Regional Autonomy and the Character of Local Government Laws and Regulations ~ New Pressures on the Environment and Indigenous Communities

A Preliminary Diagnosis

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Introduction

This paper presents a preliminary assessment of emerging trends in the character and quality of regional government regulations (*Peraturan Daerah*, or *Perda*) in Indonesia since the implementation of Law No. 22 of 1999 on Regional Government (henceforth the Regional Government or Regional Autonomy Law). As this process is still unfolding, this assessment is limited to a descriptive analysis of trends and issues, and is based primarily on secondary data. The methodology employed is empirical, non-doctrinal legal analysis.[1]

The analysis examines a number of parameters which taken together provide indications of the emerging character of local and regional laws and regulations in the country. It assesses initial trends, a more detailed analysis will have to wait until more time has past and trends have solidified into patterns. The parameters examined include the lawmaking process itself; the substance of the new laws and regulations; and the implementation process. The essay then goes on to discuss – in a generic fashion – the sorts of issues being addressed and approaches taken, whose interests are served, contradictions in application and enforcement, and the impacts of the new laws on communities and the environment. In this way, the essay attempts to outline an emerging 'big picture' of the orientation, shape and direction of ongoing legal reform in Indonesia.

According to the Indonesian Ministry of Internal Affairs, there are presently some 3,000 regional laws and regulations that require corroboration and perhaps revision, because they might be in contravention of higher laws or the public interest. This represents a significant portion of the estimated 6,000 new laws and regulations that have been produced by the country's 368 districts and municipalities (*Kabupaten/Kota*) since the decentralization process began. Obviously, this brief essay cannot attempt to examine each of these 3,000 decrees

and draft decrees. The analysis presented will be limited to an assessment of local regulations regarding a) revenue generation; b) control and management of natural resources; and b) local government and institutions.

This analysis will contribute to our understanding of the following issues: 1) the politics of decentralization and regional autonomy in Indonesia; 2) changing centre-periphery and state-society relations; 3) how non-legal factors (e.g., political, economic) influence the character and content of local policy and law; and 4) the political and economic influences shaping regional government policy on the control and management of natural resources and local institutional structures.

The Growing Momentum for Regional Autonomy[2]

Regional autonomy and decentralization have a long history in Indonesia, but the discourse reached a crescendo during the period immediately following the collapse of the New Order regime.[3] Along with other pressing issues such as press freedom and freedom of expression, electoral reform, internal security and anti-subversion laws, anti-corruption and reform of financial institutions and the judiciary, regional autonomy took its place at the top of the national reform agenda. Part of a broader critique of the politics of the New Order, the call for a complete reformulation of the relationship between the central and regional governments soon took on a momentum of its own. During the New Order period, regional governments were little more than extensions of the central state. Permits for and revenues from natural resource exploitation were controlled by the centre, provincial Governors were appointed by the President, Regents (*Bupati*) were appointed by the Minister of Internal Affairs, development plans were prepared by the central government. This pattern was not limited to government; political parties and social organizations were required to adopt similar structures and procedures. This form of governance eventually gave rise to many problems, including the concentration of fiscal resources in the capital Jakarta, imbalanced growth, lack of opportunities for education and advancement for communities outside of Java, and other related problems.

More important for the purposes of this discussion, the New Order politics of centralized power – as set out in Law No. 5 of 1974 on Regional Government – had a very destructive impact on local communities and institutions throughout the country. The national government hierarchy was extended to the village level by Law No. 5 of 1979 on Village Government, which assigned sole authority for village government to the Village Head (*Kepala Desa*), a government official. The Village Head and Village Secretary were by law also placed in charge of the Village Community Council (LMD, the village parliament), and the Village Community Resilience Council (LKMD, the village development authority). Under this law, the "village" was identified as a unit of government, and not a social organization.[4]

The *Reformasi* era signalled the culmination of growing local anger toward the system of centralized governance in Indonesia. In a brief period, a tidal wave of regional radicalism exploded on the scene, with rapidly mounting intensity and volume. Expressions of disappointment and rage came from many different sectors and classes within Indonesian society. Local political elites from both the executive and legislative branches pressed for the rapid promulgation of regional autonomy policies and law. In different regions throughout the country, support grew for the formation of new provinces and *Kabupaten*. Local entrepreneurs approached local government agencies and communities to apply for concessions and permits. At the most basic level, communities vented their anger against the symbols of centralized government oppression and capitalist exploitation, such as state forest, state and private plantations, forest concessions, mines, police posts, Village Heads, government buildings, etc. At

a different scale, and with different motives, the provinces of Aceh, Riau and Papua demanded to secede from the Republic. Along with these radical secessionist expressions, politicians from many other regions called for the establishment of a Federalist state, a notion that was vehemently opposed by Indonesian nationalists.[5]

Less than a year after President Suharto's resignation, the repudiation of the centralistic policies of the New Order government bore fruit in the form of two new laws on regional government and fiscal relations between the centre and the regions. Laws No. 22 on Regional Government and No. 25 on Fiscal Balance between the Centre and Regions were passed by parliament (DPR) in May 1999. The introduction of Law No. 22 states unambiguously that Laws No. 5 of 1974 on Regional Government and 5 of 1979 on Village Government were unconstitutional. Also in the introduction, the new law lists a number of guiding principles for regional autonomy, including democracy, public participation, equality, justice, and regional diversity. The desire for delegation of authority to regional governments was addressed by this law, which states that regional government authority extends to all matters of governance excepting foreign affairs, national security, justice, and fiscal and monetary policy (Paragraph 7, Clause 1).[6] This declaration is further strengthened by statements that the regions are responsible for the management and conservation of national resources within their respective territories in accordance with national legislation. The law also revitalizes the position and role of regional parliaments (DPRD), which are no longer a subordinate unit of regional governments, but rather an independent partner to the executive, responsible for channelling the people's sentiments and aspirations. The new structure largely bypasses the provincial level, devolving authority directly to the district and municipality (*Kabupaten*/ *Kota*) level. Regarding villages, the 1999 Regional Government Law stresses that village communities have their own autonomy and rights, and that local communities do not necessarily have to adhere to the form of "*desa*" (literally: "village," but meaning the unit of government as set out in the 1979 Village Government Law).

Normatively, the 1999 Regional Government Law restores formal legitimacy to regional government's role in carrying out the tasks of governance. The law gives "permission" to the regions to manage their own affairs and those of local communities, based on their own priorities and initiative, while requiring them to accommodate the wishes and aspirations of the local public. The regions, which had been awaiting such an opportunity, quickly assumed charge of many responsibilities and functions. Although the law only came into effect nearly two years after its signing – on 1 January 2001 – and needs to be supported by numerous government regulations and decrees that are still under preparation, this hardly dampened the enthusiasm of regional governments to commence immediately taking advantage of the new power and authority the law promised.

Regional Autonomy: The Birth of a New Rent-Seeking Regime

What forms have regional governments' efforts taken since they began implementing the new Regional Government law? The new law distinctly sets out their responsibilities to regulate and manage affairs (Indonesian: *mengatur* and *mengurus*). These two terms are commonly used in social science and legal discourse. The simplest interpretation is that regional governments are responsible for producing and implementing the necessary legal instruments, in the form of regional laws and regulations (*Perda*). This is confirmed in the language of the Regional Government Law, which states that regional regulations can be produced to effectuate regional autonomy (Paragraph 69).

In addition to the normative description above, the issuing of new regional regulations can be interpreted as a crystallization of the political and economic will of particular groups. This

latter interpretation is commonly put forward in political science analyses, based on the premise that law cannot be viewed separately from the political context in which it is produced and deployed. Laws are produced by the most powerful groups within a society. As the strongest entity within the state, the government has the greatest power to determine the shape, content and intent of laws (Mahfud 1998; Huijbers 1991). Viewed from this perspective, the new regional regulations are not simply instruments for the implementation of the decentralization process, but embodiments of the vested interests of particular political and economic formations in the regions.

Within a few months after the Regional Government Law came into effect, commentators began drawing attention to the growing "*Perda* mania" besetting the country.[7] Numerous groups strenuously criticized the new regional regulations as being divisive and dangerously counterproductive. Representatives of regional and national Chambers of Commerce were among the first groups to approach President Megawati Soekarnoputri, whom they presented with a list of 1,006 local regulations which they considered "foolish" and "anti-business." A few months later, through channels in the Ministry of Finance, the International Monetary Fund (IMF) requested the annulment and retraction of 100 "problematic" regional regulations. This request was later included in an IMF Letter of Intent signed with the Government of Indonesia. The following day, the Ministry of Finance presented a recommendation to the Ministry of Internal Affairs to overturn 71 regional regulations they claimed restricted the free traffic in commodities, services and capital between regions. The Ministry of Internal Affairs internal Working Group on Local Regulations identified 68 problematic regulations (Media Indonesia, 24 November 2001). The furore over regional regulations reached its zenith during the annual meeting of the Supreme Consultative Council (MPR) in November 2001, which recommended that the Supreme Court conduct a judicial review of all regional regulations that possibly contradict national laws, without waiting for court challenges of individual laws.

The Ministry of Finance's report divided the regulations into five categories: 1) regulations affecting commodities and services; 2) regulations on fees for the use of public facilities; 3) fees that impose tariffs on the free flow of goods, services, capital and people; 4) permits and licensing regulations; and 5) regulations on "voluntary contributions." A few examples portray the sort of regulation pointed out by the study:

- *Perda Kabupaten* Kapuas No. 14 of 2000 on Transport and Trade of Agricultural and Industrial Products outside the *Kabupaten*;
- *Perda Kabupaten* Kerawang No. 15 of 2001 on Solid Waste Permits and Fees;
- *Perda Kabupaten* Cirebon No. 53 of 2001 on Fish Auctions;
- *Perda Propinsi* Lampung no 6 of 2000 on Permit Fees to Transport Goods outside the Province;
- *Perda ???????* No. 11 of 2001 on User Fees for Heavy Goods Vehicles on National Highways;
- *Perda Kota* Samarinda No. 20 of 2000 on Fees for the Transport of Coal through Samarinda.

Other regional regulations assess fees on livestock transactions, or on market vendors and wholesale and retail merchants. These regulations and scores like them constitute barriers to free trade, and cause additional costs for goods and services originating from, or transported through, particular regions, thereby making them less competitive in the open market (Media Indonesia, 10 May 2002).

Clearly, regulations of this nature place an added burden on producers and traders, but they also penalize local consumers of goods and services. The additional fees are passed on to the purchaser in the form of higher prices. This is particularly severe when these fees are assessed on basic commodities required for everyday sustenance. These affect all members of a society, with the proportional effect on the poorest sectors being the most severe.

Local parliamentarians use a portion of the income generated by these new taxes and fees to reimburse themselves for the important service they are providing. The 2002 annual budget for the province of West Sumatra, for example, provides each DPRD member with a spring bed allowance of Rp. 14 million, a dressing table allowance of Rp. 1.5 million, a plate rack allowance of Rp. 500,000, a chair allowance of Rp. 18 million, a bookcase allowance of Rp. 3.25 million, and allocations for insurance for the next five years at the rate of Rp. 2.5 million per month. To cover these benefits, the annual budget for West Sumatra for 2002 reached a whopping Rp. 453 billion.[8] This figure is astounding, given that the provincial revenues from local sources in 2001 only amounted to Rp. 160 billion. To make up the difference, the West Sumatra Provincial DPRD instituted a number of new taxes and user fees, such as a ground and surface water tax, a local motor vehicle fuel tax and a health service tax.

The same scenario is unfolding in districts, municipalities and provinces throughout the country. Many *Kabupaten/Kota* have had to scour the landscape for new sources of revenue just to cover the costs of salary raises and benefits for their legislators. To earn their pay, DPRD members are busily cranking out new *Perda* to extract revenue from commodities, services and people. Rather than performing its supervisory function vis-à-vis regional government agencies, the legislative branch has entered into a larcenous collusion with the government. The regional executive gets their routine budgets and development projects, the DPRD get their salary raises and spring bed allowances. Anything that can be taxed, will.

This scenario is unfolding with a minimum of transparency or public participation. It leads to the depressing conclusion that government reform in Indonesia has only changed the relationship between the central and regional governments, while relations between government and the public remain unaltered. What has transpired has been the fragmentation of decision-making authority from highly centralized control to a multiplicity of local centres. Local political elites have hijacked the legislative process and now use it to further bolster their own political power, supported by – and used to further increase – fees and taxes levied on local producers, traders, service providers and consumers. In resource-rich regions, autonomy represents a bonanza for local politicians, who are scurrying to extract maximum profit from local resources in the shortest possible time.

Events throughout the country signal the continuing erosion of central government authority. The central government no longer possesses the political apparatus nor resources to exact discipline and obedience from regional governments. Military force, once a powerful threat used to control or intimidate local governments and communities can no longer be wielded with the same impunity as in the past, due in part to the groundswell of public contempt for the armed forces in the wake of President Suharto's fall from power. Revelations of human rights violations and rampant abuse of power that came to light during and after the New Order's demise have damaged the prestige and effectiveness of the Indonesian military. The government political party, Golkar, is no longer the invincible vote-getting machine it was during Suharto's presidency, coming a distant second behind PDI-P in the 1999 election. Numerous new parties also won seats in the national and regional parliaments, something that has not occurred in Indonesia since the election of 1955. The central government no longer controls the financial resources it used to wield, as the fiscal crisis that hit the country in 1997 shows no sign of abating. The breakdown of central authority and power has provided an op-

portunity for local political elite throughout the country to build their own local power bases. While the current era in Indonesia is still popularly known as *Reformasi*, the methods employed by these local politicians mirror the darkest methods and abuses that became the norm during the latter years of the New Order period. Local politics are rife with the intimidation and collusion that the national *Reformasi* was supposed to abolish.[9] Newly elected DPRD members are more beholden to their party leadership than to the people whose votes put them in office. The weakness of civil society movements and institutions has allowed local elites to close ranks and gain a strong grip on local levers of power. This process has been financed with revenue from local taxes and fees, along with "contributions" from the central government (General Allocation Fund, Special Allocation Funds). This new political constellation is responsible for producing the myriad of regulations needed to effectuate the decentralization and regional autonomy process in Indonesia. Needless to say, this process is producing new pressures on the environment and on local and traditional (*adat*) communities, who shoulder the burden and live with the affects of this so-called *Reformasi*.

New Pressures on the Environment and Local Communities

Between late February and April 2002, the capital Jakarta transformed into a huge lake, by one of the greatest floods ever recorded in the city's 475-year history. The severity of the Jakarta flood – and the fact that most news agencies are based in Jakarta – diverted people's attention from similar floods that were plaguing other cities and towns around the country. During the same period, floods also hit Medan in North Sumatra; Manado in North Sulawesi; Pekanbaru in Riau Province; the capital of Jambi province; Palu, Central Sulawesi; and Samarinda, South Kalimantan. Melak and Tenggarong in East Kalimantan were hit by serious floods just prior to Jakarta's. In the following weeks, several cities on the north coast of Java – particularly Semarang and Situbondo – also Gorantalo and Wajo in Sulawesi and Jayapura in Papua were also flooded.

The commonly held explanation for the Jakarta floods is the rapid proliferation of villas, cottages, hotels and other real estate developments in the Puncak catchment area in the mountainous area to the south of the city. For the areas outside Java, the injudicious granting of forest use and development permits and concessions is generally believed to be the primary culprit. A major national daily published its investigation of flooding in Kalimantan under the banner headline, "HPH and Floods in East Kalimantan" (Kompas 17/2/2002).[10] In the province of East Kalimantan, *Kabupaten* governments have been issuing forest exploitation permits – mostly HPHH Forest Product Enterprise Rights Permits, IPK Wood Use Permits, and IPKTM Wood Use Permits for Privately Owned Forest Land – at an alarming rate. District Heads (*Bupati*) are allowed to issue HPHH permits for concessions up to 10 hectares in size, and the Governor can grant HPHH permits for tracts of up to 10,000 hectares. In a period of slightly more than one year, the *Bupati* of *Kabupaten* Kutai Barat issued 650 HPHH permits, and his counterpart in *Kabupaten* Bulungan, more than 300. This averages out to two and one forest exploitation *per day*, respectively.

Similar conditions have appeared in other provinces as well. Due to the proliferation of IPK and IPKTM permits in South Sumatra, standing forest there has been reduced from 3 million to 1.9 million hectares. Jambi, one of the major wood-producing provinces in Sumatra, is experiencing a similar fate. In West Kalimantan, nearly every *Kabupaten* has already enacted their own *Perda* on the issuance of HPHH permits. In South, Central and Southeast Sulawesi, the story is the same. In Papua, one *Bupati* issued several HPHH permits to harvest timber from a Protected Forest zone.

The new *Perda* on HPHH, IPK and IPKTM specify who may apply for permits, the application process, rights and responsibilities of permit holders, the government's obligations and sundry implementation criteria. Generally, the process is quite simple, and the eligibility criteria quite lax. Many authorize the Village Head to represent local communities in permit negotiations, and set very minimal standards for proof of ownership. In effect, the entire exercise is merely to put a legal gloss on one basic issue – how much will an investor pay? The going price for a HPHH permit in East Kalimantan is currently around Rp. 15 to 20 million. The higher the offer, the more quickly the permit can be processed.

The speed with which these forest exploitation *Perda* were produced, and the methods used, are a clear reflection of local politicians' and officials' intentions. Lawmaking in Indonesia is usually a complicated and time-consuming process, involving tedious discussion and consideration of each term and phrase. The forest use permit *Perda* have been prepared with record speed. Often, DPRD simply subcontract the drafting tasks to local universities, reasoning that the regulations deal with issues that are technical in nature, not political or social. In some districts such as Kapuas Hulu in West Kalimantan, the *Kabupaten* government circumvented the *Perda* process altogether. The *Bupati* requested the DPRD to produce a recommendation that he issue a "temporary" decree on issuing HPHH permits of 100 hectares or less, so that the process could move forward while the legislature worked on preparing a more detailed *Perda*. The *Bupati*'s temporary decree was issued immediately, and the permit frenzy was underway. To date, more than a year and a half later, the *Perda* on HPHH and other types of forest use permits has yet to be written.

These practices came under intense criticism in the wake of the 2002 floods. A few *Kabupaten*, such as Pasir in East Kalimantan, have placed a temporary moratorium on new forest use permits. The cost of repairing the infrastructure and buildings damaged by the floods far outweighs the revenues generated from the forest exploitation permits.

The benefits derived from the forest permit process are enjoyed by a small group of political and business leaders in the regions. Local entrepreneurs and middlemen profit from the logging activities. DPRD members, local officials and to a lesser extent local government agencies divide the license and stumpage fees among themselves. The impact on local communities, meanwhile, has been devastating. Traditional peoples have lost access to the forest resources that provide most of their basic needs and most of their income. Cultural practices and institutions that centre around communities' interactions with the forest world become irrelevant and fade away as the forest disappears. Social cohesiveness is stretched and rent. Local conflicts – both between local communities and concession-holders and local officials, and within village communities and even families – are becoming more common. Fathers and sons argue over whether to sell rights to their hereditary swidden zone to logging firms. Once the decision is made to sell, they are nearly always duped and cheated by the investors and middlemen. Many rural families who's ancestors have lived in a forest zone for generations now find themselves working as low wage day workers cutting down that very forest. As time passes, the logging activities move further and further away from the village. Village men are required to leave home for weeks or months at a time to continue their work as woodcutters. Social and family life in the village is immediately transformed. Observing this process as it unfolds in regions around the country drives home the sad reality that the purpose of new regional regulations has nothing to do with increasing local people's well-being and prosperity, but rather to increase profits and revenues for the local business and political elite.[11]

Most of the easily exploited high grade lowland forest in Indonesia was already divided into large HPH concessions during the decades following the enactment of the Basic Forestry

Law of 1967. Management of large HPH concessions has generally been very poor, with little if any effort to promote forest regrowth for a second cutting. The new smaller HPHH, IPK and IPKTM permits are being issued for forest land that was set aside either as community *adat* land, buffer zones or conservation areas. It appears that the sort of logging taking place on the smaller HPHH and other local concessions is if anything even more short-sighted and destructive. The sole purpose is to extract maximum profit in the shortest possible time. Since much of the remaining standing forest in Indonesia is classified as community forest, a common means for wily investors to gain access is to include the names of selected village luminaries – village officials and the educated class – as members of a cooperative that is applying for the permit. The money paid to these "shareholders" is miniscule compared to the proceeds from the sale of the logs. These "divide and conquer" tactics have a devastating effect on community cohesiveness, pitting those who want to preserve or hold on to local forests against their own leaders.

The communal nature of village economic activity is rapidly unravelling. Village community leaders who have been legally authorized to make decisions and enter into contracts on behalf of the community are tempted or duped into decisions that are against the general community interest. Families, clans, villages are splintered into groups or individuals who either favour or oppose granting permission to log their forest. More and more, people are coming to view forest land more as individual private property to be managed and/or traded as the "owner" sees fit. The fragmentation process is accelerated as the men leave the village to work as woodcutters in increasingly distant forest stands.

NGOs, nature conservation organizations, and indigenous rights groups criticized Village Government Law No. 5 of 1979 as a caustic force that was destroying indigenous structures, institutions and practices developed over generations of intimate contact between local communities and the surrounding environment. All of these groups joyously greeted the new 1999 Regional Government Law, which restored "natural autonomy" and the possibility of diversity to village government throughout the country. The new law overturns the 1979 Law's definition of the village as merely a unit of government, describing it as a social unit with its own structure, norms and rights. This had the effect of assigning to the village a new status as an independent legal entity. According to legal theory, this affords the village its own set of rights and responsibilities, the same as a corporation or individual. Villages are now permitted to enter into contractual agreements, and to make their own rules and regulations.

Subsequent national regulations began to undermine the villages' renewed autonomy soon after the new law was passed. Minister of Internal Affairs Decree No. 64 of 1999 on General Guidelines for Village Government – later superseded by Government Decree No. 76 of 2001 – set in motion the process of delimiting and re-standardizing village government in Indonesia, an abrupt reversal of the letter and spirit of the 1999 Regional Government Law. The new regulation stipulated a) the particular elements that comprise village government; b) procedures for electing and appointing village officials; c) specific duties and responsibilities of village governments; and d) that villages are required to produce Village Regulations. In effect, this regulation countered the principles implicit in the language of the 1999 Regional Government Law entrusting village communities to manage their own affairs. The Ministerial decree also instructed *Kabupaten* governments to produce a set of *Perda* on village government in their respective districts.

In a relatively brief period, the enthusiasm over the village government clauses in the 1999 Regional Government law began to wane. *Kabupatens* throughout Indonesia obediently produced *Perda* on village government that mimicked the language of the Ministerial Decree.

The Decree suggested 13 *Perda* on various aspects of village government, nearly every *Kabupaten* in Indonesia produced exactly 13 *Perda*, with wording virtually identical to the national regulation. The *Kabupatens* of Donggala and Banggai in Central Sulawesi; Lampung Barat in Sumatra; Kapuas Hulu and Ketapang in West Kalimantan; and Kutai Kertanegara, Kutai Barat, Kuta Timur, Pasir, Malinau and Bulungan in East Kalimantan each produced 13 *Perda* that are identical except for the place names. Several *Kabupaten* simply borrowed copies of draft *Perda* from their neighbours, changed the names, and issued them as their own.

One of the 13 suggested *Perda* sets out the rules and requirements regarding Village Regulations (*Perdes*). The language of Law No. 22 on Regional Government states that villages *may* produce regulations – *if they require them*. Suddenly, they are *required to* produce *Perdes*. In *Kotamadya* Bogor, one Subdistrict Head (*Camat*) ordered all villages in his subdistrict to finish preparing their *Perdes* before the end of the financial year.

In this way, the initiative for local communities to preserve, revitalize, create or revise their own indigenous institutions as part of a village renewal effort was seriously undermined. It is as if there was a national consensus to disavow the concept of village autonomy ensconced in the Regional Government Law, and return to the certainty and regularity of the 1979 Village Government Law. This is understandable, perhaps, if one realizes that local elite at the provincial and *Kabupaten* levels stand to benefit from the same sort of controls exercised by the national government over village affairs under the 1979 law. The outcome of this reversal is that village communities, rather than being empowered by the decentralization process and regional autonomy, find themselves once again on the receiving end of laws devised to further outsiders' interests and agendas. The ecological and institutional devastation wrought by the new local government regulations appears if anything to be even more severe and rapid than under the previous regime. This alarming situation could provide the needed impetus for a social movement in Indonesia that truly originates from the "bottom up."

What will be the long-term social trends emanating from the present situation? Will the *Reformasi* process be completely hijacked by local political and business elites intent on creating exploitative local government frameworks and policies that afford them benefits previously reserved for the President and his cronies? Or will communities take matters into their own hands, and forge their own political order to address their interests and concerns? Are there examples of this process already taking place in Indonesia?

Stories from the "Other Side" – Experiment or Emergent Social Movement?

There are some examples of legislative processes and *Perda* that do not fit the mould outlined above. A few examples include:

- *Perda Kabupaten* Wonosobo No. 22 of 2001 on Community-Based Management of Forest Resources;
- *Perda Kabupaten* Tana Toraja No. 2 of 2000 on *Lembang* Government;
- *Perda Propinsi* West Sumatra No. 9 of 2000 on Guidelines for the Return of Village Government to the Traditional *Nagari* System;
- *Perda Propinsi* Lampung No. 6 of 2001 on Converting Land Use and Function;
- Permits issued by the *Bupati* of Lampung Barat granting Forest Management Permits to the Dusun Rigis Jaya II and Abung Community Forest Conservation Associations;
- *Perda Kabupaten* Lebak No. 32 of 2001 Protecting the Traditional Communal Land Use Rights of the Baduy People;

- Four new *Perda* from *Propinsi* Gorontalo, on Transparency and Open Access to Information; Public Participation; Public Supervision; and Community-Based Development Planning, respectively.

Other progressive decrees are still in the drafting and deliberation stage, including:

- Draft *Perda* on *Kampung* Governments in *Kabupaten* Sanggau, West Kalimantan;
- Draft provincial *Perda* on Protected Forest Zones in West Java;
- Draft *Perda* on Coastal Management in *Kabupaten* Minahasa, North Sulawesi;
- Draft *Perda* on Forest Management in *Kabupaten* Kutai Barat, East Kalimantan;
- Draft *Perda* on Community-Based Forest Resource Management in Lampung Barat.

There are discussions and negotiations underway in many areas between communities and local governments on proposed laws and regulations to acknowledge and protect the *adat* rights of local traditional peoples, such as the Dayak Pitap communities in South Kalimantan, the Enggano in Bengkulu, the *adat* people of Biak island, Papua, the people of Desa Guguk and Batu Kerbau in *Kabupaten* Meringin, Jambi, and the village communities of Benung in Kutai Barat, East Kalimantan.

This list of examples demonstrates that the regional autonomy era in Indonesia has also made possible a lawmaking process that seriously engages and involves the public. They also show that pressure from community groups can influence local executive and legislative branches of government to make laws that reflect the people's wishes and protect their interests. Both the procedures, as well as the content and intent, of laws and regulations produced in this manner differ completely from the examples discussed in previous sections.

In general terms, the substance of the *Perda* and *Bupati*'s Decrees listed above acknowledge the existence and special rights of local and traditional communities, as well as their territories and institutions, and provide opportunities for these groups to preserve and practice traditional lifestyles, while allowing their institutions to exist alongside the formal government structure. These regulations and drafts also allow local communities to manage their own affairs, and settle their own conflicts according to their own cultural norms and traditions.[12] Many of these local laws focus on issues of natural resource and forest conservation. The better ones attempt to achieve this by entrusting care of forests and other resources to local communities.

Not to cast doubts on the significance or benefit of these new regulations, it does appear however that the majority of these cases have been driven by outside NGOs working in cooperation with local communities, as a sort of experiment to fulfil the NGOs' ideological agenda of participatory local government, grounded in the *adat* values of traditional communities. Most of these success stories are the result of intense intervention, usually taking the form of a short-term NGO "project." What appears to be "participation" could more accurately be defined as "mobilization" in the majority of these cases. As well, the success of these ventures is highly dependent on the receptiveness and good will of local officials in the legislative and executive branches of government.

Many of these new regulations are running into problems once the process enters the implementation phase, such as the *Perda* on *Lembang* Government in Tana Toraja or the Community Forestry *Perda* in *Kabupaten* Wonosobo. These problems are more than simple delays in the implementation process, they reveal a deeper lack of commitment and responsibility on behalf of the governments that produced them, and an overall weakness of local communities ability to apply political pressure to complete the process that was initiated during the law-

making process. Once the NGO leaves the scene, momentum slows and enthusiasm wanes. This raises questions about the characteristics of the "social movements" that produced the decrees in the first place. To date, organizing and mobilization efforts have only been able to influence decision-makers at the policy formulation stage. During subsequent implementation, old relations and interests reassert themselves, supplanting the participatory and accommodative dynamic that held sway briefly during the drafting and deliberation processes. This is unfortunate if true, for it means that these relatively progressive regulations can still be manipulated to serve the interests of local business and political elites. The political sophistication of most rural communities in Indonesia is still quite limited; they can be placated with promises and concessions, while the real power remains in the hands of the politicians and business interests.

Conclusion

The examples set out above – both the exploitative *Perda* and Decrees, as well as the progressive and accommodative ones – underscore the point made at the beginning of this essay that the character, content and intent of the law is shaped by political and social configurations.[13] In spite of the enthusiasm and optimism that suffused Indonesian society at the onset of the *Reformasi* process, it now appears more and more that the decentralization/regional autonomy process in the country is little more than the fragmentation of the power of the central government into numerous local centres at lower levels of government. The authority devolved to regional governments has been hijacked by local elites to create their own political and business empires in their respective regions. In so doing, they have borrowed many of the approaches and structures of the centralistic New Order regime, including:

a) using natural resources as a source of revenue and capital;
b) co-opting and/or sidelining local customary leaders and institutions through a combination of manipulation, bribes and establishment of top-down, control-oriented local government structures;
c) enfeebling local legislatures through a combination of inducement, bribery and chicanery;
d) the use of force and intimidation to settle disputes;
e) continued – even increased – collusion, corruption and nepotism; and
f) courting investors with offers of incentives and special dispensations.

Aside from the six characteristics listed above, there are a few notable departures from the techniques and approaches employed by the authoritarian New Order Regime. These include:

a) attempts to codify and formalize local *adat* law;
b) facilitate the revitalization of older local polities such as *kerajaan* and Sultanates, taking advantage of the sentiment to restore and rehabilitate *adat* law and life; and
c) mobilizing communities to resist laws and policies emanating from the centre, and large-scale enterprises that receive their permits and licenses from – and share their profits with – the central government.

These latter approaches are part of a larger pattern of local politicians attempting to consolidate their own regional political and economic empires. Other parts of this emerging pattern are the *Perda*, regulations and permits discussed in earlier sections on taxes and fees on the traffic in commodities, services, capital and people; issuing permits for exploitation of local forest, mineral and marine resources; and standardization and formalization of local and village government structures and processes. The first two categories are intended mainly to in-

crease local government revenues, while the third is an attempt to recreate the sort of local government institutions that held sway during the New Order era, to facilitate investment, exploitation, and consolidation of local political and economic power. Calls to revise the 1999 Regional Autonomy Law are met with shrill protest from groups such as the All-Indonesia Association of *Kabupaten* Governments (APKASI), the All-Indonesia Association of Municipal Governments (APEKSI), and the All-Indonesia Association of *Kabupaten* and Municipal Legislatures (ADKASI and ADEKSI). Most local communities have remained on the sidelines of this increasingly contentious debate.

In the midst of this ongoing power struggle, there are a few rays of brightness, a few *Perda* and decrees with a quite different orientation and intent. Although a strong social movement has yet to make itself felt on the Indonesian political stage, here and there local regulations are being produced that represent an entirely different approach – indeed, a different ideology – to law and policy making. The future shape, direction, and dimensions of this trend will be determined by the strength and quality of community efforts to develop democratic institutions and processes in their respective regions. If the success of this "movement" is measured not only by the number and quality of *Perda* produced – but also by examining empirical evidence in the field – it becomes evident that public resistance to exploitative local regulations and policies is substantial, and growing.[14] Consider, for example, efforts by local communities to prosecute forest concession holders according to local *adat* law; demonstrations and mass actions to protest and reject both national and regional laws and regulations; local community actions to apprehend and punish timber thieves in community-controlled forests; efforts to remove and replace Village Heads and *Adat* leaders appointed by Subdistrict or District Heads (*Camat* and *Bupati*), and communities' decision to resolve local disputes themselves, according to their own *adat* law, without resorting to formal courts or government channels.

There is a great urgency to all of this – if communities do not act quickly, there well be no resources, ecosystems or traditional lifestyles worth preserving.

Endnotes:

1 A non-doctrinal methodology is one that views law not was a set of norms/principles/rules that are *a priori* separate from social processes and reality. Rather, law is an integral part of the broader social dynamic that is informed by a multiplicity of political, economic and cultural forces. This approach developed scholars from various social sciences (i.e., political science, sociology, history and anthropology) began to study law from their respective perspectives (Wignjosoebroto 19__; Mahfud 1998).

2 Although "regional autonomy" and "decentralization" describe distinct phenomena, these terms are used interchangeably in Indonesia and in this essay. Decentralization describes "a transfer of management from the central to local government," while autonomy is "a transfer of power from state to society" (Yuwono 2001). Another definition holds that decentralization is the division of authority between organs of the state, while autonomy covers the rights that follow decentralization's delegation process (Koswara 2001). In the context of the current reform process taking place in Indonesia, it is difficult to differentiate between the two.

3 Efforts to devolve authority and responsibility to regional governments in Indonesia dates back to the colonial era, beginning with the *Decentralisatiewet* Law of 1903. The policy was carried forward after Indonesia achieved statehood through numerous national laws, including Basic Law No. 22 of 1948, Basic Law No. 1 of 1957, Basic Law No. 18 of 1965 and Basic Law No. 5 of 1974, which was superseded by the present Regional Government Law No. 22 of 1999.

4 According to numerous scholars and activists, it has been an intentional policy to weaken local communities in order to effectuate state control of village affairs. Such control was seen as necessary for the achievement of three national agendas: 1) economic growth; 2) security and political stability; and 3) equitable distribution of the benefits of development (Zakaria 2000; Safitri 2000).

5 The victory of the PDI-P party in the 2000 national elections signalled a triumph for the nationalist vision of a unitary Indonesian state. The nationalists hold that the unitary state, as set out in the original 1945 constitution, is final, and not open for negotiation or revision. To change this would be to dismantle Indonesia. For this reason, this group is opposed to the notion of federalism, or to any amendments to the 1945 constitution.

6 The clause also notes that "authority over certain other matters" also cannot be devolved to the regions, such as national planning policy and macro-level development, state administration and government finance, development of national natural resources and strategic technologies, conservation and national standardization.

7 See, for example, Simarmata (2001). Witnessing a similar phenomenon in Peru, Hernando de Soto wrote, "We are living in a legal maze of amazing complexity. Even Daedalus would find himself lost inside it. The number of laws and regulations continues to grow like a cancer, reflecting the skewed thinking that underpins the lawmaking process in this country. Laws are created in the interests of particular groups." De Soto described the attempts of Peru's nonformal sector to circumvent the law, because of the expense and complexity of accomplishing anything through legal channels. (De Soto 1992) (re-translated from the Indonesian translation).

8 At the present rate of exchange, Rp. 1 million equals slightly more than US$ 100.

9 There have been particularly "dirty" and violent local elections in many regions. Public outrage did little to curb "money politics" and intimidation during local elections in Sampang, Madura; Bulelang, Bali; Kendari, South Sulawesi, and the new provinces of Gorontalo and North Maluku.

10 HPH is the abbreviation for *Hak Pengusahaan Hutan*, Forest Enterprise Permits.

11 Many *Kabupaten* governments have been very critical of a new Decree of the Minister of Internal Affairs No. 541 of 2002 retracting Decision of the Minister of Forestry No. 05.1/Kpts-II/2000 that empowered governors and *Bupati* to issue HPHH permits.

12 Most of these laws guarantee only limited rights and responsibilities to local and traditional communities and institutions. For example, the Banten *Perda* protecting the communal property rights of the Baduy people applies only to lands that have not been reclassified for other uses by agrarian or forestry law, and stipulates that conflicts with outside firms, agencies and individuals must be settled in an Indonesian court of law.

13 This argument draws from the writing of Moh. Mahfud, a prominent political and legal intellectual in Indonesia. This essay, however, does not follow Mahfud's system of dividing Indonesian government, agrarian and election law into two opposing groupings: a) responsive/populist law, and b) orthodox/conservative/elitist law.

14 This reasoning draws on the school of thought known as legal realism. Legal realism argues that law must be viewed as part of a larger reality, that results are more "real" than any internal logic the law may possess. Legal realism is an attempt to demystify law, and stands in opposition to formalistic and positivistic legal thought (Schaumberg-Muller 2002).

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