is evident that they are being used as crutches. Removing these crutches will allow the RGAs to more keenly feel the need to bolster their own organizations in more sustainable ways. Support can then be given for sound organizational development, focused on reducing wasteful overhead, increasing leadership and management skills, and improving staff performance through increased wages for competent staff. Top quality management is essential for all of the RGAs, as is the need for RGA managers to craft effective cooperation strategies.

Donors should respond also to needs as they are shaped by the RGAs themselves. The technical working group idea of ADEKSI and APEKSI has much appeal (drawing on regional government staff and external resources). It may result in stronger analysis, sounder policy positions, and better communication strategies. It is deserving of support from donors, but the effort needs to be shaped to join all four district/city level RGAs, with the topics and positions selected to reflect common challenges and interests.

Support relations with MoHA: The recent RGAs response to lack of recognition from MoHA is to switch from a one track advocacy approach, directed to MoHA, to a multi-track

²⁵⁵ The exceptions to this way of seeing themselves, such as the establishment of the regional secretary forum in BKKSI, are too few to counter this overall assessment.

²⁵⁶ In particular GR 37/2005 on the financial position of DPRD and Ministry of Home Affairs Circular No. 188 on the additional explanation to PP No. 37/2005.

approach. For instance, ADKASI is aiming to meet directly with the President²⁵⁷. Other RGAs are talking up the potential of links to the regional second house (DPD). Bappenas appears to be fairly receptive to the RGAs recently (through the UNDP – LOGIC Project). This broadening may turn out to be more productive than a relationship strictly focused on MoHA, but this still depends in large part on the RGAs being more united and sustaining their advocacy effort.

While a more effective lobbying strategy that encompasses various stakeholders is needed, RGAs must be mindful that, in the final analysis, it is their relationship with MoHA and other central government agencies that is key to the success of the RGAs. MoHA and other ministries involved with regional governance (MoF, Bappenas, MenPAN and sectoral ministries) need to see tangible benefits of cooperation with the RGAs. They will be more easily persuaded to cooperate if the RGAs have worthwhile ideas and concrete suggestions. They will also be more inclined to be receptive to RGAs if the donor community is clear that such a stance is part and parcel of good practices in intergovernmental relations (see Appendix 18).

It is widely held in OECD countries that government consultation with associations has consistently produced better results than individual consultations with cities (CEMR, 1999). There is a great need to work with MoHA in particular to examine the various options for a more structured dialogue between the government and the RGAs. Models exist in North America, Europe, and South American countries of more structured relationships that benefit both sides. Donors should facilitate the RGAs in efforts to inform national stakeholders of these models.

Recommended Action

Immediate Action—Donor coherence in support for RGAs: the donors would benefit by intensifying their discussions on how RGAs can best be supported. The issues to be tackled include:

- How to structure cooperation to make the most of the “intermediary” role of RGAs in product development and dissemination
- Forms of support to the secretariats that are most promising for sustainability (e.g. organizational development against a sound structural strategy)
- Division of labor between donors.

Short term action (late 2006)—Technical working groups: the capacity of the RGAs to fashion, collectively, better analysis and policy positions could be supported by interested donors. A promising idea being considered by some of the RGAs is the establishment of technical working groups that could draw from the RGA membership, external Indonesian expertise, and donor funded projects dealing with the relevant issues. Donor support for this effort could be strategic in improving RGA performance and encouraging a virtuous cycle, where the membership feels involved and sees the RGAs to be more effective, thus attracting more member fees and support, which in turn can boost RGA efforts and performance.

²⁵⁷ <http://www.adkasi.or.id/berita.php?topik=no&id=28>

Mid-term action (early 2007)—MoHA-RGA accord: support should be offered by donors to MoHA and other selected national stakeholders to examine, with RGAs' involvement at critical points, international practices for structured agreements on how central government can best relate to the RGAs. Failing any show of interest, donors should work with the RGAs to undertake the exploration and then support the RGAs in mounting a campaign to familiarize policy makers on the benefits of such a structured agreement.

Donor Coordination in Support of Decentralization/Local Governance²⁵⁸

Introduction

The success of decentralization depends overwhelmingly on the actions of the Indonesian government and stakeholders. Donor support can play a catalytic role in bringing the stakeholders together and suggesting more effective policy development processes. Moreover, donor funding and technical assistance can cover, in an exemplary fashion, a modest part of the vast capacity development effort that is required to bring about good local governance. In all of the above efforts, donors are well placed to bring to the table good practices from relevant international contexts.

The value of donor support depends in large part on how it is harnessed by the government of Indonesia. As more donors have become active in supporting decentralization and local governance in recent years, the need for effective donor coordination has become more urgent.

At the international level, donors have committed themselves to work towards harmonization, alignment and results (Paris Declaration, 2005). Indicators are being developed to provide guidance to donors and partner countries. Each partner country and supporting donors are expected to explore how best to realize these aid effectiveness objectives.

The issues of aid effectiveness and donor coordination are closely linked. In the field of decentralization in the Indonesian context, both issues are critical. Efforts on both of these fronts over the last few years have been uneven and have fallen short of their potential. More recently there are some encouraging developments that need to be nurtured carefully. This note traces some of these developments and makes some suggestions for further gains.

Pattern of Donor Assistance

Decentralization has been a major initiative of the Government of Indonesia since 1998. Donors have been tracking its progress with interest and many have been providing support. From the start of the decentralization program, the Ministry of Home Affairs (MoHA), responsible for general guidance to regional and village government, has received long-term assistance on policy formulation on various aspects of intergovernmental relations from GTZ, the World Bank/Dutch Trust Fund, JICA and USAID, CIDA and UNDP. USAID also provided assistance to the Ministry of Finance (MoF) in developing grant mechanisms, taxation and sub-national borrowing. Somewhat later, CIDA and the World Bank/Dutch

²⁵⁸ Both bilateral and multilateral agencies, providing grants and loans, are subsumed under this term. Where more precision is required, more narrow terms are employed.

Trust Fund also supported MoF, in addressing grant mechanisms and financial information systems respectively. The ADB funded training for MoF officials in regional financing/financial management issues. Bappenas received support from CIDA in development planning and related issues. MenPAN, the Financial and Development Supervisory Agency (BPKP), and sectoral ministries have also obtained considerable support relevant (directly or indirectly) to decentralization, from bilateral and multilateral agencies. Decentralization assistance has been focused on MoHA and MoF in view of their critical role in providing a framework for the regions on administrative and financial matters.

For a time (2003- mid 2005) MoHA became reluctant to draw on donor support for policy making, though MoF and Bappenas continued to invite assistance on selected reform efforts. Projects that normally might anchor to MoHA (or MoHA and other ministries) found reasons to attach themselves to Bappenas or MoF (e.g. CIDA-GRSII, UNDP-LOGIC, USAID-LGSP, and USAID-DRSP)²⁵⁹. In part due to MoHA's stance²⁶⁰, but also due to reform fatigue, progress made on decentralization reforms slowed considerably during this period. This was also largely the case for financial issues in relation to MoF and planning issues in relation to Bappenas. The closed nature of the drafting process for Law 32/2004 on Regional Government and Law 33/2004 on Fiscal Balance reflected the government's mood at that time.

More recently, donors have returned to prior levels of support to MoHA. A more open approach to non-government organizations (universities, research centers, advocacy NGOs) is also in evidence at the moment in MoHA. Bappenas and MoF continue to have steady levels of support.

Donor support for projects in the regions that are closely involved with regional government has increased considerably since decentralization. These projects often deal with physical infrastructure, but also capacity development for the regional governments. According to a recent study of the World Bank (2004), the share of donor funded projects directly engaging district level entities in capacity building now accounts for about one-third of all donor funded projects. The portion that is directly associated with improving local governance is not possible to discern from the study, but the list of key existing and new generation of projects for regional capacity development/governance is fairly extensive (see Appendix 19).

Following an initial period where bilateral agencies played the dominant role among donors (up to 2000), the IFIs have more recently entered the scene with substantial loans, while taking an increasingly prominent role in the policy dialogue (through the CGI in particular) as well as regional capacity development (e.g. ADB-SCBD and World Bank ILGR).

²⁵⁹ This shift may have much to do with donors' view that not much could be accomplished in the environment of the time, as well as the draw of regional government need and willingness to engage with donors. Bappenas, by virtue of its overall donor coordination role, presented itself as a convenient attachment for such projects. It should also be said that for projects desirous of expanding their partnerships, Bappenas seemed like a less possessive formal partner than MoHA.

²⁶⁰ The stance taken by MoHA is in part explained by the personal views of the Secretary General at the time; not shared by the organization as a whole, but also reflects this organization's greater sensitivity to political currents, including the reemergence of nationalist sentiments. Other observers have also offered reasons for the difficulties of working with MoHA compared to other central government organizations (its military connections, lack of internationally educated staff, politically based recruitment etc.), and these may also have had a role.

The World Bank had, in 1992, become the sponsor of the CGI meeting (previously called the Inter-Governmental Group on Indonesia-IGGI, sponsored by the Netherlands) on the donor side. It used this forum in the reform era to promote a dialogue on reform, including decentralization. This was conducted mainly through the Joint Working Group on Decentralization, one of several working groups of the CGI. It is chaired by the GoI (MoHA) and co-chaired by a donor. Bilateral donors continued to play a significant role by chairing the JWGD on the donor side, and being key providers of assistance to MoHA, MoF, and Bappenas. Sectoral projects tended to have a larger IFI presence. DFID chose to forego its own projects, and linked closely with the World Bank and ADB, in an effort to influence poverty policies of these IFIs.

The focus of national policy support in the last two years has shifted somewhat from political/administrative to financial management issues. This includes a new stress on improving national level processes and structures (e.g. PRSP, mid-term national planning, budget processes, special service agencies), with the expectations that similar changes would be made to regional levels or that the more efficient national level actors will have a variety of knock on effects on regional development/governance.

A renewed effort to involve donors in the preparation of follow-up regulations to Law 32/2004 is also afoot in MoHA, with GTZ-ASSD and CIDA-GRSII playing significant roles, and USAID-DRSP also being involved at a less intensive level. An effort is being made to find convergence of the various legislative streams (e.g. Law 25/2004 and Law 33/2004) as these government regulations are being produced.

Pattern of Donor Coordination

Throughout the above evolution of donor assistance, donors have taken the lead role in coordinating their efforts. Information sharing was usually conducted through personal links among donors and informal multi-donor sessions on occasion (e.g. the UNDP sponsored donor discussions). Since 2000 it has been done largely through regular meetings of the Donor Working Group on Decentralization. The GTZ-SfDM project for several years acted as a briefing centre for donors and other stakeholders wishing to learn of government reforms and the decentralization scene in general. It used its well elaborated website and bulletin to keep all interested parties informed.

As the number of donors increased²⁶¹, attempts to intensify and give more structure to coordination were seen. On occasion a GoI unit would lead these efforts (e.g. Bappenas in 1999), but in the main these efforts were lead largely by donors. The joint donor recommendations to the GoI in 1999 (Donor Group on Decentralization Policy, 1999) and the donor group supporting the policies and model building exercise in the regions on minimum service standards (Donor group for SPM, 2001) were two intensive and reasonably successful efforts at cooperation²⁶², where a coherent donor view was prepared and communicated to counterparts. On a more general policy level, donors were able to coordinate their statements on decentralization policy issues that were presented at the CGI Meetings. More recently, donors have cooperated in supporting financial management reforms, working with the

²⁶¹ Although the number of donors active in a significant way is still less than 10, their activities and partners are numerous.

²⁶² The key donors involved in the broad decentralization policy paper were GTZ, USAID, CIDA, World Bank, UNDP and UNSFIR, while the operational group on the minimum service standards were GTZ.

Ministry of Finance, Bappenas, and the Ministry of Home Affairs with informal means to gain coherence and GoI coordination²⁶³. Some measure of success in this approach to coordination can be seen, but it is still largely donor lead.

During the rather lean years for donor supported national policy development (2003-mid-2005), several regional level projects were developed as the doors were kept open to this form of support. The coordination means and efforts established to that point proved unequal to the task of coordination. As a result, a great deal of duplication and waste ensued, as evident in the field of regional planning and budgeting for instance. Donors worked closely with their specific counterparts but were not able to harmonize efforts across donor projects or to encourage coordinated approaches across GoI units.

At the same time, the attention given to decentralization in the CGI forum began to wane. The JWGD has since then struggled to find mechanisms to be more active and effective. In 2004, the donor WGD commissioned a study, to provide some options for better coordination. Several options were proposed, with different roles for the GoI. The main concern raised was the lack of readiness, or interest, in the GoI to take the leadership role. Even so, the favored option put forward was one that would allow the GoI to eventually play its proper role; the Permanent Secretariat idea was born (see Janssen, 2004). A year later, MoHA facilitated the creation of the Permanent Secretariat, composed of the key Ministries/agencies e.g. MoHA, Bappenas, MoF and Menpan (Echelon II level) involved in decentralization.

MoHA in particular hopes that the JWGD/PS structure will become an operational vehicle for donor coordination. It is not always clear if the other members of the Secretariat are as sanguine. Nearly a year after its establishment, the Secretariat has scant offices, staff, and resources to match its mandate, making some donors doubtful about its prospects. Some donors also fear that the JWGD/PS will be perceived by other central government organizations as being too dominated by MoHA. These doubts may also affect the readiness of donors to support the nascent organization, possibly making its demise a self-fulfilling prophesy. The various stances of GoI organizations and donors do make the concerns about the viability of the JWGD/PS valid, indicating that it may be best to have a frank GoI-door discussion on the viability of the JWGD/PS structure, the related role of the DPOD (and its budding "working groups"), and the other short to long term options for effective coordination on decentralization/local governance across the entire central government (e.g. in the President's office).

Over the last few years, other initiatives for improved coordination among different stakeholders have evolved. Technical working groups on governance issues were established, not having a connection to the DWG, or a loose one at best. Often these groups have government, donor and NGO participation; they work together to solve certain technical challenges or work towards policy reform. They have been struck to address minimum service standards, village governance, performance rating of regions, participatory planning, and others.

Another significant development in 2005 was the creation of the Decentralization Support Facility (DSF). DSF is largely funded by DFID, and managed by the World Bank, under a

²⁶³ CIDA-GRSII has been involved in such an effort in the context of the preparation of a government regulation to replace GR 105/2000 (leading to GR 58/2005, and recently MoHA decree 13/2006).

Trust Fund arrangement. The partner agencies are the ADB, AusAID, CIDA, DFID, GTZ, Netherlands, UNDP, USAID and World Bank. DSF is not a registered body, society or company. It is only a set of arrangements agreed among the partners. DSF initiatives include efforts to develop regional government performance indicators, the Governance and Decentralization Survey, and the stock taking study on decentralization being conducted on behalf of the JWGD ²⁶⁴. The DSF initiatives involve two or more donors. The linkages between these donor initiated efforts and related central and regional government counterparts varies by topic.

The challenge for donors is to align all these initiatives with GoI priorities and to put GoI in the lead for decentralization. The JWGD has stated that it regards itself as the umbrella for donor coordination related to decentralization. However at present it is still at a very early stage of development organizationally and as alluded to earlier, it will need considerable support and time to fulfill its mandate.

On a final historical note, it must be recognized that civil society in Indonesia has had difficulties making itself heard in ‘pure’ formal government-donor forums. The “government to government” nature of this dialogue has perhaps been necessary, and perhaps it has justifiably limited civil society to indirect means to inject its views. There has not however been a compensatory or complementary forum for a deep and useful dialogue between the three parties. CSOs rightly resent the fact that they have been largely on the outside of the dialogue on decentralization/local governance, and see the current construction as a mark of disrespect toward CSOs and lack of recognition for the role that they can play in this field. With the loosening of the JWGD from the CGI, it may well be that an opportunity is presenting itself to enlarge the dialogue and design the JWGD/PS to accommodate CSOs.

An enlarged dialogue would ideally also accommodate the voice of regional governments. It may even be appropriate to make a link with the legislative side, particularly the Commission II in the DPR and the DPD. How all of these interests could be accommodated requires some thought. It may be difficult to accommodate CSOs in the JWGD for instance, due to the difficulty of selecting CSO representatives. On the other hand, such representation for regional government may be less complicated if these are drawn from the regional government associations. It may be possible, and preferable, to invite DPR/DPD members to some JWGD rather than giving them permanent status.

Current Stance of the Government of Indonesia

GoI officials have at various times and forums indicated that it is desirable for donors to be more aligned with its reform efforts, and that it desires to bring about better donor coordination. This coordination will be important to support what the GoI refers to as the “consolidation” phase for decentralization.

Despite the connotation given by “consolidation”, the GoI readily admits that there is much work to be done yet on reforms and it has opened many of these to donor support. The new laws (32/2004 and 33/2004 in particular) are said to act as the “corridor” for this assistance,

²⁶⁴ In the future (second phase of DSF), three focal area working groups are foreseen (DSF, 2006). These will each be lead by a Team Leader: 1. Strengthening the intergovernmental framework, 2. Support to subnational entities, 3. Promoting Accountability through Informed Public Participation in Decision Making. It is not clear if additional working groups will be formed under the three broad focal areas.

meaning that the assistance should be focused on elaborating the laws and keeping other reforms consistent with these laws. Even so, the GoI has also opened the door to revisiting these framework laws at some point in the future. This stance of the GoI means that donors can expect to be involved in decentralization/local governance for at least 5-10 more years provided the GoI continues to see the value of this assistance.

Recent Donor Coordination Efforts

Because decentralization reforms cut across the mandates of many central government ministries/agencies, the GoI has struggled to bring about a coherent development of the policy and legal framework. It has not been able to find appropriate forums and processes for policy development that ensure the participation of relevant ministries/agencies and stakeholders. This shortcoming has also impaired coordination of donor support. Donors have at times found themselves supporting different GoI agencies that have worked at cross-purposes on reform initiatives, have missed opportunities to reinforce efforts across agencies, or have been left unsure about which related initiatives in different (or same) agencies they should support.

Donor coordination, up to recent times, has continued to be managed by donors, informally and through the donor side of the Working Group on Decentralization. Donors have increased these efforts, establishing a number of ad hoc donor working groups (e.g. on village, participatory planning). This approach may be pragmatic, but is at odds with the Paris Declaration. It is also possible that by increasing own efforts, donors are neglecting the more difficult task of helping the GoI to manage donor coordination. Moreover, any harmonization achieved among donors on their own must still lead to an interaction with the GoI to absorb inputs. It is more likely that the GoI will be receptive if they (co)initiated the effort and were involved in the creation of the “product.”

Two significant efforts of the GoI to effect donor coordination in recent years stand out. The first (a demand-supply matrix circulated by MoHA) has had little success. The second, a more institutional approach, has so far received a better response from donors.

Demand-Supply Matrix

The GoI has tried to structure the support it receives by developing a clear work plan on decentralization. Donors were contacted to support this work plan in 2005 by MoHA (Directorate General for Regional Autonomy), in the form of a matrix listing the GoI initiatives/priorities for decentralization and eliciting donor interest to support these.

The matrix covers five general substantive objectives, broken down into 30 programs, indicates the lead and supporting GoI organizations, and the scope of support required from donors. The final column in this matrix is left open for the donors to signal their intention to continue or add their support. Additionally, a sixth objective outlined in the matrix is to “Develop and institutionalize mechanism for more effective donor coordination in the field of decentralization and local governance.” Support is also sought from donors to make this workable.

This open ended request was given a rather tepid response by donors; many did not reply and only two made their support commitments and preferences known in detail. The GoI did not

quite know what to do with the low response, and in the end no response was given to the few support preferences submitted. A year later, the matrix is being updated, and will again be sent to donors, with updated priorities of the GoI, in the hope that there will be a more complete response.

Donors have actually received an informal draft of this matrix and are trying to find a better way to respond, collectively, to the upcoming formal request. What has not been made clear in the past, in the use of the matrix, is how the discussions would unfold if donors were to signal their interest, both in terms of what the commitment might mean, who would take the key role among donors, and how the cooperation between government and donors might be structured. In short, the demand-supply matrix lacks the institutional means for coordination. The inventory approach is doomed to fail if it is not accompanied by a clear institutional way to work with the resulting “inventory” of needs and offers. The dialogue and mutual adjustment that has to occur can only take place through face to face discussions between the GoI and donors.

The Permanent Secretariat of the JWGD

Recognizing the problems faced in the past, as it is preparing the revised matrix, the GoI is also establishing a Permanent Secretariat to the JWGD²⁶⁵. Brought to legal life in September of 2005 through a Ministerial decree, the Secretariat is to be the operational vehicle for donor coordination²⁶⁶. With this step, the JWGD is loosening its connection to the CGI²⁶⁷. The JWGD is still positioned to take advantage of opportunities presented to it at the CGI, but with the Permanent Secretariat it is expected to play a more intensive and ongoing role.

The work plan of the Permanent Secretariat is ambitious, and calls for considerable resources from the GoI and donors, and a closer and more intensive relationship between the two. It includes the following objectives or activities:

1. Develop working mechanisms for the Permanent Secretariat and its relationship to the Joint Working Group²⁶⁸ as well as to other donor coordination fora (like DSF)
2. Establish a data base on donor support programs and projects in the field of decentralization and local governance
3. Review and update GoI-donors joint action plan/work program
4. Inventorize and review good local practices developed with donor support and facilitate establishment of more effective dissemination mechanisms
5. Identify local governance tools and instruments that need to be (further) developed and initiate formation of Technical Working Groups for the individual issues

²⁶⁵ Composed of Echelon II officials from the relevant central government organizations (MoHA, Bappenas, MoF).

²⁶⁶ The donor community was very much behind the proposal for the establishment of the Permanent Secretariat, an initiative adopted at the 2005 CGI meeting.

²⁶⁷ The principal mechanism of the GoI for donor coordination is the Consultative Group for Indonesia (CGI), now chaired by the GoI. The CGI meets twice a year, at a mid-term review/interim meeting and an annual meeting. Normally the working groups are given an opportunity to report and discuss progress in the pre-CGI meeting on the first of the two day meeting.

²⁶⁸ Joint Working Group for Decentralization (JWGD).

6. Prepare inputs and materials for the CGI meeting in the field of decentralization and local governance
7. Regular meetings with donor WG on selected issues

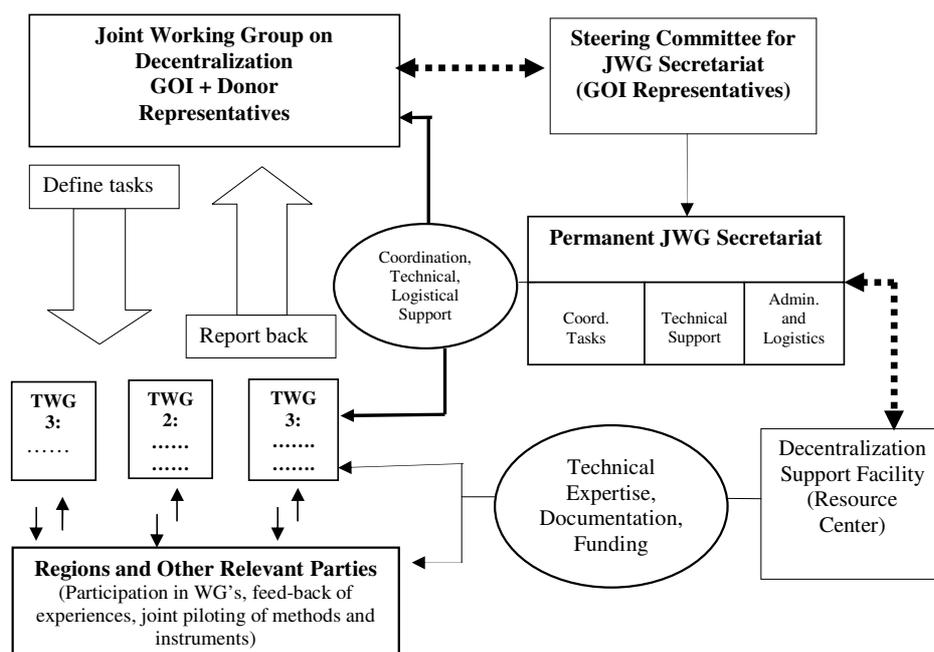
There are still some unknowns in the construction put forward in Figure 12. The nature of the GoI Steering Committee is not yet clear (it is not addressed in the September 2005 ministerial decree). Ostensibly, it would be made up of senior officials from the various ministries/agencies, and it would be the channel by which policies are entered into the JWGD for discussion and analysis, in terms of how donors would both harmonize and align their efforts. It might be assumed that it is this body that absorbs the input from the JWGD and decides ultimately what directions to take, giving impetus to the Permanent Secretariat to follow up in concrete ways on some of the decisions taken by the Steering Committee (or endorsed by it if they originated from the JWGD). More details are evidently needed before this structure can be said to be ready for implementation.

Also unclear is the membership of donors: whether the JWGD brings together only the donors that are most intensively involved in decentralization/local governance, or the entire set that has an interest in the topic. As well, donors have existing relationships with GoI ministries/agencies. How these relationships fit in the proposed coordination scheme would need to be taken into account.

Greater clarity is evident in the case of the Permanent Secretariat. It would oversee policy or other capacity development efforts that bring multiple donors (or technical staff of donor supported projects) together with GoI technical staff, also from one or several agencies. Technical working groups (TWG) would be formed, and supported by, the Secretariat²⁶⁹. These TWGs would be further supported through the DSF platform if needed. The TWGs may need to enlist other stakeholders to obtain sufficient inputs to develop proposals for policies or approaches to capacity development, and they may need to mount some experimentation in selected regions to test some ideas.

²⁶⁹ A small working group of the donor WGD has been tasked to support the Permanent Secretariat in establish TWGs.

Figure 12. Coordination Structures Envisioned in the JWGD



The position of the DSF in the above scheme is rather ambiguous. There is evidently a desire to anchor this “platform” (it is not a “donor” as such) to the coordination mechanisms of the JWGD. The rationale for forging a close connection is the potential the DSF has to support harmonization, particularly among donors. This potential rests largely on the resources it can marshal. The desire to draw DSF closer to the JWGD reflects the experiences of the DSF in its first year of existence, and the varied perceptions among donors on the rationale for the DSF and how it has linked to the government (see Walsh, 2005). The above construction does indicate that the DSF is supporting the GoI effort to take the lead in donor coordination, even if the support mechanism organizational linkage remains unclear.

Provided it is properly clarified, this institutional approach promises to be a more effective forum for discussions of policies and donor support, but it calls for a significant investment from the GoI to make it work. It will need to coordinate better internally to present some common “GoI” policies (on decentralization and donor coordination) and it will need to have a properly staffed, housed, and capable Permanent Secretariat. Donors, for their part, would also need to make more intensive efforts to support the GoI in the lead role. They will need to ensure, for instance, that any working group (or sub-working group) created under the DSF umbrella aligns with or complements the policies and TWGs established through the Permanent Secretariat of the JWGD.

Aid Effectiveness Dialogue And Donor Coordination

Donors are increasingly motivated to reflect in practice the principles of the Paris Declaration on aid effectiveness. Indonesia has had a CGI working group on aid effectiveness, but it has

not met frequently (Sri Mulyani, 2005) and concentrated primarily on issues related to loan projects and programs. In February 2006, the group did meet again and another meeting is planned focusing on the Paris Declaration and the government framework for channeling loans and grants.

Harking back to the January 2005 meeting of the CGI, several aid effectiveness issues were tabled, including three that intersect with decentralization/local governance:

- Strengthening the Government's capability to undertake reforms and coordinate agencies involved,
- Enhancing involvement of civil society, and
- Addressing issues that have impeded donor support for public service delivery at decentralized level.²⁷⁰

The first aim is very much related to the already discussed efforts to find a more suitable institutional construction for donor coordination. The other aims are already part and parcel of the extensive list of issues that the GoI, with donor support, is seeking to address in decentralization/local governance. This agenda, including the channeling of funds agenda for regional capacity development efforts, may therefore best be handled first and foremost within the JWGD itself, leaving the WG on Aid Effectiveness to address common concerns across the larger GoI-donor scene.

Making the JWGD more responsible for aid effectiveness issues pertinent to its work would allow for more fruitful discussions on the aid modalities and capacity development approaches to be used in furthering decentralization/local governance. Choices in these modalities have a bearing on GoI ownership, impact of efforts and sustainability. Moreover, the choice of modalities (e.g. TA pooling, budget support) has important implications for donor coordination.

In particular, the approach of donors to capacity development in decentralization/local governance needs examination. The pattern of assistance noted in the World Bank study is helpful, and additional perspectives can be brought to the table. The aim should be to examine if the mix of modalities is appropriate to the task at hand, and if donors are selecting entry points that have the prospect for exit strategy that withstands institutional scrutiny. It is already evident that donor support is stretched thin as it tries to stake out rather permanent regional foci or makes efforts to cover as many regions as possible. It may well be asked why donors do not assume a more strategic approach, placing more emphasis on central and provincial government organizations that need to be more effective in supporting regional government, and strengthening Indonesian "intermediaries"/service providers that will in time replace donors and effectively reach local actors with valued services.

²⁷⁰ The 14th meeting of the Consultative Group for Indonesia (CGI Meeting) was held in Jakarta on 19 - 20 January 2005.

Possible Ways Forward

In contrast to other countries where donor financial support makes up a large or major part of the development budget (e.g. Cambodia and some African countries), donors working in Indonesia can only hope to have a catalytic effect. This is premised on the reality of the aid-GDP ratio of just over 1 per cent but also on the principle commitment to have the GoI in the driver's seat. Notwithstanding the more significant role played in the "safety-net" period following the economic crisis, the most likely way donors will serve the GoI is by introducing good ideas, and some targeted funding for pilots. There is nonetheless much scope for a variety of aid modalities and creativity within these bounds.

It is important to make the most of the policy dialogue and intervention design opportunities that the new JWGD/Permanent Secretariat offers. Effective use of this body may help to avoid the duplication and gaps seen in reform support to date. This Stock Taking Study reveals, or underscores, the uneven support given by donors to important reforms. Reform areas that have seen low levels of donor support, and that are in great need of it, include:

- Reporting procedures of regional government,
- Monitoring and evaluation of regional government performance,
- Guidance and Supervision of regional government,
- Role of governor/deconcentration mode,
- Organizational structures of regional government,
- Adjustment of territorial structures (*pemekaran*),
- Minimum service standards being generated by sectoral departments,
- Village governance,
- Policy/legal processes in the area of decentralization/local governance

In moving forward, careful attention to the following is advisable:

1. Clarifying the enhanced JWGD/Permanent Secretariat coordination structures and linkages among actors.
2. Examining the current and potential roles of the JWGD/PS, DPOD/Working Groups, and other forums that may be used for more effective coordination in decentralization/local governance. The intent should be to confirm support or air doubts about current directions, and seek modifications, complementary efforts, or alternatives that have support and a good chance of success.
3. Connecting the many donor working groups that have formed to date to the JWGD/PS. This may have to be a gradual process as the Permanent Secretariat gains capability. At a minimum, the current groups could make an initial presentation to the donor JWGD and obtain some general direction for their work from this body.

4. Ensuring that the DSF dovetails effectively with the JWGD/Permanent Secretariat. Some ways to forge a strong connection include:
 - a. Making the review of the findings of the Decentralization Stock Taking Study, and the elaboration GoI reform policies/strategies a common effort, principally in the JWGD.
 - b. Linking the donor response to the request for donor support (the Matrix) to the analysis of the Decentralization Stock Taking study and the GoI reform policies/strategies.
 - c. Establishing DSF working groups and any other structures associated with them, and Permanent Secretariat TWGs in a coordinated way. The aim should be to find complementary roles and useful connections between the technical level efforts.
5. Integrating aid effectiveness discussions in the JWGD. The DSF can support this effort since the rationale for its creation is very much connected to the Paris Declaration.
6. Intensifying the discussion on crucial topics of aid effectiveness/decentralization/local governance; on joint efforts, assessment of good practices, modalities, exit strategies (see Appendix 2 for details).
7. Considering the creation of an additional forum, or expansion of the existing JWGD, to accommodate the voice of civil society, creating a more meaningful three way dialogue on decentralization/local governance.
8. Supporting other organizations outside of the JWGD where necessary, for instance the Ministry of Justice and Human Rights on the harmonization of the legal framework.

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Laws

Law/UU	English Title	Indonesian Title
05/1974	Regional Government	Pemerintahan Daerah
05/1979	Village Government	Pemerintahan Desa
UU 08/1985	Mass Organisation	Organisasi Kemasyarakatan
24/1992	Spatial Use Management	Penataan Ruang
22/1999 32/2004	Regional Governance	Pemerintahan Daerah
25/1999 33/2004	Fiscal Balance between the Central Government and the Regional Governments	Perimbangan Keuangan antara Pemerintah Pusat dan Pemerintahan Daerah
43/1999	Amendment to Law 8/74 on Ordinance of the Civil Service	Perubahan Atas UU 8/74 Tentang Pokok – Pokok Kepegawaian
28/1999	The State Organizer who is clean and Free from Corruption, Collusion, and Nepotism	Penyelenggaraan Negara yang bersih dan bebas dari Korupsi, Kolusi, dan Nepotisme
17/2000	Amendment to Law 7/93 on Income Tax	Perubahan Ketiga Atas UU 7/93 Tentang Pajak Penghasilan
25/2000	National Development Planning	Program Pembangunan Nasional
34/2000	Amendment to Law 18/97 on Regional Taxes and Regional Levies	Perubahan Atas UU 18/97 Tentang Pajak dan Retribusi Daerah
16/2001 28/2004	Foundation Law	Yayasan
18/2001	Special Autonomy for the Province of Aceh	Otonomi Khusus Aceh
21/2001	Special Autonomy for the Province of Papua	Otonomi Khusus Papua
34/2000	Regional Taxes and Regional Levies	Pajak dan Retribusi Daerah
31/2002	Political Parties	Partai Politik
12/2203	General Elections	Pemilihan Umum Anggota Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah
17/2003	State Finance	Keuangan Negara
20/2003	National Education System	Sistem Pendidikan nasional
22/2003	Structures and Positions of the MPR, DPR, DPD and DPRD	Susunan dan Kedudukan Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah dan Dewan Perwakilan Rakyat Daerah
23/2003	Election of President and Vice President	Pemilihan Presiden dan Wakil Presiden
01/2004	State Treasury	Perbendaharaan Negara
09/2004	Administration Court	Pengadilan Tata Usaha Negara
10/2004	Law Making	Pembentukan Peraturan Perundang – Undangan

Law/UU	English Title	Indonesian Title
15/2004	State Audit	Pemeriksaan Pengelolaan dan Tanggung Jawab Keuangan Negara
25/2004	National Development Planning	Sistem Perencanaan Pembangunan Nasional

Government Regulations

GR/PP	English Title	Indonesian Title
32/1979	Retirement of Civil Servants	Pemberhentian Pegawai Negeri Sipil
30/1980	Disciplinary Conduct of Civil Servants	Disiplin Pegawai Negeri
68/1999	Guideline on Public Participation in Governance Processes	Cara Pelaksanaan Peran Serta Masyarakat dalam Penyelenggaraan Negara
25/2000	Discretionary Functions	Kewenangan pemerintah dan Kewenangan Propinsi Daerah Otonom
98/2000 28/2000	Recruitment of Civil Servants	Pengadaan Pegawai Negeri Sipil
84/2000	Regional Apparatus Organization Guideline	Pedoman Organisasi Perangkat Daerah
104/2000	Balance Fund	Dana Perimbangan
105/2000 58/2005	Government Rule of Management and Regional Finance Accountability	Pengelolaan Dan Pertanggungjawaban Keuangan Daerah.
107/2000	Regional Government Borrowing	Pinjaman Daerah
129/2000	Establishment of New Regions	Persyaratan Pembentukan dan Kriteria Pemekaran, Penghapusan, dan Penggabungan Daerah
25/2002 53/2005	Government Authority and Provincial Authority as an Autonomous Region	Pedoman Penyusunan Peraturan Tata Tertib Dewan Perwakilan Rakyat Daerah
08/2003	Guideline on Establishing regional government organizations Regional Apparatus organization	Pedoman Organisasi Perangkat Daerah
09/2003	Transfer of Civil Servants	Wewenang pengangkatan, pemindahan, dan pemberhentian pegawai negeri sipil
24/2004 37/2005	Status of Protocol and Finance for Regional House of Representative's members and leader	Kedudukan Protokoler dan Keuangan Pimpinan dan Anggota Dewan Perwakilan Rakyat Daerah
06/2005	Election, Enactment, Appointment, Termination of Regional Head and Deputy Regional Head	Pemilihan, Pengesahan, Pengangkatan, dan Pemberhentian Kepala Daerah dan Wakil Kepala Daerah
23/2005	Special Service Agency	Pengelolaan Keuangan Badan Layanan Umum (BLUD)
24/2005	Governmental Accounting Standard	Standar Akuntansi Pemerintahan

GR/PP	English Title	Indonesian Title
53/2005 24/2004		Pedoman Penyusunan Peraturan Tata Tertib Dewan Perwakilan Rakyat Daerah
54/2005	Local Borrowing	Pinjaman Daerah
57/2005	Grant for Local Finance Management	Hibah kepada Daerah
65/2005	Minimum Service Standard Formulation and Implementation	Pedoman Penyusunan dan Penerapan Standar Pelayanan Minimal
72/2005	Village	Desa
79/2005	Guideline on Supervision and Monitoring on the Implementation of Local Governance	Pedoman Pembinaan Dan Pengawasan Penyelenggaraan Pemerintahan Daerah
02/2006	Procedures for Realization of Loans and/or Grants and Allocation of Foreign Loans and/or Grants	Tata Cara Pengadaan Pinjaman dan/atau Penerimaan Hibah serta Penerusan Pinjaman dan/atau Hibah luar negeri
08/2006	Budgeting report and Work Performance of Government's Instances	Pelaporan Keuangan Dan Kinerja Instansi Pemerintah
65/2006	Guideline to draft and implement Minimum Standard Services	Pedoman Penyusunan dan Penerapan Standar Pelayanan Minimal
2006	Report on Accountability of Regional Head to the Regional House of Representatives and the Information on Regional Governance to the Public	Laporan Keterangan Pertanggungjawaban Kepala Daerah kepada Dewan Perwakilan Rakyat Daerah dan Informasi Penyelenggaraan Pemerintahan Daerah kepada Masyarakat

Ministerial Decrees

KepMen	English Title	Indonesian Title
10/79	Performance Appraisal of Civil Servants	
Kepmendagri 17/2001 (MoHA)	Transfer of Monitoring Function on the Implementation of Local Governance to the Governor	Pelimpahan Pengawasan Fungsional Penyelenggaraan Pemerintahan Daerah Kepada Gubernur
KMK 35/2003/ MoF	Planning, Implementation and Monitoring on Lending from Foreign countries to the region	Perencanaan, pelaksanaan/penatausahaan, dan pemantauan penerusan pinjaman luar negeri pemerintah kepada daerah
1457/MENKE S/SK/X/2003	Ministry of Health Republic of Indonesia No. 1457 about Local Government Minimum Service Standards in the Health Sector	Menteri Kesehatan Tentang Standar Pelayanan Minimal Bidang Kesehatan Di Kabupaten/Kota
MOHA/193.05 -854/2005	Permanent Secretariat for CGI Joint Working Group on Decentralization	Keputusan Menteri Dalam Negeri Nomor 193.05-854 Tahun 2005 tentang Pembentukan Sekretariat Tetap Kelompok Kerja Bersama CGI Bidang Desentralisasi

Presidential Decrees

KepPres	English Title	Indonesian Title
102/2001	Position, Responsibility, Function, Authority, Organizational Structure and Mechanism of the Department	Kedudukan, Tugas, Fungsi, Kewenangan, Susunan Organisasi dan Tata Kerja Department
Kepmendagri 29/2002	Guideline on Monitoring of Local Budget and Budget Calculation.	Keppres No. 29 Tahun 2002 Tentang Pedoman Pengurusan, PTJ dan Pengawasan Keuangan Daerah dan Penyusunan Perhitungan APBD. Pedoman Pengurusan, pertanggungjawaban, dan pengawasan keuangan daerah serta tata cara penyusunan APBD, pelaksanaan tata usaha keuangan daerah dan penyusunan perhitungan APBD
28/2005	Deliberation of Regional Autonomy (DPOD)	Dewan Pertimbangan Otonomi Daerah

APPENDICES

APPENDIX 1: SUMMARY OF TERMS OF REFERENCE FOR STOCK TAKING STUDY ON DECENTRALIZATION

1. Background and Research Objectives

The USAID funded DRSP project will be the vehicle for managing a multi donor research effort to take stock of the far reaching policy and institutional changes Indonesia has implemented since the onset of decentralization in 2001 and to identify viable options for further reforms. Specifically, the initiative has the following two related objectives:

- a. Assist the GOI in gaining a sharper vision of where decentralization reforms need to be promoted over the next few years
- b. Assist development organizations (e.g. donors, foundations, NGOs, Associations for LG) to develop their future decentralization support strategies

2. Thematic Focus

To ensure a sound implementation of the study, the various research topics outlined in the SOW are grouped into four thematic clusters:

- (1) **Intergovernmental Relations and Public Service Delivery:** expenditure assignment and public service delivery, financing public services (intergovernmental transfers; reform of sub-national taxes and user charges and sub-national government borrowing), intergovernmental oversight, public service delivery innovations.
- (2) **Civil Service Reform and Local Government Organization:** recruitment, Structure (levels, qualification and job standards, job profiles, human resource management), Wage policies and structures, performance management (evaluations, promotions), Training and Capacity Building, Accountability/ Patronage/Corruption, Pensions, Organizational structures
- (3) **Local Accountability Frameworks:** Budgeting and Planning, political accountability (Electoral Incentives, Checks and Balances), evolving patterns of civic participation in local governments

These clusters provide both conceptual guidance and a basis for the organization of research teams. Each thematic cluster will cover the following analytical elements:

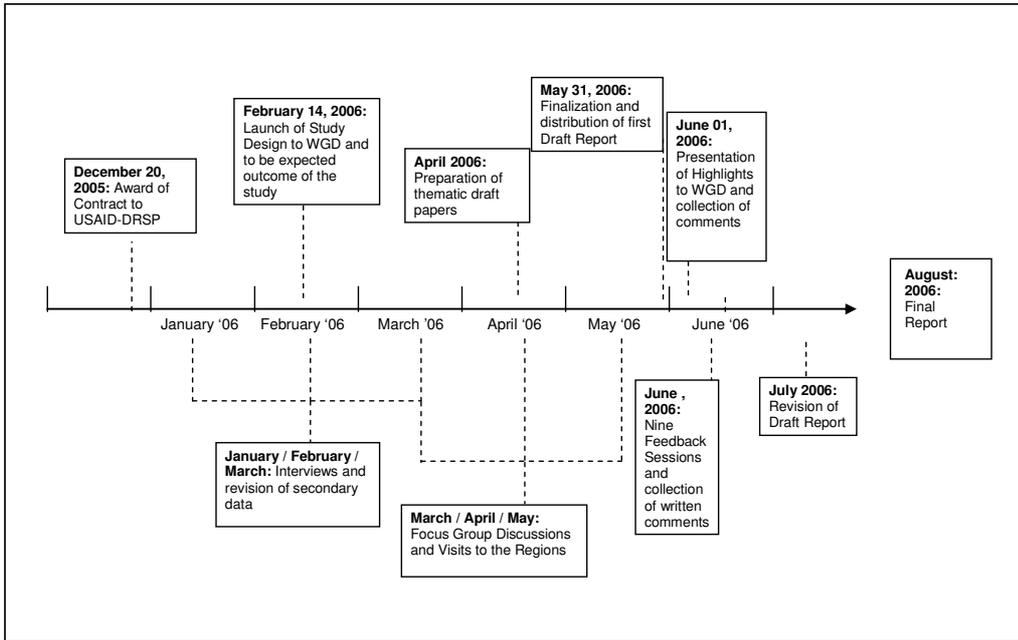
- A broad review of institutional and policy initiatives shaping with a focus on Law 32/2004, Law 33/2004 and subsequent implementing regulations
- Assess the available evidence concerning the on-the-ground situation, including a limited number of rapid field assessments at the local level
- An assessment of the policy formulation process itself and the players involved
- An Outlook identifying viable reform strategies

3. Outcomes

The research activity will result in the following outcomes:

- Policy report including analysis of the current state in implementation of decentralized governance and strategic recommendations for further reform efforts
- Broad dissemination of results through workshops and focus groups with relevant GOI partners to provide input into policy formulation process

APPENDIX 2: SCHEDULE OF KEY ACTIVITIES IN THE STUDY



APPENDIX 3: LIST OF RESEARCHERS

No.	Research Cluster	Topic	Name of Consultant	Institution
1	Intergovernmental Relations	Functional Assignments	Ahmad Alamsah Siregar	Freelance Consultant
2		Fiscal Relations	Andry Asmoro.	Institute for Economic and Social Research Faculty of Economics University of Indonesia (LPEM FEUI)
3		Fiscal Relations	Robert Simanjuntak	Institute for Economic and Social Research Faculty of Economics University of Indonesia (LPEM FEUI)
4	Civil Service Reform in Regional Autonomy	Organizational Structure of Local Government	Muhammad Firdaus	STIA LAN Makassar
5		Personnel	Amir Imbaruddin	STIA LAN Makassar
6	Local Governance Reform	Service Delivery	Entin Muslim Sriani	BIGS Bandung
7		Planning and Budgeting	Suhirman	Lecturer at ITB Bandung Coordinator of FPPM
8		Financial Management	Marselina Djayasinga	PUSSBIK Lampung
9		Village Governance	Arif Roesmann	Bappeda Bima
10		Village Governance	Pietra Wiwiadi	Center for Participatory Development (Cepad), Sidoarjo
11		Civic Engagement	Firsty Husbani	Yayasan Kemala
12		Political Parties DPRD	Meutiah Ganie Rohman	Department of Sociology, Faculty of Social and Political Sciences, University of Indonesia (FISIP – UI)
13	Elections Role of Regional Heads	Adi Abidin	Freelance Consultant	

APPENDIX 4: LIST OF MAIN RESOURCE PERSONS

Topic Covered	Name	Organization
CL 1 - Legal Framework	Owen Podger	USAID BRR NAD and Nias
	Bernhard May	GTZ
CL 1 – Intergovernmental Oversight	Bernhard May	GTZ
	Blane Lewis	WB
	Hefrizal Handra	Andalas University Padang
	Kadjatmiko	Director of Balance Fund/MOF
	Made Suwandi	MoHA Regional Autonomy
	Saut Situmorang	MoHA Regional Autonomy
	Daeng Mochamad Nazier	MoHA Regional Financial Administration
	Deddy Koespramoedyo	Bappenas Regional Autonomy Development
CL 2 – CSR	Max Pohan	Bappenas
	Djohermansyah Djohan	Vice Governor's Office
	Peter Rimmele	GTZ
	Soren Davidsen	WB
	Robert Vander Hoff	LGSP/USAID
	Hefrizal Handra	Andalas University Padang
	Guenther Felber	GTZ SfGG
CL 3 - Service Delivery	Adam Nugroho	LGSP/USAID
	Widjono Ngoedijo	LGSP/USAID
CL 3 - Planning and Budgeting	Adam Nugroho	LGSP/USAID
	Manfred Poppe	GTZ
	Paul MacCarthy	DSF Consultant
CL 3 – Civic Participation	Abdul Malik	CIDA
	Joel Friedman	CIDA
	Farhan Royani	CIDA
	Jessica Ludwig	WB
	Adam Nugroho	LGSP/USAID
	Andrew Urban	LGSP/USAID
CL 3 – Political Accountability	Robert Dahl	Consultant
CL 3 – Village Governance	Hans Antlov	LGSP/USAID
CL 4 – LGA	Ed Anderson	DRSP/USAID
	Rudi Hauter	CIM/GTZ
	Margaretha PDwi Widiastuti	LGSP/USAID
CL 4 – Donor Support	Anthea Mulaka	DSF/WB
	Shalini Bahuguna	DSF/WB
	Guy Jansen	AUSAID
	Jeffrey Ong	CIDA
	Bernhard May	GTZ
	Lisbeth Steer	TAF

APPENDIX 5: DETAILS ON INFORMANTS FROM INTERVIEWS AND PARTICIPANTS OF FOCUS GROUP DISCUSSIONS

Issue	Regions Visited	Interviewed Persons			Participants of Focus Group Discussions			
		GoI	Leg	Donor/CSOs	GoI	Leg	Donor/CSOs	Date
Intergovernmental Relations		7	3	5				-
Civil Service Reform	Makassar Yogyakarta	30		3	15	1	7	17.02. & 11.05.
Local Service Delivery	Bandung	10	16	26	6	6	10	10.05.
Local Planning and Budgeting	Aceh Province Bandung Bima Lampung Province Bandarlampung Municipality, Central Lampung, and Tanggamus District	9	14	10	13		20	08.02 & 07.03.
Civic Involvement & CSO/University	Bandung Jembrana – Bali			8			10	05.03.
Political Accountability	Bogor	1	2	16		3	12	18.05.
Village Governance	Bima Dompu Smerang	10	2	6	8		16	15.04. & 01.05.
RGA				3				
Donor		3		6				
Sub-Total 1		70	37	83	42	10	75	
Sub-Total			190			127		
Total					317			

APPENDIX 6: LIST OF REGIONS VISITED BY RESEARCHERS

Issue	Region
Civil Service Reform	Makassar Municipality Yogyakarta Municipality
Local Service Delivery	Bandung Municipality
Local Planning and Budgeting	Aceh Province Bandung Municipality Bima District Dompu District
Finance Management	Lampung Province Bandarlampung Municipality Central Lampung District Tanggamus District
Civic Involvement	Bandung Municipality Jembrana – Bali
Legislative Accountability	Bogor Municipality
Village Governance	Bima District Dompu District Smerang District