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EXPLORING REFORM OPTIONS IN FUNCTIONAL ASSIGNMENT
Final Report

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ABBREVIATIONS

BAPPENAS	Badan Perencanaan Pembangunan Nasional (National Development Planning Board)
CG	Central Government
CLM	Central Line Ministry
CIDA	Canadian International Development Agency
DAK	Dana Alokasi Khusus (Special Allocation Fund)
DAU	Dana Alokasi Umum (General Allocation Fund)
DRSP	Democratic Reform Support Program (USAID funded)
DSF	Decentralization Support Facility
FPPD	Forum Pengembangan dan Pembaharuan Desa (Village Reform Forum)
GoI	Government of Indonesia
GR	Government Regulation
GTZ	Deutche Gesellschaft Für Technische Zusammenarbeit GmbH
LG	Local Government (interchangeable in most contexts with sub-national government)
MoF	Ministry of Finance
MoHA	Ministry of Home Affairs
MSS	Minimum service standards
OF	Obligatory functions
PMD	Pemberdayaan Masyarakat dan Desa (Community and Village Empowerment - MoHA)
SNG	Sub-national government
USAID	United States Agency for International Development
WB	World Bank

EXECUTIVE SUMMARY

Considerable challenges remain in functional assignment in Indonesia - some introduced by the recent revisions, during the second round of reform in the period 2004-2007. The Government of Indonesia (GoI) has accepted the offer from donors to undertake a study to delve more deeply into the progress made to date, the challenges that remain, and the opportunities to fashion a more robust, effective and stable assignment of functions. The study aims to help the GoI and donors in exploring new avenues for reform in this field.

The term functional assignment in the study denotes a broad concept that captures the overall architecture of roles between levels of government and the specific construction of functions. The robustness of functional assignment is seen to derive from the judicious choice of elements suited to the local context, particularly how these elements come together to form a sound and consistent architecture.

In assessing functional assignment, the study made use of academic and other stakeholder views on both substantive issues and the capacity development approach needed to develop a policy network in this field in the future. The possible supporting role of donors is also indicated, within the discussion of each issue in the main part of the report, and in condensed form at the end of this summary.

KEY FINDINGS OF THE STUDY

The evolution of the functional assignment framework from the pre-decentralization period through two reform rounds reveals that progress has not been linear. On the positive side, the current architecture is more elaborate than many found in developing, or developed, countries. It makes explicit the three common intergovernmental modes of decentralization: devolved functions, agency tasks, and deconcentration tasks. The district/city has been made the general purpose government level responsible for the provision of most basic services. The framework seeks to make clear what has to be performed by regional government, and it sets out specific (minimum) performance standards for basic service delivery. Its evolution over the two completed rounds of reform has seen increased consultation across central government sectoral organizations and with regional government.

However, little progress has been seen in terms of clarity and sustainable rules, as indicated in the continued deviation by central line ministries from the organic law on decentralization and its government regulation on functional assignment. A major weakness has been the lack of attention to the legal and other aspects of the architecture of functional assignment. The architecture of functional assignment is a foundational aspect of intergovernmental relations and must be seen in its linkages to the legal framework, territorial divisions, roles between levels of government, organizational structures, funding and other features of governance. Much work remains to be done to improve functional assignment as indicated in the thematic findings summarized below.

1. Overall architecture

The current framework is inconsistent in the definitions of the modes of decentralization, beginning with the constitution (on agency tasks) down to the laws and regulations. Draft

regulation under preparation for agency and deconcentrated tasks threaten to further muddy the modes; the resulting confusion in funding and organizational structures, particularly concerning the dual role of the governor, could have grave consequences for efficiency and accountability.

- ☞ A constitutional amendment is desirable to clearly define decentralization modes, key principles guiding decentralization, and hierarchy/roles between levels of government; this guidance should be reflected in harmonized laws.
- ☞ The pending draft on deconcentration/agency tasks should await constitutional or at least organic law amendment.

2. Legal framework/mechanisms for ongoing adjustments

In both the 1999 and 2004 decentralization/regional government frameworks, Indonesia has used an organic law to set out the principles for functional assignment and make explicit some general functions. A government regulation was then used to provide the details (GR 38/2007 presently). The GoI has not been able to sufficiently harmonize sectoral laws with the organic law for regional government, despite the apparent "ownership" of GR 38/2007 by sectoral ministries (e.g., individual ministerial communiqués agreeing to the text of the draft regulation).

There is also no adequate provision to effect incremental changes in functional assignment. GR 38/2007 introduces the mechanism of "remaining functions" (*urusan sisa*), but this lacks elaboration, and does not seem promising.

- ☞ In view of the difficulties faced with the current architecture, the GoI needs to clarify the legal architecture it will use in the future, including the interim steps to get to the final desired architecture (e.g., order of revision of the organic law and regulation on functional assignment, or outright placement of functions in sectoral instruments).
- ☞ The current legal conflicts over functions should be mapped, with a combined bottom up (regional government driven) and a centrally driven approach, to note the sectoral instruments concerning functions that need to be revised.
- ☞ The Ministry of Home Affairs needs to enlist the assistance of national level actors that can exert more effort and pressure for sectoral harmonization.
- ☞ Mechanisms should be developed to deal with functions that have not been listed , and with functions that need to dynamically move up or down levels of government.

3. Role of the governor and province

Contrary to early official pronouncements, the recent revision of the framework did not appreciably clarify the "province vs. governor as central government representative" duality, or strengthen the role of the governor in this regard. GR 38/2007 instead gives the provincial government, as an autonomous region, a heavy role (as devolved functions) towards the district/city in practically all sectors, with duties expressed in terms of supervision, monitoring and evaluation, control, coordination, planning, and conflict resolution. At the

same time, a draft regulation on the role of the governor is being prepared that is likely to severely clash with this recent (re)assignment of functions.

- ☞ A clear vision for the role of the provincial level/governor is required, which considers the advantages and implication of the various modes of decentralization; options need to be well considered (see Appendix 5).

4. Finance's fit with functions

The principle of "money follows functions" is stated explicitly in law, but otherwise neglected. Growing levels of deconcentrated funds are used to finance regional government functions; the shift from deconcentration funds to the more autonomy friendly special allocation fund (DAK) does not seem to be happening in any significant way. The size of the general allocation fund (DAU) and DAK have no relation (except coincidental perhaps) to the real cost of regional government services at expected levels of performance. Minimum service standards have yet to be adequately costed and translated into expenditure norms that could be worked into transfer mechanisms. Donor off-budget mechanisms and regional selection practices further exacerbate the difficulty in equitably matching service needs with finances country wide. Movements to determine inputs (funds) is making budgeting processes more complicated (due to ambiguity in cost categories) and rigid.

- ☞ The legal framework needs to be more detailed on how the functions-financing match is to be attained.
- ☞ A more intensive effort is needed to cost regional government basic services and to reflect these costs in national level transfer mechanisms.
- ☞ Donor projects should allocate resources (funds, technical assistance) in ways that respect the functions assigned to the various levels. Emergency response excluded, donor funds for regional government investments should only be provided to regional government on-budget (with central government approval) and in pilot mode, with the intent to adjust national-regional level financing mechanisms to strengthen the functions-finance nexus.

5. Criteria used in functional assignment

The criteria employed in the functional assignment seen in GR 38/2007 are reasonable in the main (externality, efficiency, accountability), though they miss the seemingly important factor of "administrative capacity." The criteria are in places badly explained and in general not applied in a transparent manner.

- ☞ It may be appropriate to adjust the criteria for functional assignment to better explain accountability and include "administrative capacity."
- ☞ To further transparency and accountability, future applications of the functional assignment criteria should yield a record of decisions that is made available to interested parties.

6. Concurrent functions

The Indonesian meaning of concurrent functions (recently referred to as joint functions – "*urusan bersama*") denotes the principle that aside from the exclusive set of central government functions, all other functions are "shared" - in the sense that parts of it are assigned to the central government and parts to regional government. This understanding is different from the meaning commonly used in international practice, and can lead to misunderstandings. Furthermore, GR 38/2007 has several instances of functions that are worded exactly the same for the province and district/city levels. As the term "concurrency" does not seem to apply to this construction, it is difficult to tell if this duplication is inadvertent or intended, and if the latter what concept/argumentation should apply to it.

Two options could be considered:

- ☞ Option A: Introduce concurrent functions consistent with international practice, if this is deemed necessary.
- ☞ Option B: If concurrent functions, as per international practice, are not desired, then drop the term (and the equally unhelpful term "*urusan bersama*").

7. Formulation of functions

Weaknesses in the formulation of functions are found in the organic law and particularly in GR 38/2007. These relate to common pitfalls seen in other country lists, such as the ambiguous use of "scale" as an explanatory term and the use of central level organizational mandates as starting points for functional assignment. Moreover, the formulation is not connected to the larger framework/architecture on issues of modes of decentralization, general competence vs. *ultra vires* construction, and obligatory versus discretionary nature of the functions.

- ☞ Consideration should be given to boosting the capacity of individuals/units within MoHA charged with promoting good practices in functional assignment (e.g., among sectoral ministries), especially on the formulation of functions.

8. Obligatory functions/minimum service standards

Since their tentative introduction in the 1999 framework, obligatory functions (OF) and minimum service standards (MSS) have been clarified and "socialized." Provisions concerning MSS are now well inserted in the legal framework (for planning, budgeting, monitoring and evaluation, accountability reports), and steps are being taken to make the MSS operational. Nonetheless, preparations and the draft list of sectoral ministries reveal varied understanding or views of OF/MSS, suggesting that much discussion is still needed to come to common views and approaches on regional government roles and performance. In particular, there is a lack of consensus on the scope of MSS with respect to OF (do all OF have to have MSS?); how OF differ in principle from discretionary functions, and how they differ in their associated standards from discretionary functions; and which OF are truly obligatory (in view of the long and ambiguous lists found in GR 38/2007).

- ☞ It appears necessary to revisit the conceptual basis for obligatory functions and minimum service standards if sectoral agencies are to prepare strong proposals for OF/MSS that are justified on the basis of trackability of MSS, administrative capacity and affordability.

- ☞ The aim of some ministries to launch significant capacity building associated with MSS application (at local level) merits support from donors. Some attention to the ministries will also be needed in this regard.

- ☞ It may now be possible to formalize the working group on MSS that was about to form under the Permanent Secretariat of the Joint Working Group for Decentralization. This working group could assist donors in supporting various counterparts and regions in a harmonized and aligned way.

9. Discretionary functions/right of initiative

Discretionary functions (*urusan pilihan*) were introduced in Law 32/2004, and reiterated , in a vague fashion, in GR 38/2007; they are to be set in detail in regional government regulations within a year of the issuance of GR 38/2007, forcing regional government to make them explicit prior to exercising them. As indicated above, there are many open questions on the notion of discretionary functions, particularly how they differ from obligatory functions. It appears that the concept veers from international usage, and was conceived to restrict regional government proliferation of organizational structures. It is not then a means of introducing a "right of initiative" in terms of functions.

- ☞ The current concept of discretionary functions should be dropped as it does not relate to functions per se, and is not useful in any case in guarding against organizational excesses (the intended aim).

- ☞ The more internationally recognizable notion of discretionary functions could be pursued, enhancing regional government autonomy through a "right of initiative."

10. Kecamatan level functions

Recent studies indicate that the shifting role of the Camat/kecamatan has weakened this structure, and that the district/city has not taken up the challenge of empowering this administrative (deconcentrated) level. There is fairly broad consensus that the kecamatan level must be better utilized, particularly in the provision of services. Toward this end, discussion is taking place on basic alternatives; whether the current construction is to be maintained or whether a more central government driven solution is required.

- ☞ The current exploratory effort on the role of the kecamatan should be brought to its conclusion in time to affect the revision of Law 32/2004. The two key options need to be well considered; whether districts/cities can be guided to best use kecamatans, or if central level fixed minimum list of functions for kecamatan is needed.

- ☞ If the government opts to keep the kecamatan formation/mandate process largely under the control of districts/cities, consideration should be given to removing the "minimum number of kecamatans" as one of the requirements for regional splitting.

11. Village level functions

The Indonesian constitution is silent on the nature of autonomy for the village level, and Law 32/2004 and GR 72/2005 specify that the district/city should delegate tasks (agency tasks) to the villages. There has been little activity in this regard, despite MoHA issued regulations, perhaps in part because these are not very clear or helpful. An NGO facilitated policy formulation effort seems to hold some promise, but the MoHA receptivity to it is hard to discern. Even this proposal however, needs additional clarity and elaboration, and faces the same fundamental policy choice as seen in the empowerment of the kecamatan level.

- ☞ Option A: Maintain the current district lead approach to village governance framework in relation to the functions of the village (including agency tasks), with efforts to make improvements where needed, and make it work as intended.

- ☞ Option B: Make the village essentially a third level of autonomous government, as implied by the academic paper prepared by PMD/FPPD, where an expanded set of functions is guaranteed to the village (by law/regulation), and perhaps an additional set is left to negotiation with districts, derived from district functions.

12. Organizational expression of functional assignment

Fearing local excesses, implementing regulations have in the past narrowed the discretion of regional governments to organize themselves in line with the functions they must discharge. A new regulation (GR 41/2007) has just been issued, but it is not clear if this new guidance will work to effectively balance the values of uniformity/economy (stressed by the centre) with local tailoring to the specific work load and characteristics of the area and service users.

The framework for decentralization is entirely lacking in provisions to reorganize ministries that have shed functions or are shifting roles. Some pressure to reorganize has been exerted by the Ministry of State for Administrative Reform (Menpan). A limited form of reorganization has been undertaken to manage the regional government end of decentralization. However, the remaining organizations in the ministries continues to be bloated beyond their functions, spurred by easy access to deconcentration and special funds (DAK).

Of equal concern is the lack of clarity in the various regulations being drafted on the role of the province and governor. Some choices can make the scope of the implementing units complicated, hindering accountability.

- ☞ Additional efforts will be needed to guide central level reorganization as deconcentration shrinks and strategic support to regional government is intensified.

- ☞ The role of the provincial level will need clarity to understand how the decentralized (devolved/autonomous) units relate to any central government extensions (deconcentration).

- ☞ The right of ministries to establish deconcentrated units and their obligations to use the governor as a representative of the central government will need to be clarified.

- ☞ An effort needs to be made to ensure that regional governments are given incentives/directives for efficient regional organizations, encouraging the tailoring of regional organizations to the functional load and local characteristics.

13. Functional assignment in special regions

Indonesia has established specific laws giving special status to four provincial regions, with the most "autonomous" in principle being Papua (Law 21/2001) and Nanggroe Aceh Darussalam (Law 11/2006). The special aspects of the regions, in terms of functions, does not shine through the thicket of provisions in the autonomy laws. Moreover, in places it seems that the provisions for special autonomy status prevail, but in other parts of the legal system (or official views) it appears that the regular system (Law 32/2004 and GR 39/2007) prevails.

Aceh, with central government support, is taking the initiative to lend clarity to the framework though a combination of government regulation (lead by MoHA, on the role of the central government in Aceh) and sectoral based Qanun that apportion functions between the provincial and district/city level. Papua lags in this respect, and awaits an evaluation of its autonomy status before any further legal changes are made.

- ☞ The special autonomy laws need to be examined to see if there is clarity in what provisions of Law 32/2004 prevail and which provisions of the autonomy laws override or add to these provisions. Clarity should also be evident on the division of functions between the provincial level and lower levels, or how this is to be attained.
- ☞ Discussion needs to be widened on what justifiably promotes national unity in functional assignment, and specifically what the role of the central government will be in setting standards for any functions given to regions, regardless of the autonomy regime in place.
- ☞ The central government should pay particular attention to Aceh's efforts to allocate functions between the provincial and district/city levels (and to agree on a forum for ongoing consultation for central level policies affecting Aceh), to see if the processes and legal architecture may be useful models for other provinces as well.
- ☞ In view of the importance of functional assignment, the evaluation of the autonomy experience in Papua should pay attention to the role of the MPR and the evolving territorial divisions.

14. Territorial divisions' impact on functional assignment

Territorial reform, or at least a more purposeful pattern of territorial divisions, is being attempted as part of the revision of Law 32/2004. There is some concern that several new or proposed regions will not able to shoulder the functions associated with the level of districts/cities. Some discussion has been noted on the possibility of introducing population limits to guard against insufficient capacity to undertake functions, but it is not clear how much support this option has among policy makers.

- ☞ Serious consideration should be given to placing population limits on the size of districts/cities to avoid regions that cannot cope with the functions that have been uniformly given to all districts/cities.

- ☞ For regions with special autonomy, consideration should be given to empowering the region to arrange its own territorial divisions and to match functions to the scale/hierarchy selected.

15. Process of functional assignment

Counting the current effort to revise Law 32/2004, there have been three rounds of reform in regional autonomy over the last ten years. Despite some differences in the "process" based approaches used in these rounds, the main features of the processes have persisted. Indonesian and international experiences and expertise remain underutilized, and the process of consultation remains poorly managed. Moreover, the circle of Indonesian experts that can contribute to functional assignment issues remains small and not well connected – there is no policy network in this field. The few experts recruited in the government policy development effort do not seem able or inclined to bridge the government policy effort to their own outreach/academic work.

- ☞ A more relaxed and systematic pace of policy review and policy development is required, with greater specificity, preparation of empirical information (Indonesian and international) and policy options considered.

- ☞ Consideration should be given to managing the functional assignment policy process through a special task force of government, or a special commission that can act more intensively and flexibly in obtaining expert inputs and participation of stakeholders. Alternatively, a number of possible actors (beyond the narrow expert group presently used) should be encouraged to undertake efforts on certain areas of revision and contribute these to the government.

- ☞ A longer term strategy is required to strengthen the policy network on issues of regional autonomy, particularly on politico-administrative issues that have proven problematic (functional assignment, role of levels of government, dual roles of regional heads, supervision, regional splitting, special regional autonomy). Target groups could include academic, research and regional government institutions.

IMPLICATIONS FOR DONORS

Donors have supported, and are supporting, practically all of the reform work described under the above fifteen themes related to functional assignment. The support has waxed and waned over the three rounds of reform, and has yielded some success at times, and little take up in other instances. This is par for the course in technical assistance. Having said that, experience in this broad field of reform suggests that donor support could have been more effective at times had it been more constant, or pervasive (e.g., acting in concert through sectoral projects/technical assistance, across donors), or offered in a different way. In particular, it suggests that a shift in the approach may be needed, where a long term investment in Indonesian actors that could form a policy network is made, avoiding the

shortcomings that direct donor technical assistance poses in terms of acceptability and sustainability.

Donors have shown interest in supporting indigenous policy networks in the past, but have not scored many successes, primarily due to the short term orientation and lack of learning from past efforts in Indonesia or elsewhere. While the notion of using intermediaries to support policy is increasingly accepted among donors, and to some extent employed, it is not clear if there is appetite among donors for a longer term commitment that would be needed to support such networks.

Indonesian academics and other stakeholders appear to be fairly receptive to the idea of establishing policy networks in this field. Acceptance and participation should however not be taken for granted; sometimes the interest is very much as individuals rather than institutional, and it is conditional on a particular kind of relationship to donors. The desirability of developing these networks among MoHA and other GoI organizations is also an issue. The selective use of individuals from favoured academic institutions, their participation preferably funded by donors in a hands-off approach, may be the desired mode for using intermediaries. Despite these cautions, a dialogue on this longer term perspective is needed to make progress in this policy field.

RINGKASAN EKSEKUTIF

Pembagian urusan di Indonesia tetap mengemukakan berbagai tantangan – sebagian yang berasal dari ronde revisi terakhir, yaitu selama 2004-2007. Kesadaran in merupakan latar belak keputusan Pemerintah Indonesia (PI) untuk menerima usul para donor untuk melaksanakan suatu studi yang bertujuan mendalami status dalam bidang kebijakan ini; menyangkut kemajuan dan tantangan, dan juga peluang untuk memperkokoh dan membuat more stabil dan berkelanjutan kerangka pembagian urusan. Studi dimaksudkan untuk membantu PI dalam menjajaki berbagai arahan baru reformasi di bidang kebijakan pembagian urusan.

Istilah pembagian urusan dalam studi ini berkaitan konsep yang cukup luas, mencakup arsitektur peranan antar tingkat pemerintahan dan struktur/rumusan spesifik pembagian urusan. Kekuatan sutau kerangka pembagian urusan dinilai dari elemen yang dipilih untuk membangun kerangka tersebut dan kecocokan elemen agar terbangun suatu arsitektur yang kuat dan konsisten.

Dalam menilai pembagian urusan, studi ini memanfaatkan dari pandangan para akademisi dan stakeholder lain, baik menyangkut soal substantif maupun pendekatan pengembangan kapasitas yang diperlukan untuk membangun jaringan kebijakan yang tepat masa depan. Kemungkinan untuk peranan para donor juga diidentifikasi, dan dalam ringkasan eksekutif ini ditempatkan di bagian terakhir.

TEMUAN POKOK STUDI

Pengembangan kerangka pembagian urusan sejak era Orde Baru sampai dengan sekarang ini telah melalui dua ronde reformasi dan menunjukan bahwa kemajuan bukan suatu proses yang sederhana dengan prestasi yang terus meningkat. Terlihat dari aspek positif, arsitektur sekarang ini adalah lebih terjabarkan daripada banyak negara maju atau negara berkembang lain. Arsitektur itu mencakup ketiga asas pemerintahan (biasannya dikenal sebagai "*modes of decentralization*"), yaitu desentralisasi (*devolution*), tugas pembantuan (*agency*), dan tugas dekonsentrasi (*deconcentration*). Lagipula, daerah kabupaten/kota ditunjukan sebagai tingkat pemerintahan yang bertanggungjwab atas kebanyakan pelayanan dasar (*general purpose local government*). Arsitektur pembagian urusan juga menuju kejelasan atas apa yang harus dilaksanakan oleh pemrintahan daerah dan tingkat prestasi minimal yang harus dicapai (standard pelayanan minimal - SPM). Perlu juga diakui bahwa, selama dua ronde reformasi, konsultasi antar organisasi pusat dan pemerintah daerah juga menjadi lebih intensif.

Namun demikian, kemajuan sedikit saja terlihat dari segi kejelasan dan peraturan perundang-undangan yang berkelanjutan. Salah satu indikator kelemahan ini adalah penyimpangan instansi sektoral dari UU 32/2004 tentang pemerintahan daerah dan PP 38/2007 tentang pembagian urusan. Kelemahan besar sampai saat ini adalah kurangnya perhatian yang diberikan kepada aspek hukum dan aspek lain yang merupakan arsitektur pembagian urusan. Arsitektur hukum dan substantif atas pembagian urusan merupakan landasan bagi banyak aspek lain dalam hubungan antar pusat dan daerah. Arsitektur tersebut berkaitan kerangka hukum yang lintas sektoral, penataan daerah, peranan antar tingkat pemerintahan, struktur organisasi, pendanaan dan aspek pemerintahan lain. Banyak pekerjaan yang tetap

menghadapi pengambil kebijakan dalam upaya membenahi pembagian urusan, sebagaimana diuraikan dalam limabelas tema di bawah.

1. Arsitektur umum

Kerangka pembagian urusan mengalami definisi yang kurang konsisten, mulai dari Undang-Undang Dasar (menyangkut tugas pembantuan) sampai undang-undang dan peraturan pemerintah lanjutan. Rancangan peraturan berkaitan tugas pembantuan dan tugas dekonsentrasi, yang sedang digarap, akan menambah kerancuan, dengan implikasi buruk atas sistem keuangan daerah, pengorganisasian (khususnya menyangkut peranan berganda gubernur); semuanya bermuara pada akibat serious akan prinsip efisiensi dan pertanggungjawaban.

- ☞ Suatu amendemen konstitusional diperlukan untuk mendefinisikan dengan jelas asas pemerintahan, prinsip pokok desentralisasi, dan hirarki/peranan antar tingkat pemerintahan; arahan ini nantinya agar tercermin dalam undang-undang yang terserasikan.

- ☞ Rancangan peraturan tentang tugas dekonsentrasi/pembantuan sebaiknya ditunda sampai amendemen konstitusional (atau paling tidak undang-undang pemeritahan daerah) diselesaikan.

2. Kerangka hukum/mekanisme penyesuaian

Dalam kerangka desentralisasi tahun 1999 dan 2004, Indonesia mengunakan undang-undang pokok (*organic*) untuk menguraikan prinsip pembagian urusan dan menempatkan berbagai urusan umum. Sebuah peraturan pemerintah omnibus kemudian digunakan untuk memberikan urusan secara rinci (PP 38/2007 sedang berlaku). PI kurang menjamin konsistensi antar UU Pemda dengan UU sektoral, walaupun kelihatan instansi sektoral merasa milik PP 38/2007 (melalui berita acara masing-masing).

Arsitektur mengalami juga kekurangan mekanism yang jelas dan rinci untuk menyesuaikan pembagian urusan secara terus-menurus. Mekanism “urusan sisa” yang diperkenalkan dalam PP 38/2007 kurang menjanjikan.

- ☞ Mengingat kesulitan yang dialami berkaitan kerangka hukum, PI perlu memperjelaskan kerangka hukum pembagian urusan yang akan dianut masa depan. Tahap menuju ke arsitektur baru perlu juga dipetakan (misalnya tentang urutan penyesuaian; apakah PP terlebih dahulu atau UU Pemda? Atau langsung disesuaikan UU/PP sektoral?).

- ☞ Konflik hukum atas pembagian urusan perlu dipetakan juga, dengan mengandalkan pada pendekatan dari bawah (pemerintah daerah), dan jugas yang dimotori oleh DDN/instansi sektoral.

- ☞ DDN perlu menjalin kerjasama erat dengan pihak/badan nasional yang dapat mendukung upaya harmonisasi instrumen hukum sektoral.

- ☞ Agar dikembangkan mekanisme untuk menangani urusan yang belum terdaftarkan, dan urusan yang perlu dialihkan antar tingkat pemerintahan secara dinamis.

3. Peranan gubernur dan propinsi

Menyimpang jauh dari pengumuman awal pemerintah, revisi pembagian urusan tidak memperjelaskan peranan (dilema) propinsi dan gubernur (sebagai wakil pusat), dan pasti tidak memperkuat peranan gubernur tersebut. Melainkan, sebagai dampak PP 38/2007, peranan pemerintah daerah propinsi yang menonjol, dengan urusan berkaitan kabupaten/kota yang mencakup supervisi, monitoring, evaluasi, pengendalian, koordinasi, perencanaan, dan perselisihan konflik. Namun, sedang dipersiapkan rancangan peraturan tentang peranan gubernur yang kelihatan akan bertabrak dengan PP 38/2007.

- ☞ Visi yang jelas diperlukan atas peranan propinsi/gubernur, yang mempertimbangkan kelebihan/kekurangan dari semua pilihan pokok berkaitan asas pemerintahan yang digunakan (lihat Lampiran 5).

4. Kesesuaian sistem keuangan dengan urusan

Prinsip "uang mengikuti fungsi" diakui dalam UU Pemda namun diabaikan dalam praktek. Dana dekonsentrasi terus meningkat untuk mendanai urusan daerah. Pengalihan dana dekonsentrasi pada DAK belum terlihat. Hubungan besaran DAU and DAK dengan beban urusan kurang diperhatikan. Belum dihitung implikasi biaya berkatian pencapaian SPM, dan belum diintegrasikan standar analisa biaya berkaitan SPM dalam mekansime pendanaan daerah. Pendekatan pendanaan donor yang off-budget, dan cara menseleksi daerah penerima, membuat situasi lebih parah lagi dalam upaya menimbangi urusan dengan pendanaan. Desakan politis untuk membekukan pengeluaran anggaran juga mempersulit perencanaan/penganggaran daerah.

- ☞ Kerangka hukum perlu menjadi lebih rinci dan tegas tentang cara menimbangi urusan dengan sumber keuangan.
- ☞ Upaya yang lebih intensif diperlukan untuk menhitung biaya yang diperlukan oleh pemerintah daerah dalam pelayanan dasar dan kebutuhan biaya perlu tercermin dalam mekanisme keuangan daerah.
- ☞ Proyek donor perlu mengalokasikan sumber daya (keuangan, bantuan teknis) sesuai dengan pembagian urusan pemerintahan. Kecuali respons bantuan mendadak, pendanaan donor untuk proyek fisik sebaiknya hanya diberikan on-budget (disetujui PI) dan hanya sebagai pilot yang dimaksudkan untuk mencontohi mekanisme keuangan pusat-daerah agar kaitannya antar urusan dan sumber keuangan diperkuat.

5. Kriteria untuk pembagian urusan

Pada umumnya, kriteria yang digunakan untuk menghasilkan PP 38/2007 cukup baik (eksternalitas, efisiensi, pertanggungjawaban), walaupun "kapasitas administratif" tidak nampak. Namun, penjelasannya kurang meyakingkan dan aplikasinya sebenarnya kurang transparan.

- ☞ Sebaiknya kriteria disesuaikan agar mencakup "kapasitas administratif" dan kriteria "pertanggungjawaban" diperjelaskan.

- ☞ Dalam penerapan kriteria masa depan, sebaiknya pembahasan didokumentasikan agar proses manjadi terbuka.

6. Urusan konkuren

Urusan konkuren di Indonesia (baru-baru ini panggilannya disesuaikan menjadi "*urusan bersama*") kelihatan berarti bahwa selain dari serangkaian urusan esklusif pemerintah, urusan lain dibagi antar tingkat pemerintahan. Pengertian ini berbeda dari praktek internasional dan cenderung menimbulkan kebingunan. Lagipula PP 38/2007 memuat beberapa urusan yang persis sama rumusannya baik untuk tingkat propinsi maupun kabupaten/kota. Istilah konkuren kelihatan tidak menyentuh situasi ini (dalam arti konkuren di Indonesia). Oleh karena itu, sulit diketahui apakah kesamaan rumusan in merupakan suatu kesalahan atau dilakukan dengan maksud jelas – dan dengan justifikasi mana kalau memang dimaksudkan.

Dua pilihan dapat dipertimbangkan:

- ☞ Pilihan A: Memperkenalkan urusan konkuren yang konsisten dengan praktek internasional, apabila diperlukan.
- ☞ Pilihan B: Apabila urusan konkuren, dalam arti internasional, tidak diperlukan, menghapus konsep urusan konkuren/urusan bersama.

7. Rumusan urusan

Kekurangan rumusan urusan terlihat dalam UU Pemda dan khususnya dalam PP 38/2007. Kekurangan ini mencerminkan jebakan yang sering terlihat di negara lain, di mana istilah "skala" digunakan untuk menjelaskan sifat urusan, atau pembagian urusan berasal dari mandat organisasi (tupoksi). Lagipula, rumusan kurang dikaitkan dengan kerangka/arsitektur urusan, yaitu asas pemerintahan, konstruksi *general competence* dibandingkan *ultra vires*, dan urusan wajib dibandingkan urusan pilihan.

- ☞ Agar dipertimbangkan upaya meningkatkan kapasitas individu/unit di DDN untuk menyebarluaskan praktek yang baik dalam pembagian urusan (khususnya pada staf di instansi sektoral).

8. Urusan wajib/standar pelayanan minimal

Urusan wajib (UW) dan SPM diperkenalkan dalam kerangka hukum tahun 1999 dan telah mulai dimasyarakatkan. Ketentuan tentang SPM sekarang telah terintegrasikan dalam kerangka hukum (tentang proses perencanaan, penganggaran, monitoring dan evaluasi, laporan pertanggungjawaban), dan langkah-langkah sedang diambil untuk membuat SPM operasional. Namun demikian, persiapan dan rancangan daftar SPM sektoral menunjukan pengertian yang berbeda-beda antar instansi sektoral. Situasi ini berarti bahwa masih perlu kesempatan untuk menyatukan persepsi atas peranan pemerintahan daerah dan prestasi kinerja yang diharapkan dari daerah. Konsensus perlu dicapai dalam soal ruang lingkup SPM; kaitannya dengan UW (apakah semua UW perlu SPM?); pembedaan UW dari urusan pilihan (apakah urusan pilihan perlu dibarengi dengan SPM?); yang mana UW betul diharuskan mengingat daftar panjang urusan dalam PP 38/2007.

- ☞ Kelihatan konsep urusan wajib/SPM perlu dibenahi agar instansi sektoral dapat menyusun usulan UW/SPM yang kuat, yaitu dapat diukur/dilaporkan, akan sesuai kapasitas setempat, dan dapat dijangkau.

- ☞ Tujuan instansi sektoral untuk menjalankan upaya pengembangan kapasitas di daerah wajar didukung oleh donor. Perhatian perlu juga diberikan pada instansi sektoral sendiri.

- ☞ Pembentukan formil kelompok kerja SPM mungkin lebih layak sekarang ini setelah penyesuaian *Permanent Secretariat/Joint Working Group for Decentralization*. Pokja ini dapat membantu donor mendukung PI dan pemerintahan daerah sesuai prinsip harmonisasi dan kesesuaian (*alignment*).

9. Urusan pilihan/hak inisiatif

Urusan pilihan diperkenalkan dalam UU 32/2004, dan diulang lagi dengan rumusan umum dan kabur, dalam PP 38/2007; urusan ini harus dirinci dan diatur dalam perturan daerah paling lama satu tahun setelah dikeluarkan PP 38/2007; pemerintahan daerah terpaksa membuat daftar urusan itu ekplisit secara serentak. Banya pertanyaan yang muncul dengan adanya konsep urusan pilihan, khususnya pembedaannya dengan urusan wajib. Kelihatan bahwa yang dimaksud dengan urusan pilihan jauh berbeda dengan arti yang dianut secara internasional. Konsep urusan pilihan dikembangkan di Indonesia untuk membatasi pengorganisasian pemerintah daerah, bukan sebagai alat memberikan daerah "hak inisiatif" dalam urusannya.

- ☞ Konsep urusan pilihan sebaiknya tidak digunakan mengingat konsep ini berkaitan soal pengorganisasian, bukan soal urusan.

- ☞ Urusan pilihan dapat dikembangkan melalui suatu konsep yang sesuai arti internasional, di mana tujuannya adalah untuk memperkenalkan hak inisiatif daerah.

10. Urusan kecamatan

Berbagai kajian terakhir ini menunjukan bahwa penyesuaian peranan Camat/kecamatan memperlemah struktur ini, dan bahwa pemerintahan daerah kabupaten/kota pada umumnya belum memberdayakan tingkat administratif (dekonsentrasi) ini. Dalam stakeholders terdapat konsensus luas bahwa tingkat kecamatan seharusnya dimanfaatkan lebih baik, khususnya berkaitan pelayanan dasar. Berkaitan maksud ini, diskusi telah mulai atas pilihan pokok; memberdayakan kecamatan dalam kerangka yang telah ada, ataukah melalui intervensi pusat.

- ☞ Agar penjajakan peranan kecamatan bermuara pada revisi UU 32/2004, dengan mempertimbangkan dua pilihan pokok secara tuntas; apakah kabupaten/kota dapat dipedomani untuk memaksimalkan tingkat kecamatan, ataukah apakah diperlukan penetapan daftar urusan kecamatan (secara rinci) oleh pemerintah pusat.

- ☞ Apabila pemerintah mempertahankan kecamatan sebagai perpanjangan kabupaten/kota (dalam mengatur mandatnya secara persis), sebaiknya kriteria "jumlah/usia kecamatan" dihapus dalam pertimbangan untuk proses pemekaran kabupaten/kota.

11. Urusan desa

UUD tidak menyinggung sifat otonomi desa, dan UU 32/2004 dan PP 72/2005 mengatur agar kabupaten/kota menugaskan desa. Namun, sedikit saja kemajuan dalam penugasan ini, walaupun DDN telah mengeluarkan peraturannya dalam hal ini (yang kelihatan kurang menyentuh/mengigit). Sebuah jaringan LSM telah memfasilitasi pengembangan kebijakan baru berkaitan peranan desa, namun sikap DDN terhadap usulan ini kurang jelas. Usulan inipun perlu diperjelaskan dan dijabarkan terus. Akhirnya, pilihan kebijakan dalam pemberdayaan desa mirip pilihan berkaitan kebijakan untuk tingkat kecamatan.

- ☞ Pilihan A: Mempertahankan pendekatan di mana kabupaten memainkan peranan utama dalam mengatur kerangka pemerintahan desa (termasuk penugasan dari kabupaten kepada desa), dengan upaya membuat sistem ini berjalan dengan lebih baik.

- ☞ Pilihan B: Menempatkan desa sebagai tingkat otonom ketiga, sesuai visi yang dikembangkan oleh PMD/FPPD, di mana desa diberikan (oleh pemerintah/DPR) urusan rumah tangga yang jelas dan bermakna, dengan kemungkinan kabupaten dapat juga menugaskan dari urusan kabupaten sendiri.

12. Kesesuaian organisasi dengan urusan

Peraturan tentang organisasi daerah yang diterapkan selama dasawarsa terakhir cenderung mempersempit peluang untuk menyesuaikan organisasi dengan beban urusan. Belum jelas apakah versi yang baru (PP 41/2007) akan menimbangi dengan baik nilai keseragaman/ekonomis (yang ditekankan oleh pemerintah pusat) dengan nilai menyesuaikan organisasi dengan beban kerja urusan dan karakteristik setempat.

Kerangka desentralisasi tidak menyinggung isu penyesuaian organisasi instansi sektoral untuk mencerminkan penyerahan urusan dan penyesuaian peranan. Dorongan untuk menyesuaikan organisasi berasal dari Menpan. Namun, sampai saat ini, penyesuaian yang menonjol adalah yang berkaitan pengelolaan kebijakan desentralisasi yang menyentuh pemerintahan daerah. Organisasi instansi pusat cenderung lebih besar daripada beban urusannya, mungkin sebagai akibat dari akses yang mudah pada dana dekonsentrasi dan DAK.

Aspek pengorganisasian lain yang penting juga adalah kerancuan akan peranan propinsi dibandingkan peranan gubernur sebagai wakil pemerintah. Pilihan asas pemerintahan dapat menimbulkan kompleksitas yang mempersulit akuntabilitas.

- ☞ Upaya lebih intensif diperlukan untuk mencapai penyesuaian organisasi instansi sektoral sejalan dengan penurunan kegiatan dekonsentrasi dan peningkatan dukungan strategis pada pemerintah daerah.

- ☞ Peranan propinsi perlu diklarifikasi dalam hal hubungan unit desentralisasi dengan unit/wakil dekonsentrasi pemerintah.

- ☞ Perlu klarifikasi hak instansi sektoral untuk membentuk unit dekonsentrasi dan kewajiban mengunakan lembaga gubernur (sebagai wakil pemerintah).

- ☞ Perlu dijamin bahwa pemerintah daerah diberikan insentif/arahan untuk membentuk organisasi yang sesuai beban urusan dan karakteristik setempat.

13. Pembagian urusan di daerah otonomi khusus

Indonesia membentuk empat daerah propinsi dengan status khusus, di antaranya dua dengan otonomi yang lebih dalam (khusus) dibandingkan daerah lain; Papua (UU 21/2001) dan Nanggroe Aceh Darussalam (UU 11/2006). Kekhususan daerah ini, berkaitan urusan, kurang jelas dalam undang-undang otonomi khusus. Kadang-kadang kelihatan bahwa ketentuan dalam peraturan perundang-undangan otonomi khusus berlaku, dan kadang-kadang kelihatan bahwa sistem biasa (UU 32/2004 dan PP 38/2007) tetap berlaku.

Aceh, didukung oleh pemerintah, sedang mencoba membuat pembagian urusan lebih jelas, mulai dengan suatu peraturan pemerintah yang mengatur urusan pusat yang berlaku di Aceh, disusul dengan serangkaian Qanun sektoral Aceh yang membagi urusan (selain yang dipegang oleh pemerintah) antar NAD dan kabupaten/kotanya. Papua belum sampai tahap klarifikasi/penyesuaian kerangka hukum; proses evaluasi otonomi Papua akan dilalui terlebih dahulu.

- ☞ Undang-undang otonomi khusus perlu dikaji untuk menilai apakah jelas ketentuan dalam UU 32/2004 yang tetap berlaku dan ketentuan mana dalam undang-undang otonomi khusus lebih kuat atau menambah hal baru. Kajian ini juga perlu menilai kejelasan atas pembagian urusan antar tingkat propinsi dan tingkat bawahannya, atau mekanisme untuk mencapai pembagian tersebut.

- ☞ Diperlukan memperluas diskusi tentang aspek pembagian urusan yang dapat digunakan untuk mempertahankan persatuan nasional, dan secara khusus peranan pemerintah dalam menentukan standar berkaitan urusan untuk rezim otonomi daerah apapun.

- ☞ Agar pemerintah memperhatikan upaya Aceh dalam pembagian urusan antar NAD dan kabupaten/kota (dan mekanisme konsultasi atas kebijakan pemerintah yang mempengaruhi Aceh), untuk menilai sejauhmana proses dan arsitektur hukum dapat menjadi model bagi propinsi lain.

- ☞ Mengingat pentingnya pembagian urusan, evaluasi otonomi Papua perlu menekankan peranan MPR dan perkembangan dalam penataan daerah.

14. Dampak penataan daerah pada pembagian urusan

Penataan daerah merupakan salah satu aspek yang ditangani dalam revisi UU 32/2004. Konsern atas kemampuan daerah baru/calon untuk memikul beban urusan telah muncul, dan kemungkinan menetapkan batas ambang jumlah penduduk pernah dikemukakan. Namun belum jelas sejauh mana kemungkinan ini diterima oleh pengambil kebijakan.

- ☞ Agar dipertimbangkan batas ambang jumlah penduduk kabupaten/kota untuk menghindari daerah yang kurang mampu memikul urusan yang diberikan secara seragam kepada semua daerah.

- ☞ Untuk daerah otonomi khusus, agar dipertimbangkan memberikan wewenang untuk mengatur penataan daerah agar mudah menimbangi urusan dengan skala daerah yang dihasilkan.

15. Proses pembagian urusan

Termasuk upaya kini untuk merevisi UU 32/2004, telah diupayakan tiga proses revisi selama dasawarsa terakhir ini. Proses terakhir ini berbeda dalam beberapa aspek, namun beberapa aspek kunci tetap sama; pengalaman dan keahlian Indonesia dan internasional kurang dimanfaatkan, dan proses konsultasi kurang dikelola dengan baik. Lagipula, ahli Indonesia yang dapat menyumbangkan kepada isu pembagian urusan tetap sedikit dan kurang berfungsi sebagai suatu jaringan. Ahli yang digunakan untuk mendukung proses pengembangan kurang menjembatani upaya ini dengan pekerjaan akademis/diseminasi rutin.

- ☞ Diperlukan proses perumusan kebijakan yang lebih sistematis dan kurang buru-buru, di mana kegiatan pengembangan gagasan/pembahasan akan lebih spesifik, dipersiapkan dengan leibh baik dengan informasi empiris (dari Indonesia dan negara lain) dan dengan mendalami kemungkinan kebijakan secara tuntas.

- ☞ Agar dipertimbangkan pengelolaan proses pembagian urusan melalui komisi pemerintah, atau komisi khusus nonpemerintah yang dapat bekerja secara lebih intensif dan lebih leluasa dalam memperoleh masukan dan mendorong partisipasi. Kemungkinan lain yang dapat dipertimbangkan adalah pendekatan di mana beberapa aktor lain didorong untuk mempersiapkan masukan yang matang dan siap digunakan oleh pemerintah.

- ☞ Strategi berjanka panjang diperlukan untuk memperkuat jaringan kebijakan akan isu otonomi daerah, khususnya tentang isu politis/administratif yang ternyata sulit dipecahkan (pembagian urusan, peranan berbagai tingkatan pemerintahan, peranan berganda kepala daerah, supervisi daerah, pemekaran daerah, ononomi khusus). Kelompok sasaran dapat termasuk akademisi, institusi penelitian dan organisasi yang mewakili pemerintahan daerah.

IMPLIKASI BAGI PARA DONOR

Donor telah, atu sedang, mendukung reformasi dalam seluruh tema yang terkait dengan pembagian urusan yang dihadapi dalam laporan ini. Intensitas dukungan tersebut meningkat dan menurun selama ketiga ronde reformasi, dengan hasil yang memuaskan dan juga hasil yang kurang dimanfaatkan oleh PI; dinamika ini biasa saja dalam konteks bantuan teknis.

Pengalaman dalam bidang kebijakan pembagian urusan menimbulkan kesimpulan bahwa dukungan donor mungkin akan lebih berguna apabila diadakan secara terus-menurus, apabila ruang lingkupnya lebih luas (misalnya bertindak lintas-sektoral dan lintas proyek donor), dan apabila menganut pendekatan yang berbeda. Secara khusus, dapat dipetik bahwa diperlukan pendekatan jangka panjang yang menekankan bantuan teknis kepada pihak Indonesia yang akhirnya harus merupakan jaringan kebijakan bagi pemerintah, agar dihindari kekurangan yang sering kali dialami bantuan teknis dari donor – "penerimaannya" dan berkelanjutannya.

Para donor telah mendukung jaringan kebijakan namun belum secara intensif. Keberhasilannya agak terbatas. Belum terlihat upaya donor untuk belajar dari sukses/kegagalan di Indonesia dan di negara lain dalam upaya membangun jaringan kebijakan. Belum jelas apakah para donor bersedia untuk memberikan komitmen jangka panjang yang seiring dengan tantangan yang dihadapi dalam membangun jaringan kebijakan dalam bidang "tata pemerintahan."

Para akademisi dan stakeholders lain ingin membangun/memperkuat jaringan kebijakan berkaitan isu "tata pemerintahan". Namun, pihak ini belum tentu bersedia menerima dukungan dari donor. Seringkali keinginan untuk didukung berdasarkan aspirasi sebagai individu, bukan institusi, dan tergantung pada jenis hubungan yang dapat dijalin dengan donor.

Keinginan dalam DDN, dan organisasi pusat secara umum, juga harus dimengerti dengan baik. Seringkali, jaringan yang dimaksud oleh DDN adalah penggunaan ad hoc beberapa individu yang favorit, bukan hubungan yang sistematis dengan berbagai institusi yang berperan dalam topik yang relevan. Lagipula, dukungan yang dicari dari donor mungkin terbatas pada aspek keuangan untuk mempekerjakan individu tersebut. Namun demikian, wajar apabila dialog tentang prospek jaringan kebijakan dalam tata pemerintahan diintesifikasi.

INTRODUCTION

1. Overall study context

In Indonesia, as in many other countries,[1] experiences with decentralization indicate that assigning functions between levels of government is a difficult tasks. Already two rounds of framework changes (1999 and 2004) have been undertaken to clarify roles and responsibilities, and a third effort is underway. Though the process may be arduous, a well designed and conducted assignment of governmental functions between levels of government is critical to the success of decentralized governance. In undertaking this third effort, Indonesia can increase its chances of success by learning from its previous reforms and by taking note of other country experiences.

Law 22/1999 on regional government and Government Regulation 25/2000 introduced some bold changes in "who does what" in the context of sweeping decentralization and broader reforms. But this new decentralization framework was hampered by shortcomings in the overall functional assignment architecture, in terms of structure and elaboration of components. Regional actors were also not sufficiently prepared to work with its bold new design, and tensions between levels of government quickly developed due to the misunderstandings and gaps in the framework. Conflicts over fishing, forestry, education and many other functions arose,[2] feeding into the pressure to revise the decentralization framework law – an effort that has only recently culminated in Government Regulation 38/2007 on functional assignment[3] as the elaboration of the provisions of Law 32/2004 on regional government.

Reviews of the 2004 framework revisions undertaken by government and donor supported projects reveal that considerable challenges remain in functional assignment - some introduced by the new provisions themselves.[4] Recognizing that this revision has not fully addressed the gaps and shortcomings of the inital framework, the government of Indonesia (GoI) has acccepted the offer from donors to undertake a study to delve more deeply into the progress made to date, the challenges that remain, and the opportunities to fashion a more robust, effective and stable assignment of functions (see Terms of Reference for the study in Appendix 1). The results of the study should be helpful to the GoI and to donors who wish to support continued efforts of the GoI in this field.

[1] East Asia Ministerial Conference on Forest Law Enforcement and Governance in Bali, Indonesia (2001) 11-13 September 2001, Ministerial Declaration; pg. 1.
[2] See for instance, Dirhamsyah, D. (2006). Indonesian legislative framework for coastal resources management: A critical review and recommendation, *Ocean and Coastal Management*, Volume 49, Issue 1-2: 68-92.
[3] Peraturan Pemerintah Nomor 38 Tahun 2007 tentang Pembagian Urusan Pemerintahan antara Pemerintah, Pemerintahan Daerah Provinsi dan Pemerintahan Daerah Kabupaten/Kota (Government Regulation Number 38 – 2007 regarding the division of functions between central government, provincial government and district/city government).
[4] See DRSP (2006). Stock Taking on Indonesia's Recent Decentralization Reforms – Main Report, prepared for the Donor Working Group on Decentralization.

This study was guided by the GTZ staff of the Advisory Support Services for Decentralization (ASSD),[5] and is funded by the Decentralization Support Facility (DSF); the study falls within the DSF focal area "Strengthening the Intergovernmental Framework." It was conducted in close cooperation with key counterpart agencies; Ministry of Home Affairs (MoHA), Bappenas, and the Ministry of State for Administrative Reform (MenPAN), to ensure relevance and to support capacity development in these organizations on functional assignment. Specifically, the study provides evidence of the robustness and shortcomings of the present architecture of functional assignment, based on both policy and regulatory texts as well as stakeholder responses (see Appendix 2 for list of key informants tapped for the study). The analysis feeds in part into the current Law 32/2004 revision process, expected to stretch into well into 2008. While this is the third revision in Indonesia's reform period, it is quite likely that revisions will be incremental and incomplete. Hence the study also provides a longer term perspective for effecting a greater degree of robustness and harmonization of the policy and legal framework, and it promotes harmonized multi-donor interventions in support of these longer term objectives.

The study entailed several discussions with the government appointed team concerned with the revision of Law 32/2004. An inception report was provided to the GoI in October 2007. A presentation was made to donors in the DSF in mid-November, and a separate one to relevant Indonesian stakeholders and selected donors in late November. An opportunity to comment on the draft report was provided in late December. This draft was used in the context of ASSD discussions on the revision of Law 32/2004 and specifically the issue of minimum service standards in March 2008. It was also used by USAID-DRSP to inform its work with key government counterparts on the issue of territorial reform. Moreover Bappenas staff have indicated their intention to work with the draft report in exercising their role in support of regional autonomy. This final draft will be disseminated to a wide range of government, donors and stakeholders.

2. Scope and methodology of the study

The study reviews the development of functional assignment, from pre-decentralization (centered on Law 5/1974 on Main Features of Regional Government) through the initial reforms of 1999, and the more recent revisions, culminating in Government Regulation 38/2007 (the latter elaborates the revisions made in the framework Law 32/2004).

Revenue assignment is not treated (this has a separate treatment in Law 34/2000 on regional taxes and levies) but reference to the fit between functions and financing will be made. The term functional assignment is used for the study as this is a broader concept than "expenditure assignment"; the term functional assignment better captures the overall architecture of roles and types of functions between levels of government, and more clearly encompasses government activities that may not register significant expenditures but are yet critical to governance (e.g. regulating commerce).

[5] A cooperation between the Federal Ministry for Economic Cooperation and Development (BMZ), implemented by GTZ, and the Ministry of Home Affairs. GTZ provides support to MoHA and other bodies at national level in initiating and institutionalizing participatory and transparent policy-making in the field of decentralization and local governance. It has provided long standing support to GoI in the field of functional assignment.

Functional assignment encompasses a number of elements, and its soundness needs to be seen in the choice of specific elements and fit between the chosen elements (its overall architecture). This study examines the overall architecture and its key elements:

1. Overall architecture (modes, roles, structure)
2. Legal framework and mechanism for ongoing adjustment
3. Role of the governor and provincial government
4. Finance's fit with functions
5. Criteria for assigning functions
6. Concept of concurrent functions
7. Formulation of functions
8. Obligatory functions/minimum service standards
9. Discretionary functions/right of initiative
10. Kecamatan level functions
11. Village level functions
12. Organizational expression of functional assignment
13. Functional assignment in special regions
14. Relationship of functional assignment to territorial divisions
15. Process of functional assignment and capacity development required

Based on the findings related to the status of the framework and processes of policy development adopted, capacity development measures that will work to strengthen policy making in this area are suggested. Because of the complexity of functional assignment, it is desirable to build a network of academics/experts in this area in Indonesia, to support the GoI in its future efforts. The study therefore made use of academic views on both substantive issues and the capacity development approach needed to develop a policy network in the future.

The study also includes views of the regional government associations, and points out opportunities for undertaking capacity development of all implementing actors in realizing the policy and legal provisions on functional assignment. The possible supporting role of donors is also indicated.

The study made use of desk analysis of existing legal instruments, mass media to ascertain the larger discourse, individual and group meetings with key informants/stakeholders to ascertain views on substantive and procedural issues, and two workshops to present findings.

3. Structure of the report

The report is divided into three sections, with the first providing some historical context and explaining the current architecture. The fifteen issues treated under functional assignment are then examined in turn; each section covering a particular issue begins with the backdrop of international practice, proceeds to the Indonesian status, and ends with suggested work to be done. Within the latter sub-section, the possible role of donors is identified where appropriate.

I. BROAD FEATURES OF THE CURRENT FRAMEWORK

1. The evolution of functional assignment in Indonesia

Prior to the reform era (under Law 5/1974 on the main features of regional govenrment), decentralization in Indonesia proceeded glacially, with deconcentration being the dominant mode in practice, and incremental decentralization proceeding in different ways and depth across sectors. When decentralization did take place, it was often directed to the provincial level, with the expectation that functions would cascade to the district/city at some point – very little trickled down in practice to this level.

The evolution of the functional assignment framework from the pre-decentralization period through the two reform rounds seen to date is captured in Table 1. It reveals some continuities in the centralized and decentralized arrangements, some significant changes in the first wave of reforms, and revisions or elaborations in the second wave of reforms.

Progress has not been linear. Some bold ideas were tried and then reversed or built upon with mixed success. Experience on the ground has provided valuable feedback on the features that are working and aspects that need to be rethought. There have been many discussions on lists of functions that should pertain to a particular sector or level of government. This discussion has at times extended beyond the confines of central government organizations, but rarely have the discussions focused on the overall architecture as outlined in the elements on the left hand side column of Table 1. This larger overview has been the domain of the ministry of Home Affairs (MoHA) officials, supported with sporadic inputs from academics and donors. Even within this narrow circle, the examination of past models and current options from other country experiences has been infrequent and not sustained.

The first round of decentralization reforms was forged in the heat of political unrest and concerns for national disintegration. Regional government associations did not exist, or did not exit in independent form. The style of consultation was that inherited from the New Order Period. Academic expertise was limited and often captured by government interests. The reform was a closed and rushed affair.[6] The outcome was a surprising but faulty architecture that favoured districts/cities, but lacked the necessary reshaping of financing and supervisory systems to make it workable. It is widely acknowledged that a kind of "autonomy euphoria" was created with many of the empowered and unencumbered Bupati/Mayors taking it for granted that they were now firmly in charge of their "little kingdoms." Tensions soon resulted between levels of government as they tussled for control over lucrative functions. At the same time, concern grew that costly service functions were not being given enough attention, and that the concept of "obligatory functions" indicated in Law 22/1999 was not sufficiently fleshed out to be useful in guiding regional government.

The second round of reforms was above all an effort to rein in errant regional governments and tighten the linkages from central to regional government. The open ended "residual" assignment of functions was jettisoned in favour of a positive list of obligatory functions, and the associated minimum service standards provisions were strengthened.

[6] Notably, one donor supported project (GTZ-Support for Decentralization Measures) was used to facilitate and provide some inputs; its influence in the final formulation of Law 22/1999 was more limited than the unprecedented access to the drafting team would have suggested.

Table 1: Evolution of the functional assignment framework since 1974

	Pre-decentralization framework (Law 5/1974)	First wave of reform (Law 22/1999)	Second wave (revision) of reform (Law 32/2004)
Principles/focus /criteria of decentralization	"Real" (responding to regional capacity/situation) and "responsible" (comprising a right and obligation) with stress of autonomy on second level (district/city). Decentralization to be guided by "efficiency" and "effectiveness" criteria.	"Broad autonomy" is added to "real" and "responsible", with continued stress of autonomy on second level (district/city). Province is to have "limited" autonomy.	"Broadest autonomy possible" – with assignment of functions predicated on criteria of efficiency, externality, and accountability.
Political/legal concept of decentralization (devolution)	Decentralization is the transfer of functions from central government (executive), or higher level region, to the region – becoming own functions of the region.	Decentralization is the transfer of functions from central government (executive) to autonomous regions within the frame of the Unitary State of the Republic of Indonesia.	Decentralization is the transfer of functions from central government (executive) to regions – to regulate and administer – within the Unitary State of the Republic of Indonesia.
Modes of decentralization	Decentralization (devolution), deconcentration and agency tasks	Decentralization (devolution), deconcentration and agency tasks.	Decentralization (devolution), deconcentration and agency tasks
Role of the regional head	Head of regional government and head of the administrative region (representative of central government -CG); at both province and district/city level.	Head of regional government and (for Governor) head of the administrative region (as representative of CG). Bupati/Mayor no longer has dual role.	Head of regional government and (for Governor) head of the administrative region (as representative of CG). Similar to previous reform.
Hierarchy between levels of regional government	Implied in the cascading nature of mechanisms to decentralize functions. Existed through dual role of regional heads (command line from President down to regional heads).	Explicit rejection of the notion of hierarchy between levels; created confusion (and autonomy euphoria) – ignored other elements of framework that did imply some form of hierarchy (e.g. Governor acting as representative of CG).	Explanation on the rejection of hierarchy is removed, but roles between regional levels are still largely unclear or inconsistent – hierarchy is clearly evident in supervision, guidance, coordination and planning roles of the province with respect to district/city level (in GR 38/2007).
Overall functional architecture	Law indicates government regulation as the transfer mechanism for specific functions; essentially an "*ultra vires*" construction; province and district/city are tied to the specific functions transferred to them.	Functions for central government and provincial government listed, and district/city as large residual (a radical form of general competency for this level).	Potentially general competence with positive list: functions listed for CG and obligatory functions for provincial government and district/city governments. However, since "discretionary functions" are not in line with international concept, the structure seems to revert to "*ultra vires*".
Prescriptive implementation/ performance	Not clear…ad hoc via monitoring/ supervision system.	Obligatory functions and minimum service standards introduced but insufficiently elaborated and not coherent.	Obligatory functions and minimum service standards stressed. Complemented with "discretionary" functions. All of these still not sufficiently coherent.

	Pre-decentralization framework (Law 5/1974)	Initial Reform of Framework (Law 22/1999)	First revision of Framework (Law 32/2004)
Deconcentration tasks	The delegation of authority from the CG, or Head of Region (as representative of CG) or head of deconcentrated units to CG officials in the region.	The delegation of authority from the CG to vertical agencies or Governor as representative of the CG.	Inconsistent definition in framework laws; in Law 32/2004 there can be delegation to vertical agencies or Governor as representative of the CG, but in sister Law 33 (on finances) can only be to Governor as representative of the CG .
Agency (assistance) tasks	Tasks from CG, or higher level region government, to region government (where regional government is the combination of the regional head as executive and the regional legislature). Also from CG and regional government to village (set out in Law 5/1979).	Tasking by CG to regions and village, and by region to village [province can not pass tasks to district/city]	Regional government/council is receiving entity (GR 38/2007 art. 16 1.c). CG, province, and district/city can all assign agency tasks to lower levels.
Financing linkage	Broad outlines in law 5/1974, but no obvious connection to functions (except in assistance tasks).	Financing is broadly outlined in Law 22/1999, with Law 25/1999 elaborating. Inconsistencies and vague connection between functions and financing.	Financing is broadly outlined in law with Law 33/2004 elaborating; inconsistencies and vague connection between functions and financing. Deconcentration still large in practice.
Mechanism for ongoing adjustment of functional assignment	Government regulations for specific functions and regions; province to pass on some functions. In practice slow development of province functions and negligible passing on to district/city.	Residual for district/city removed need for mechanism (though superfluous and confusing process of acknowledgement was introduced). No mechanism made clear to adjust CG/provincial lists.	Concept of "remaining functions" (*urusan sisa*) for those not mentioned in GR 38/2007. Stipulates criteria (same as for listed functions) to determine level that undertakes the function and requires MoHA approval for the functions. Fails to differentiate between obligatory and discretionary possibilities or to describe the process.
Village government functions	Addressed in separate Law 5/1979; requires regional government regulation. Own functions (*rumah tangga*) mentioned but are unclear and agency tasks (*pembantuan*) mentioned but unclear from which level.	Village governance is placed more firmly under regional government law; functions are "original", those not yet taken up by higher levels, and agency tasks from higher levels, especially district (city not mentioned).	Original, those that are transferred by regulation, and agency tasks from all higher levels (includes city).

The second round of decentralization reforms, concerning functional assignment, were rather protracted, with the key government regulation (GR 38/2007) setting out the specific lists of functions emerging three years after the mother law. In some eyes, the second round of reform is seen to be merely an adjustment of the previous reforms; others see it as a reversal of earlier progressive reforms. What is clear is that it did not approach functional assignment in a holistic sense. The various elements of the decentralization framework that give coherence and strength to functional assignment were not treated together, and some elements were not given much attention. This report turns to each of the important elements of functional assignment in Chapter II of the report. But as background to that discussion, it is useful to capture or summarize the main elements of the current functional assignment (FA) architecture in the section that follows.

2. Main elements in the current architecture

In examining Figure 1 **(**Indonesian Functional Assignment Architecture in Law 32/2004), some key changes in shifting from Law 22/1999 to the current Law 32/2004 architecture are the clarification of obligatory functions (the original concept dating back to Law 22/1999) and the addition of discretionary functions. Also, agency tasks have in principle more possibilities, flowing from each level to those beneath. In Law 22/1999 the provincial level could not assign agency tasks to the district/city level; this was part of the "rejection" of hierarchy that was explicitly inserted in the law.

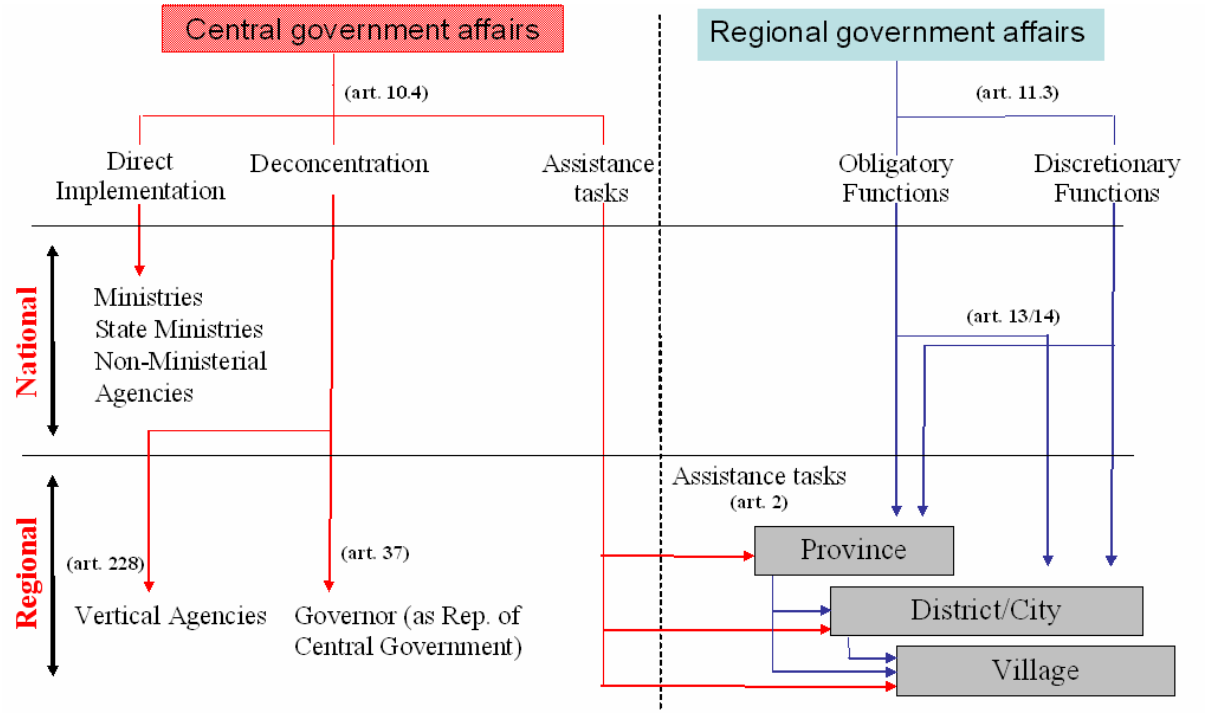
The dual role of the Governor is retained in the current framework. Hence the Governor is understood to be a deconcentrated instrument of central government (CG), in addition to his role as provincial government head. The Bupati/Mayor remains as a single role (head of regional government).

In the current framework, the "own" functions of the province and districts/cities are those outlined as either obligatory or discretionary. While an initial broad (and confusing) list is found in the law itself,[7] the detailed lists of functions are placed in a separate government regulation, GR 38/2007.[8]

The above architecture is more elaborated than many found in developing, or developed, countries. It makes explicit the three common intergovernmental modes of decentralization: devolved functions, agency tasks, and deconcentration tasks.[9] It seeks to make clear what has to be performed by regional government, and it sets out specific (minimum) performance standards for basic service delivery. In this respect it is a promising foundation for the more detailed work required to flesh it out. As will be noted in the next chapter, this potentially sound architecture is problematic in terms of several elements or aspects.

[7] Indicating, rightly, that the functions come from the "state" and not the central government per se – in contrast to the definition of decentralization in the same law.
[8] With this construction, the "own" functions of the regions can be seen as deriving from the central government – which runs counter to the notion that the functions come from the state through laws (as seems to be also called for in the Constitution).
[9] The Indonesian terms are, in the same order: *urusan desentralisasi*, *tugas pembantuan* (literally "assistance tasks"), and *tugas dekonsentrasi*.

Figure 1: Indonesian Functional Assignment Architecture in Law 32/2004



II. IDENTIFICATION OF ISSUES AND ACTION REQUIRED

For each issue, some background on the international practice is provided as a backdrop, followed by a situation description/analysis for Indonesia, and lastly policy options or further work required.

1. Overall architecture: modes, roles, and structure

International practice

Modes of decentralization

Three classic modes of decentralization have been widely cited in literature; deconcentration, agency tasks, and devolution. Limiting the discussion to the government realm (of unitary structure), these can be understood as:[10]

- ***Deconcentration*** is the delegation by central government organization head quarters of administrative tasks to its representatives or branches dispersed over the national territory in a functional/administrative pattern that serves that organization.
- ***Agency tasks*** are assigned to general purpose local government or a special purpose/semi-autonomous agency to be discharged on behalf of the assigning central government/organization. The entrusted entities are democratically accountable to their citizens but must also report on the tasks to the assigning entity.
- ***Devolution*** is the transfer of functions, requisite power and resources, to local government (including a council) that has considerable autonomy and is democratically accountable to its citizens. Reporting is primarily to the local council but also to the central government.

More detailed differentiation can be seen in Appendix 3 - Typology of decentralized functions/tasks.

Roles/hierarchy in multilevel sub-national governments

A variety of choices are possible when more than one sub-national government (SNG) is in place. In federal systems, the formative units are strong units compared to SNGs in unitary states. They often have sole jurisdiction over lower level SNGs (as in United States, Canada) or shared jurisdiction (as in Germany and India). In unitary states, there is a wide range of hierarchy relations between SNGs. Considerable degree of supervision/guidance can derive from higher level SNGs. This may be embedded in the regional government itself (e.g., Italy's regions and the Philippines' provinces) or be defined as the carrying out of duties on behalf of the central government/state (e.g., Yemen's governorates and Cambodia's provinces) – this is in essence an agency task. It can be argued that in unitary states, particularly those concerned with national integration and stability, the central government is keen to deal directly with all levels of SNGs, and will delegate regulatory and supervisory roles to a senior level of SNG only where this is seen as not threatening those national

[10] See for example Rondinelli (1981). Many refinements or deviations from Rondinelli's definitions can be found, and those offered in this section are provided by Gabriele Ferrazzi.

imperatives. The option of imposing a dual role on SNG or specific officials/politicians in SNG (where in addition to the regional government orientation there is the representation of the CG in the region) is one mechanism to allow delegation while retaining control.

There have been no surveys in readily available literature of governance patterns that focus on issues of hierarchy between CG and SNGs. It is difficult to identify good practices in this respect. It seems that a variety of approaches are workable and that the choice has to take into account the overall political stability and demand for autonomy from all SNG. In particular, the meso level can be empowered to play a useful role in setting the framework for and guiding lower levels of government; but it could be denied such a role if its empowerment is likely to threaten the central government.

Structure of sub-national government functions

One way of assigning functions is to make a detailed list of what SNG can or must do (a "positive" list). This gives clarity and contains SNGs within the bounds of these lists, making any other action of SNG "*ultra vires*" (beyond its legal bounds). The positive list can be complemented with a "negative" list; what the SNG cannot do. Even where the *ultra vires* principle is not explicitly invoked, the use of a list of functions makes SNG cautious, as the implicit understanding may be that SNG should not take up something that is not on the list.

In OECD countries, where decentralized governments have had some time to take hold, or where it was in fact the starting point for higher order government, the functions given to local government have historically been quite permissive, *de facto*. In cases, it has also been permissive *de jure* for some time (e.g., home rule in US counties). However, for many decades the *ultra vires* construction generally held sway as government grew, became more formalized, and more centralized. It is only over the last two decades that this trend has seen a reversal. Recent functional assignment reviews have been seen around the world resulting in more permissive formulations (e.g., provinces in Canada, states in Australia, and local government in the United Kingdom).

In many countries, a particular level of SNG, of sufficient scale, is targeted as the main service delivery level, and efforts are made to ensure that it can function as a "general purpose local government," empowered to fulfill the multiple needs of its population.[11] This designation is increasingly accompanied with a "general competence" construction of functions, meaning that the functions are not listed in detail but rather in broad form, to give as much freedom as possible to SNG to act in fulfillment of its broad mandate.

While general competence seems to be in the ascendancy, this construction is sometimes misunderstood. It is a construction generally found in the organic law for SNG/decentralization, but generally this law coexists with a number of other laws (e.g. sectoral laws, procurement law, planning law) that prescribe or proscribe functions/services and set out performance standards. Hence in practice OECD countries that are said to have a general competence construction in actual fact have a hybrid between general competence and *ultra vires* constructions.

[11] There is no consensus on what scale is sufficient, but general purpose local government that provides a number of important services (basic education, primary/preventive health care, water and sanitation, local roads etc.) begins to be realistic when an urban (or fairly dense) population exceeds 10,000 people. Reasonable efficiencies are believed to be more attainable when it reaches 100,000 or more.

Indonesian status

As Figure 1 in the opening chapter indicates, Indonesia works with similar modes of decentralization as the "international model", though in Indonesia they are referred to as governance principles (*asas pemerintahan*). Devolved functions in Indonesia (referred to as "decentralized" functions) pertain to both obligatory and discretionary functions.

Despite this higher level congruence with the international model, the current framework suffers from the following problems:

Vanishing Agency Tasks
There has been a drift in the understanding of agency tasks over the last decade; they are now viewed to be ad hoc/temporarily assigned/funded tasks. In practice they have not generally been used as devolution and deconcentration have become dominant. In GR 38/2007 a handful of agency tasks are listed[12] (having a stable character presumably). Functions listed in GR 38 that evidently should be seen as agency tasks are not noted explicitly as such (e.g., to assist with national exams).
A recent draft government regulation (October 2007 version) treats both agency and deconcentrated tasks in the same fashion with respect to derivation, financing, reporting, accountability relations to regional legislature (see Appendix 4). This will exacerbate the confusing state of affairs and possibly deny the state the vehicle to resolve the "province vs. Governor as CG representative" dilemma.

- The definition of deconcentration differs in foundational laws (Law 32/2004 on regional government vs. Law 33/2004 on finances).
- Agency tasks and deconcentration tasks are now poorly differentiated.
- The Constitution itself provides a misleading view of agency tasks; that regional government can regulate (*mengatur*) agency tasks. This term should be retained only for the "owner" of the function, not for the recipient of agency tasks.
- In practice, deconcentration is used, increasingly, to fund functions that have ostensibly been devolved to the regional government.[13]
- The dual role of the governor seeks to support both devolution and deconcentration but is causing confusion given the inability to differentiate the roles. The confusion is leading to poorly justified proposals that threaten the autonomy of the provincial level (see Section 3 for a more complete treatment).

In terms of the structure of functions, the construction has shifted from *ultra vires* in the centralization period to a radical form of general competence in Law 22/1999 (for the district/city level), and back to *ultra vires* in law 32/2004 (for both province and district/city levels). This last swing back to *ultra vires* seems to belie the principle of "broadest autonomy" in Law 32/2004, a principle that might be said to approximate "subsidiarity." It is difficult to anticipate functions in a way that would approximate general competence with an *ultra vires* structure. It is not clear if the Indonesian policy makers' intent was to move away from the constitutional principle of "broadest autonomy" to a strict form of *ultra vires*, or whether the shift was inadvertent.

Further work suggested

☞ In the mid to long term, a constitutional amendment would help to clearly define all three decentralization modes, and key principles guiding decentralization, followed by corresponding adjustment in laws to harmonize definitions/applications.

[12] A quick skim of the appendices for GR 38/2007 shows a few functions in health and land management to be explicit agency tasks.
[13] Data on the proportion of deconcentrated funds is difficult to obtain, but seems to be significant. For instance, the Horticultural Dinas in Aceh Taminang recently estimated that it forms about 30% of expenditures in the sector in the district.

- ☞ To gain coherency in the modes of decentralization, it may be helpful to put off the pending draft on deconcentration/agency tasks until there has been a review of the principles that define them (ideally enshrined in the constitution or revised law to follow Law 32/2004). This will avoid having to revise the government regulation soon after its preparation.

- ☞ It will be important to explore the meaning, possibilities, and limits to hierarchy between SNG levels, grounding these within the specific modes of decentralization.

- ☞ The current *ultra vires* construction is promising in terms of obligatory functions/minimum service standards. It could be made more flexible (more "general competence" like) by careful adaptation of the "discretionary" function category, to align with the common meaning of the term in the international context.

International practice is not so clear as to provide ready made guidance in the above areas. Nonetheless, donors could be helpful by facilitating a process that has legitimacy and brings a range of views and experiences to the discussion. It is likely that donor supported efforts in the fields of financing, organizational structures, and supervision/role of province/governor will not yield fruit unless the basic architecture is shored up and properly elaborated.

2. Legal framework/mechanisms for ongoing adjustments

International practice

Most countries recognize that functional assignment ought to be stable but also have some dynamism as conditions change over the years. The legal framework employed differs considerably between countries, but there is some consensus on good practices on this point. As the European charter states[14]

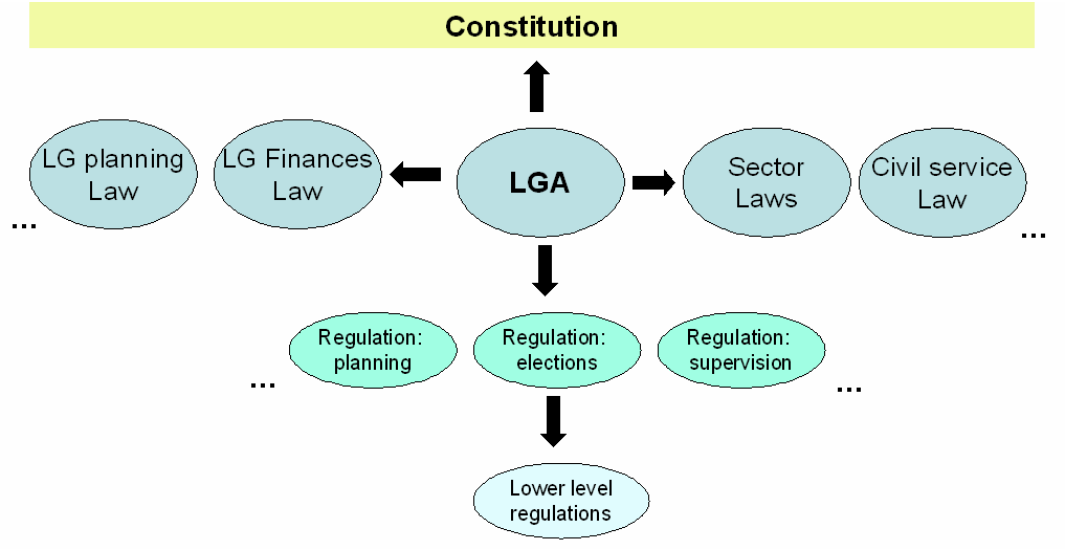
> The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.

Constitutionally defined functions are common in federal countries, between the federal government and its formative units. Some federal nations also include local government functions in the Constitution, as in India. Countries with quasi-federal structure (e.g., South Africa) or unitary structure (e.g., Italy) also enshrine some functions of SNG in the Constitution.

At the level of laws, the functions of a particular SNG are generally found in an organic law (referred to in Figure 2 as Local Government Act – LGA). But as Figure 2 shows, there are a number of other laws that also shape functions, particularly sectoral laws. Lower level regulations are often used as well to provide details and levels of expected performance.

[14] European Charter of Local Self-Government Strasbourg, 15.X.19

Figure 2: Legal architecture influencing functional assignment



Once the functions are set in law, not many frameworks around the world are very clear on the mechanisms to make adjustments, whether for the case of further decentralization or (re)centralization. Some clarity on these matters would help to set expectations and facilitate incremental decentralization or centralization. The Indonesian system in the New Order period used government regulations, and a variety of possibilities arose, where functions were principally given in several ways; to the province to keep, or to the province to pass on to the district/city at a later point, or to both the province and the district/city.

A common weakness in the legal system in developing countries is the lack of harmony between the organic law and the sectoral laws. The latter take some time to align themselves with the organic law (or its regulations). This "Sectoral Decentralization Lag" is characterized by the features indicated in the box below. Countries such as Yemen, Ghana, Cambodia and India (some states) have experienced this lag.

Sectoral Decentralization Lag

A country that has a relatively progressive constitutional or organic law provisions on SNG may nonetheless have central line ministries that:

- differ in their understanding of decentralization terminology
- knowingly or otherwise, have opted for deconcentration, and sometimes use the more general term decentralization to refer to it
- bypass LG – going "direct to local institutions/the people" (e.g. capitation)
- are tentative in undertaking innovation; testing/piloting is mostly ad hoc accommodation to pressure groups/donors
- maintain legal contradictions/fragmentation between the LGA and sectoral instrument on functional assignment and procurement rules
- have not indicated how they will reconfigure vertical relationships
- have not begun ministry re-organization to be in line with remaining functions
- do not have sector plans for decentralization or connection to overall cross-sectoral plan
- have a fragmented internal discourse/low engagement with stakeholders

Indonesian status

Harmonization of sectoral legal instruments with the organic law on regional government

In both the 1999 and 2004 frameworks, Indonesia has used an organic law to set out the principles for functional assignment and make explicit some general functions. A government regulation was then used to provide the details (GR 38/2007 presently). However, sectoral laws also exist, and these sometimes avoid clarity in assignment or have a more centralistic formulation than the organic regional government law; some sectoral laws precede the organic law and others subsequent to it did not adequately consider the organic law. While the organic law for regional government has a provision that would seem to require that other laws and regulations align themselves with the organic law, the validity of such a clause is contested. Legal principles can be used in support of the primacy of either the organic law or sectoral laws. In the end, it is the realpolitik dynamics between the various central level organizations that determines outcomes. The cabinet in Indonesia, for a number of reasons, is far from being cohesive, and MoHA, on its own, cannot force coherent cross-sectoral policy. This does not augur well for harmonization.

At this point, there is no agreed strategy in evidence to harmonize sectoral laws with the sectoral lists found in GR 38/2007. However, MoHA has asked the 31 ministries/agencies to inform MoHA of the legal instruments that will need to be adapted, and the order of priority for adjustment (alignment to the Law 32/2004 & GR 38/2007). This approach has not yielded a formal reply from any of the central level organizations, leading MoHA to consider an approach that works up from the regions. In ten provinces, an effort will be launched to determine whether the support and directives from the sectoral ministries are in accordance with GR 38 functions. The findings would then be channeled to the government, where presumably they will spark action in the organization – namely the adjustment of the misaligned legal instruments.

MoHA is furthermore hoping that the provision in GR 38/2007 (Art. 10) setting out a two year deadline for the ministries to establish "*norm, standar, prosedur dan kriteria*" will encourage the ministries to issue guidelines that fortify the assignment of functions. If these are not in place at the deadline, the regional government can then implement the functions regardless, based on existing legal instruments. Unfortunately this last conditionality places the situation right back where it began, with the GR 38/2007 revisions in conflict with sectoral legal provisions.

Very recently, the MoHA Law 32 revision team leader indicated that GR 38/2007 will stand for some time, and that a summary of this regulation will be prepared and placed in the revised law to follow Law 32/2004. As mentioned in the Section 2 of this chapter, this approach is of dubious value, as it leaves an omnibus regional government law battling several sectoral laws (not much better than an omnibus government regulation battling several sectoral laws). Even seen strictly for the salutary effect that the streamlined summary can have for all parties seeking clarification and direction, such a condensation (done within the revision team) leaves out the communication and negotiation that must take place with sectoral agencies if they are to accept the new formulations.

Ongoing adjustment of functional assignment

The adjustment of functions over time is approached in an unusual fashion in GR 38/2007. There is no stipulation of the legal instrument to effect incremental changes in assignment. However, there are some provisions that seem relevant:

- Law 32/2004 has the "mechanism" of evaluation and mergers to address situations where functions are not properly carried out.
- GR 38/2007 adds a "mechanism" that was not mentioned in Law 32/2004; the vehicle of "remaining functions" (*urusan sisa*), where functions not mentioned in GR 38/2007 are to be assigned according to the same criteria used to assign those mentioned in the regulation, with notice to be given to the central government (MoHA) to obtain the latter's formal approval (*penetapan*).
- The most elaborated mechanism for assigning and modifying functions is actually found between the district/city and village, though in practice it has not been used in any significant way. Law 32/2004 and GR 72/2005 allow the district/city to assign agency tasks to the village. The mechanism outlined in Permendagri 30/2006 is in the main a uniform exercise, covering all functions to be assigned, and covering all villages (tailoring seems to be allowed). There is however the opportunity for additional functions to be added in an ad hoc way (based on village requests). If within two years the village cannot handle the functions, some or all can be withdrawn; the way this is done is to be stipulated in a regional government regulation.

The withdrawing mechanism in Law 32/2004 is for the case of massive regional government failure rather than incremental adjustments in specific functions. This is a politically unlikely mechanism.

A politically more palatable mechanism would allow functions to be moved, temporarily or permanently, from the district/city to the province level. This does not exist. With the rapid pace of territorial division (and corresponding shrinkage of regional area/population size) seen in Indonesia, there may well be a time when such a mechanism can offer a way out of what might otherwise be a very inefficient and ineffective assignment of functions for some regions.

The "remaining functions" mechanism that is found in the framework is not only incomplete, but also does not seem to be related to the categories of obligatory or discretionary functions. The regional government themselves are to take the initiative to add "remaining functions"; there seems to be no avenue for the central government to take the initiative. It is not clear in which forum regional or central government are to apply the criteria to decide which level is to take on the "remaining function."

Further work suggested

- ☞ In view of recent discussions and decisions, it would be helpful to stakeholders if the GoI widely communicates its stance (as recently discussed in the Law 32 revision team) on the following matters:
  - when GR 38/2007 on functional assignment will likely be changed;
  - what the scope of the revision will be if the law is changed before GR 38/2007 is changed;
  - whether GR 38/2007 will eventually to be superseded by a new omnibus GR or;

- whether there will be an effort to place functions (central and regional) in sectoral laws.

☞ The bottom up approach proposed by MoHA to examine sectoral instrument conflicts with GR 38/2007 has merit and should be considered - as an alternative or companion to a more direct route from the central level. The two possibilities could look as follows:
  - Pilot regions are supported over a period of about one year (an entire annual cycle of activities) to assess particular sectors, with assistance from donors where these are active with relevant support in the regions. Findings of clashing sectoral instruments are brought forward through various channels; regional government associations, MoHA, broader GoI –donor forums. Facilitation is offered to sectoral ministries in the adaptation of laws/regulations to find alignment (or compromise) with GR 38/2007.
  - Sectoral ministries are provided support in identifying instruments that require adaptation, through MoHA and donor support. This will take perhaps 2-3 months if sectoral experts are employed. The task could be undertaken in-house but if there is little interest/movement, it could be done by parties external to the ministries. Facilitation is subsequently offered to sectoral ministries in the adaptation of laws/regulations to find alignment (or compromise) with GR 38/2007.

☞ Either of the above strategies will ultimately rely on the willingness of sectoral ministries to make necessary changes to their legal instruments. Support, encouragement, and pressure may be required in some cases to effect these changes, possibly by:
  - forging a strategy with organizations that are expected to facilitate policy or law making on regional autonomy (Ministry of Justice and Human Rights, State Secretariat, Council for the Deliberation of Regional Autonomy);
  - gaining the involvement of the President or Vice President and Cabinet;
  - gaining the support of DPR so that they will be supportive of revised sectoral laws.

  For any of these possibilities, it is likely that some streamlining and renegotiation of the functions listed in GR 38/2007 will be necessary.

☞ A mechanism should be developed to deal with functions that have not been listed and that from time to time may be stipulated as regional functions. Possibilities might include:
  - a change in the organic law if this is where functions will reside;
  - a change in sectoral laws if this is where functions will reside;
  - government regulations (per sector or combined) as ad hoc and temporary measures, with infrequent assimilation in laws (taking advantage of revisions made for other reasons).

☞ It is worthwhile to explore a formal and workable mechanism where functions are relatively easily shifted between provincial and district/city levels (or their equivalents). This should allow for some measure of asymmetry - in line with capacity levels. Such a system is particularly needed in far flung regions, particularly where regional splitting has lead to very small regions with little administrative capacity (e.g. Papua).

3. Role of the governor and province

International practice

Conceptually, the dual role given to some SNGs/officials/politicians can be understood as utilizing two modes of decentralization; one of these being devolution. It is not always clear what the other mode ought to be, deconcentration or agency tasks. This choice can have significant consequences on financing, organizations, and accountability relationships, but the choice is not always clearly made.

If the CG/state interests are expressed at the SNG level through agency tasks, then that SNG level receives it as a "government" (meaning both the executive and legislative components); the funds may be derived from the general system of own revenues and transfers, or may be specifically attached to each task, but in all cases it would be on-budget for the SNG in question. This arrangement implies that the accountability is in part to the SNG, not only to the assigning level (in this case CG).

In contrast, the use of deconcentration means an off-budget arrangement (with respect to the SNG budget). Moreover, this choice raises some questions about the fundamental role of SNGs; generally they do not wish to see themselves as merely, or even primarily, the extensions of the central government.[15] Hence it is generally the case that individual officials (elected or appointed), rather than "local government" as a whole, are entrusted with the dual role that combines devolved and deconcentration roles. If the tasks are sufficiently heavy, these officials are then likely to require implementing staff, complicating organizational structures and accountability.

Indonesian status

The revision of Law 32/2004 was expected by some stakeholders (e.g., district/city level associations) to clarify the province/governor role, in favour of a strengthened Governor as representative of the central government – and (re)introduce a reduced form of autonomy for the province (similar to Law 22/1999). This did not happen in fact. To begin with, the constitution does not differentiate the role of the regional government, characterizing autonomy at either level as the "broadest possible." Furthermore, in GR 38/2007 the provincial government, as an autonomous region, has a heavy role towards the district/city in practically all sectors, with duties expressed in terms of supervision, monitoring and evaluation, control, coordination, planning, and conflict resolution. In view of the lead up discourse, it is striking that these roles are given to the provincial government as devolved functions.

While the devolved mode raises some important issues of accountability, particularly to the central government (with reference to the unitary nature of the state), the alternatives to this construction are problematic in other ways, perhaps more so. The option of strengthening the Governor as a representative of the central government is less defensible today than in the past in view of the recent shift to direct regional head elections; it does not seem to fit with

[15] Though it is the case that SNGs are the local expression of the state. Even so, only a particular Marxist perspective would deny a meaningful role for the local state in responding to local politics; in any case what is important here is that the local state perceives itself to have a measure of identity and autonomy.

accountability to the electorate. It is perhaps most incongruous for Aceh and Papua where some greater distance from central control is desired.

In general, there is a great deal of misunderstanding and confusion regarding the dual role of the governor. Even in Law 32/2004, the terminology is not clear, with "Governor" being left ambiguous (e.g., Art. 128, 130). In sorting out the model to be applied, it will be important to use terms carefully and consistently. Special care needs to be taken in fashioning the current draft regulation on the role of the governor, to avoid a more evident clash with GR 38/2007; alternatively, both need to be worked on in concert, under a clarified framework on the modes of decentralization/roles of regional government levels.

Further work suggested

- ☞ A clear vision for the role of the provincial level/Governor is required, which considers the advantages and implication of the various modes of decentralization, e.g., accountability, organizational and financing arrangements. Appendix 5 provides the Consultant's summary of basic options and implications. These options need ample discussion given the serious political implications of the choices to be considered.

- ☞ More care should be taken in the use of terms, settling on some agreed meanings/usage (these were more clear in the past):
  - o Governor, Bupati/Walikota could be terms that do not carry with them any implied exclusivity on functions they are carrying;
  - o Head of Region (*Kepala Daerah*) should automatically relate to the regional government's autonomous functions and agency functions entrusted to the regional government;
  - o Regional Administrative Head (*Kepala Wilayah*) should automatically refer to the representative of the central government in the region (deconcentration).

4. Finance's fit with functions

International practice

The principle of "money follows functions" is widely acknowledged and frequently breached. There are several reasons for this mismatch, some perhaps with justification. For instance, to kick start decentralization, lower level governments (e.g., municipalities in South American countries and communes in Cambodia) have been given some funds without clarity on what functions they are entirely responsible for on a long term basis (at most they have been given a menu to choose from in using their funds). There is (or was) the hope that this "training" period will lead to a more institutionalized approach where LG becomes responsible for the service on a permanent basis, based on a better delineation of financing required to provide the service.

Further frustrating the linkage has been the reliance on formula based transfers that have no evident connection to the real expenditure needs of SNG; the proxies involved (e.g., population size, poverty index, cost indices) do help with horizontal equalization but do not necessarily create a match between the financial burden of service needs (at expected levels/quality) with revenues.

Where decentralization has been a precipitous political process, there has not been time to adequately cost the functions that are devolved to local government (e.g., Indonesia). Few countries are willing to invest in costing exercises to fine tune their LG financing systems, though this is now changing as pressure mounts to cost MDG attainment – where local government expenditures are paramount.

It is also the case that financing is used as a means of retaining control over SNG, often because the framework for performance and supervision has not been well established; financing is used as a default tool of control. This explains the proliferation of special purpose (sectoral) conditional grants in many countries. The conditions tend to be on inputs (programs and projects that can be funded or amounts that can be spent); these directives can be very intrusive and debilitating to SGN autonomy/discretion. Political dynamics at central level determine which sectors will have grants and the size of grants. The functions-financing match is not made from the perspective of the regional government that is seeking to do justice to the entire range of decentralized functions and expectations that accompany the functions.

Indonesian status

Based on some basic provisions in Law 32/2004, regional government financing is addressed in the sister Law 33/2004. The principle of "money follows functions" is actually stated explicitly (*uang mengikuti fungsi*) and is explained in terms of adequacy of funds to discharge the functions given to regional government. However, the specifics fail to achieve this goal, due in part to:

Setting Spending Targets
In recent years national level policy makers have sought to fix the spending imbalances by fixing sectoral spending targets. The educational sector target has been set in the constitution – at 20% of the budget expenditure (for national/regional levels). Proponents for health were nearly successful in setting a similar target – 10% in this case; it is an unofficial target for the time being. Proponents for women's issues are pushing for an allocation of 5% for "gender." None of these targets are clear, and all are dangerous to regional autonomy and performance.

- Deconcentrated funds are still used to finance functions that ostensibly are of the regional government; these funds may even be growing,[16] signaling very different perceptions among CG organizations of what modes of decentralization should be used.
- Efforts to speed development in Papua rest on funding that uses deconcentration financing mechanisms.[17]
- The shift from deconcentration funds to DAK, as indicated in government policy, does not seem to be happening in any significant way.
- The aggregate size of the DAU and DAK have no relation (except coincidental perhaps) to the real cost of regional government services at expected levels of performance.

[16] Ministry of Finance data indicates that the Education Ministry is seeking Rp. 48 trillion the 2008 FY – this seems very out of balance with its policy setting functions and funding of the University system. The Consultant's visit to the field in Aceh indicates that other sectors experience a significant deconcentration stream; Horticulture Dinas officials in Aceh Tamiang estimated that 30% of the funds received in the district in their sub-sector derives from the deconcentration stream.

[17] See Bappenas' explanation in *Cendrawasih Pos* (2007). Rp 17 - 18 Triliun Untuk Papua Direalisasikan 2008-Menteri PPN/Ka BAPPENAS Minta Dikelola Baik, 12 July. http://www.cenderawasihpos.com/detail.php?id=1645&ses=

- Minimum service standards have yet to be adequately costed and translated into expenditure norms that could be worked into transfer mechanisms.
- Donor off-budget mechanisms and regional selection practices further exacerbate the difficulty in equitably matching service needs with finances country wide.
- The tendency to determine inputs (funds) is making the budgeting processes more complicated (due to ambiguity in cost categories) and rigid (see box in this section).
- The well intended but confusing assessment and politically charged discussion around what is spent on "public services/development" and what is spent on the "bureaucracy" has been badly cast and unhelpful in focusing on what functions are being delivered and at what level of performance.

Further work suggested

- ☞ Law 33/2004 and subsequent regulations need to be revised and detailed to make clear how the functions-financing match is to be attained.

- ☞ A more intensive effort is needed to cost regional government basic services and see these costs reflected in national level transfers.

- ☞ Benchmarks sensitive to technology and regional circumstances should be established that indicate when a service is being provided efficiently (e.g., cost to educate a primary school child, cost of providing garbage pick-up) – replacing misleading or global assessments (e.g., funding going to "regional apparatus").

- ☞ Strategies need to be developed to persuade stakeholders of the downside of setting sector funding targets, with an effort to refocus on outputs and outcomes desired, and the appropriate soft and hard levers required to work towards these.

- ☞ Donor projects should allocate resources (funds, technical assistance) in ways that respect the functions assigned to the various levels.

- ☞ Donor projects should allocate resources (funds, technical assistance) in ways that respect the functions assigned to the various levels. Emergency response excluded, donor funds for regional government investments should only be provided to regional government on-budget (with central government approval) and in pilot mode, with the intent to adjust national-regional level financing mechanisms to strengthen the functions-finance nexus.

5. Criteria used in functional assignment

International practice

The need to set a process for the ongoing adjustment of functional assignment is more pressing in countries that have chosen to use an *ultra vires* construction. The need is more obvious for facilitating decentralization, but there is sometimes the need to recentralize functions or to acknowledge functions that had not been anticipated in earlier times. In contrast to the *ultra vires* construction, the broad mandate of general competence allows for initiative by the SNG, although this may be limited by any subsequent laws/regulations of higher levels (which can also be imposed to stop SNG from carrying out tasks they have been

doing for some time, presumably if they are been done badly). But as mentioned earlier, in most cases general competence in the "local government" stream of law is complemented with sectoral lists that are more *ultra vires* in structure; creating a hybrid overall.

In either the *ultra vires* or hybrid constructions, it is good practice to indicate how adjustments are to be made, specifying the legal instrument and key procedures (e.g., consultation mechanism).

For whatever direction of movement of functions, some countries undergoing decentralization have seen fit to specify the criteria that will govern "who does what." The general principle applied in Europe, that of "subsidiarity" is now slowly being applied in Europe and is finding its way to other countries. This principle dictates that the function/tasks in question should be undertaken by the smallest jurisdiction that can do so effectively and efficiently. The latter terms are quite broad of course and need further specification.

International lists of criteria used for assigning functions are not as available as the lists themselves, and the process of applying the criteria (who sits at the table and how criteria are weighed, or how trade-offs are made) is even less transparent. The most frequently cited criteria are spillovers and efficiency/economy,[18] but capacity of local government has also been a recurring theme. Appendix 6 provides some examples of sets of criteria promoted/applied. It is important to point out that the use of criteria is far from a mechanical exercise; there is much room for interpretation of how these are best applied. Lists prepared in a particular country by interested or disinterested parties using the same criteria could yet vary considerably.

Indonesian status

Application of criteria lacks transparency
In the discussions leading to the preparation of GR 38/2007, MoHA and the Department of Education officials had come to the conclusion that the last three years of high school (SLTA) should be placed at provincial level – in the subsequent Ministerial review, it was instead kept at the district/city level. No justification is available to explain either the first impulse or the final decision.
In the case of communication towers, the districts/cities have been given the function of approving their establishment – again with no record of the discussion that may shed light on the anticipated degree of externalities to be encountered. In practice, at least one Governor (Sumatra Utara[19]) has taken upon himself to guide the private sector in locating/sharing their towers. In Canada, it is the federal government that approves the establishment of towers.

[18] See Ferrazzi, G. (1998). Criteria for Transferring Functions to Sub-national Governments: Selection and Application in Indonesian Decentralization Initiatives, unpublished doctoral thesis, University of Guelph.

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The criteria employed in the functional assignment seen in GR 38/2007 are reasonable in the main (externality, efficiency, accountability), though they are in places badly explained. In particular, accountability should probably be seen as an implicit criterion, favouring local assignment – overridden when the trade off with economic efficiency is too unfavourable.

Given the diversity of regions, it is peculiar that the notion of "administrative capacity" is missing. This may be due to the history of abuse of this criterion in the New Order Period (where it tended to be used as an excuse to delay decentralization), but more likely it is an oversight. In view of the uniformity of assignment in Indonesia, against widely different capacity levels, the absence of this potential criterion may require rethinking. It seems unreasonable to expect district Supiori in Papua (pop. 12,500) to carry out the same functions as district Bogor (4 million).

Another characteristic of the Indonesian experience is the lack of documentation (and hence lack of transparency and accountability) in the application of the criteria. Although events were held involving government and external parties, the final decisions are not supported (publicly at least) with any rationale. For most functions this is not problematic, as many people have an innate understanding of why some functions are kept by the central government (e.g., foreign policy, nuclear power, standard setting for basic services) and why some should be in the hands of the district/city (basic education and primary health care). But for some "in-between"/contested functions it may be useful to record the thinking that lead to the decisions.

Further work suggested

- ☞ It may be appropriate to adjust the criteria for functional assignment to better explain accountability and include "administrative capacity."
- ☞ In future applications of the criteria, it would be useful to keep a record of decisions and make these available to interested parties.

6. Concurrent functions

International practice

The principle of concurrence in functional assignment can refer to two distinct situations:

[19] Pemerintah Propinsi Sumatera Utara (2007). Operator Secara Umum Mendukung dan Menyambut Positip Gubsu : Seluruh Operator Sudah Harus Sesuaikan Diri dengan "Menara Bersama", Jumat, 02 November. http://www.sumutprov.go.id/lengkap.php?id=134

1. A particular function can be carried out by more than one level of government, simultaneously (e.g., the concurrent list for federal and state levels in Malaysia and India).
2. A particular function can be taken up by a level of government if it has yet to be taken up by another level of government or does not infringe on another level of government (usually higher level; e.g., agriculture and immigration in Canada's federal-provincial constitutional lists).

The first case is a fairly common approach that encompasses a sub-set of all governmental functions, usually a small to modest proportion. Too much concurrence is thought to lead to difficulties in determining roles and accountability.

The second case sees concurrency to mean "opportunity" to take on a function rather than joint occupation. Usually a lower level will be allowed to take on a function if the higher level has yet to regulate it in a way that would prevent lower level take up. It is debatable whether this provisional and sequential occupation of a function should be called "concurrent." When this mechanism gives protection to lower level government to hold its ground if first in, then it is essentially a strong version of the "right of initiative" (see Section 9 in this chapter).

Indonesian status

Indonesia has its own meaning of concurrent functions. The term concurrent (*konkuren*) appears to be used to denote a broader principle – that aside from the exclusive set of central government functions, all other functions (read here "sectors" or "very broad functions") are "shared" in the sense that parts of it are assigned to the central government and parts to regional government. This understanding, and the way it is specifically formulated, suffers from the following shortcomings:

- The Indonesian meaning is simply another way of restating the exclusive principle ("these five functions are only held by the central government, the rest are shared – they are concurrent"). In this sense, it is a rather trivial meaning.
- The meaning given to it in Indonesia causes confusion as it is runs counter to a common international use – in Indonesia it signals that there will be a finer division of a particular function between levels, not that it will be occupied simultaneously by multiple levels.
- The application of the concept is marred by the tendency to see broad functions as having pieces that can be placed at <u>all</u> levels (central, provincial, district/city) – this is likely to be true for "sector" level functions but would not always be true where a function is defined more narrowly.
- Occasional references to "*urusan concurrent*" in the lists of GR 38/2007 are not clear (see section "Otonomi Daerah/3. Administrasi Keuangan Daerah.(8))

It is ironic that the formulation of obligatory functions in Law 32/2004, where provincial and district/city lists are practically identical, suggests a classic view of concurrent functions; either level can undertake them. Subsequent regulations however show that this was never the intention – the meaning of concurrent is only seen as a division of a sector/broad function. These sectors/broad functions are broken down and their parts assigned to different levels of

government (at some point, in other parts of the legal framework); they are not jointly occupied.

Are these functions meant to be concurrent?
In GR 38/2007 several functions are listed at both province and district level, with the exact same formulation. For instance, drawing from the Public Works appendix:

- Supervision and control in the implementation of norms, standards, procedures and criteria (NSPK). [formulation used for both levels]

In other cases the difference in the function between the two levels is difficult to discern:

- Provision of drinking water in areas hit by natural disaster or drought at provincial scale
- Provision of drinking water in areas hit by natural disaster or drought at district/city scale

In the latter instance it is difficult to see how the two levels will both be involved. They may be, but likely with different roles.

It is not clear if Indonesia wishes to apply the international meaning of concurrency. GR 38/2007 has several instances of functions that are worded exactly the same for the province and district/city levels (see box at left). As there is no introduction or main body provisions that explain whether this is to be a feature of the architecture of functional assignment, the answer to this question is not available. The official discourse also is not helpful in answering this question since it would require an appreciation for the international meaning of the term. Some experts do have this appreciation, and in fact Professors Bhenyamin Hoessein and Eko Prasojo have noted that concurrent functions can lead to duplication (where the functions are deemed to be attractive) or a vacuum (where they are deemed to be financially burdensome). [20]

In the current revision effort, the spreading discomfort with the term "concurrent" has merely led to its replacement with the term "together" (*bersama*). This choice of wording underscores the principle held by MoHA officials that there is no "independent" regional government function. It does little to clarify whether a particular (specific) function is to be carried out only by one level, or whether it should be carried out by more than one level "concurrently" (operating or occurring at the same time[21]).

Further work suggested

- ☞ Two options could be considered:
  - Option A: Introduce concurrent functions consistent with international practice. There seems to be no need or demand to do so however.
  - Option B: If concurrent functions, as per international practice, are not desired, then drop the term (and the equally unhelpful term "*urusan bersama*"). This will not affect other parts of the legal framework and will help to avoid confusion.

- ☞ If the notion that there is no "independent" function at regional level is deemed to be important to retain, this can be conveyed in other ways, such as in the preamble of the elucidation section of the government regulation.

If donors are further involved in functional assignment, they can bring to the discussion the precise use of "concurrent" as used in various countries (concept and lists), to allow Indonesian stakeholders, especially academics, to assess whether the use of the term or the application of the concept is worthwhile for Indonesia.

[20] Hoesseing Bhenyamin dan Prasojo, Eko (2007). Konsep Pembagian Kewenangan (Urusan) Antar Tingkat Pemerintahan, disebarluaskan pada sesi DDN untk revisi UU 32/2004, Oktober, 2007.
[21] Definition of "concurrent" in Merriam-Webster online dictionary, http://m-w.com/dictionary/concurrent

7. Formulation of functions

International practice

A wide range of formulations are seen in lists of functions adopted throughout the world. Some principles that might be gleaned from their construction, and experiences in application, might be:

- recognize when functions need to be unbundled; to avoid unwanted concurrency or giving parts of functions that are not suited for the level in question;
- nonetheless, keep the function whole if possible (inject some exceptions if that helps to retain a holistic formulation);
- avoid framing functions as projects – functions are the underlying and stable mandates that give rise to projects/programs that change considerably over time;
- avoid limiting jurisdiction by value of projects/activities; procurement should be wrapped with its substantive function;
- management functions should be implicit or mentioned as a global reference;
- avoid the use of the term "scale" or even "level" as explanatory terms as they lead to multiple interpretations or simply do not add any information;
- functions should not rigidly flow from pre-existing organizational mandates.

Keeping the functions whole makes government more easily accountable and efficient (e.g., capital and maintenance expenditures are matched), and makes the lists a lot more readable. Readability is also enhanced when norms/standards and supervision roles are stated in a blanket fashion for all of the functions to which they pertain – rather than listing them for each and every small "substantive" function.

Examples of safe use of "scale"/"level"
"Fishing within the jurisdiction of the district government" where this is already stipulated elsewhere.
"Provision of airports of municipal scale" where a previous determination has already been made of which airports are of such scale (based on location of facility and destinations/status).
"roads of provincial scale" where there is an existing and widely understood technical designation (e.g. arterial roads joining district capitals).

Difference between levels can be put as one of "scale" but generally if the scale dimension is already "standardized." Scale should not be the term used to differentiate functions that relate to different target groups. For instance, if the placement of specialized staff is to be a provincial level function with the scope being "provincial scale" it will lead to two possible interpretations; that it pertains to all staff at <u>all</u> levels <u>up to</u> provincial level, or that it only pertains <u>only</u> to staff of the provincial establishment.

Functions and organization are often conflated or confused. Organizations should follow functions; reflecting practical/efficient ways of discharging functions. It is not a good idea to begin from existing central level structures, freezing into place their current mandates and then moving on to the task of finding corresponding functions for the SNG that are more implementation oriented. This approach will surely lock in inefficiencies, through bloated central level structures and a proliferation of overlapping or questionable SNG roles/functions.

Indonesian status

The use of "scale" as an explanatory term is all too common in GR 38/2007. In the health sector, for instance, it may be appropriate to indicate that both province and district/city have surveillance over communicable disease according to scale; surveillance may be done largely at district/city level with standardized protocols for when provincial level intervention is activated – usually in emergency situations. However, this model may not be useful for a number of other issues; in surveillance of malnutrition for instance. In this case, the district ought to be well aware of malnutrition threats and has at its disposal the means to address this problem without inviting a provincial role –which in any case would be duplicative as there is very little advantage from seeing the challenge from a provincial scale and responding in a different/complementary way at that level (unlike for rapidly spreading communicable diseases where timely provincial coordination among districts can be very helpful).

GR 38/2007 is said, by government officials themselves, to be organization driven, in the sense that sectoral ministry organizations, down to the directorate level or lower, sought to see their existing mandates reflected in the central government column, and then in the regional government column so as to project their tasks to the regions. To the extent that this is the case, it makes for overly detailed lists; lists that may contain functions that are no longer necessary or should no longer have a central level component; or lists that have artificial functions/tasks at regional level merely to "match" central level units.

In the revision to Law 32/2004 there is some effort in the revision team to imagine lists that would be more streamlined and conceptually use functions as starting points, rather than flowing from what are too granular organizational mandates (*Tupoksi* in the Indonesian terminology). Selected sectoral lists have thus been condensed to show how this could be done. However, this seems to be the main preoccupation of the team when it comes to functional assignment. While it is important to improve the formulation of the lists, first there needs to be agreement that GR 38/20007 will indeed be revised, or superseded by a different legal placement of functions. And the larger framework/architecture within which the successor instrument resides must also be worked on (e.g., modes of decentralization, general competence vs. ultra vires, obligatory versus discretionary).

Further work suggested

- ☞ A long term perspective may be required to boost the capacity of individuals/units within MoHA charged with promoting good practices in functional assignment, especially on the formulation of functions (including applying criteria, working with modes of decentralization, unbundling functions, streamlining existing functions). This might consist of
    - o identifying individuals who have the potential to play a larger role, and providing them with specific support;
    - o bolstering the network around MoHA that could be drawn upon to promote good practices;
    - o working directly with sectoral ministries to increase capacity in formulating functions.

Donors provided limited support of this kind in the preparation of GR 25/2000, with the focus of the assistance going to the ministry responsible for administrative reform. There is no

further support planned at this time. The experience gained in the 2000 effort could be put to good use in a longer term orientation as suggested above.

8. Obligatory functions/minimum service standards

International practice

It bears repeating that a wide variety of practice is found internationally in the assignment of functions. Many countries have policy/legal frameworks that emphasize or make obligatory some functions of SNG. For this class of functions, particularly introduced in the context of basic services, norms/standards are set (often through sectoral instruments; laws and regulations) to specify the performance expected of SNG. The standing and enforceability of these standards vary considerably in legal and practical terms. One concern in instituting minimum service standards is financial adequacy to meet them – avoiding unfunded mandates.

A related concern with the introduction of obligatory functions is that local government not be unduly denied discretion – that it retain a significant degree of autonomy. This can be attained by carefully structuring the performance expectations on the obligatory functions (e.g., as much as possible being outputs/outcomes oriented rather than inputs or stipulating spending levels) and by allowing local government to take on functions of a local nature that it identifies as worthwhile and can undertake in view of its resources.

Indonesian Status

Since their tentative introduction in the 1999 framework, obligatory functions (OF) and Minimum Service Standards (MSS) have been clarified and "socialized." Provisions concerning MSS are now well inserted in the legal framework (for planning, budgeting, monitoring and evaluation, accountability reports). In particular, GR 65/2005 provides a robust pillar for the MSS framework, one that is still being made operational through lower level regulations. An inter-ministerial "Consultation Team" has been established to assess sectoral proposals for establishing MSS; their review will be worked into an eventual recommendation from the Council for the Deliberation of Regional Autonomy (DPOD). If the DPOD recommendation is favourable, Ministers will follow with decrees to establish MSS. The Consultation Team has met[22] but has yet to consider proposals and will not likely be fully operational until sometime 2008 (when MoHA budget for its operation starts to flow).

Ministry of Education (MoE) view of OF/MSS
There is no urgency in the MoE to move ahead with MSS; their priority is the larger set of educational standards stemming from Law 20 on National Education. Moreover, these standards are seen as achievable only if national/regional governments move from the current 12% to 20% of the budget as stipulated in the Constitution. The MoE is particularly keen to encourage the autonomy of implementing units themselves (schools) and are hoping for increased special (DAK) and deconcentration funds to transfer directly to schools. It sees its challenge as engaging with regions to make them understand their joint (with CG) facilitative role in education, overcoming misunderstandings that lead to irrational demands for autonomy (as in the rejection of national exams by Sumatra Utara).

[22] the Consultation Team met at a breakfast meeting facilitated by GTZ-ASSD November 28, 2007. Three Eschelon I members and several Eschelon II/III members (Technical Team) took part; this was an auspicious launch, but the hard work of facilitating/reviewing sectoral proposals lies ahead.

MoHA reports that seven ministries/agencies have submitted proposals for candidate OF/MSS (including health and environment, to receive some initial attention by the Consultation Team in late 2007). Draft list previously prepared have revealed varied understanding or views of OF/MSS. The Ministry of Health deems its candidate list of OF/MSS to be ready for review and to be an improvement from early lists. It has undertaken sample data checks and costing to bolster its list (streamlined to make the MSS feasible and affordable in their view).

Ministry of Health Agenda for MSS

The Ministry intends to map out regional government capacities in data systems, costing, planning and budgeting in greater detail and to develop suitable responses to what will be very different needs among regions in the application of the standards. Software is being developed to assist regions to undertake costing of closing MSS gaps. Special attention will be given to very weak regions, e.g., in Papua, but the exact approach has yet to be devised – flexibility in achieving MSS is recognized as essential in this regard. For all regions, the Ministry aims to support rather than to be punitive.

The Ministry of Education is indicating that it will not be submitting a list until sometime in 2008, and their stance suggests that they see the broader set of national education standards as their priority. This stance is part of a larger view of regional autonomy as seen from the point of view of the Ministry of Education (see box to the left) suggesting that much discussion is still needed to come to common views and approaches to regional government roles and performance.

For those ministries receiving the go ahead for their lists of MSS from the DPOD a large effort will subsequently be needed to make the MSS operational within the planning, budgeting, and monitoring activities of regional government. The intent of the Ministry of Health is captured in the box at right. MoHA is also expecting to step up socialization activities but the approach and budget for 2008 is still being prepared and could not be shared with the Consultant.

For the standards to be consistently developed and approved across sectors, the proposals will need to reflect the guidance already found in GR 65/2005, particularly the MSS connection to obligatory functions – which were themselves to be oriented to basic services. In view of the recent preparation of GR 38/2007, the following can now be said for OF/MSS:

- OF in GR 38/2007 are exclusively tied to basic services (Article 7(1)), seemingly excluding the possibility of obligatory functions that may not be basic services.
- Article 7(2) contradicts the previous provision, listing sectors/functions that are not basic services by any stretch (e.g., national and political unity).
- The text of the GR 38/2007 lists OF as sectors, continuing with the weakness of Law 32/2004 on this matter.
- G 38/2007 does not regulate "regional investment" (*penanaman modal*) – the law regulating it will instead be the reference - with no explanation for this special treatment (it is indeed desirable to have all "sectoral" laws harmonized with a politically accepted assignment of functions).
- The sectors listed in the main text are not distinguished on the basis of obligatory or discretionary character.

GR 38/2007 fails to solidify the OF-MSS link. The health list in this regulation is certainly not very similar to that which ostensibly sets out the OF and their associated MSS – now before the Consultation Team.

The main challenge facing the GoI at this point is approving MSS that are justified on the basis of their relevance, trackability (data/reporting), and affordability. Decisions have yet to be made regarding financing approaches; whether the current regional finances are to cover them, or if some additional resources will come from the national level – and how this would work. The beefed up DAK, arising from a shift from deconcentration funds is one possibility. Donor funds could supplement these. The possibility of working MSS expenditure norms within the DAU has been mooted but so far very little exploration has taken place. While some ministries hope for continued/bolstered deconcentrated funds, this would be a regressive direction – MSS should not become an excuse for sectoral ministries to hold on or increase deconcentrated funds, based on the erroneous premise that MSS are best met through nationally directed investments.

Further work suggested

- ☞ It appears necessary to revisit the conceptual basis for OF (and discretionary functions):
  - o shifting it away from a sectoral definition;
  - o removing the "basic services" restriction for obligatory functions;
  - o making lists that are purely obligatory (and handling discretionary functions separately (see Section 9);
  - o adjusting the approach to norms and standards to reflect the nature of the obligatory functions (e.g. basic services versus other regional government activities).

- ☞ It is critical that sectoral agencies prepare strong proposals to the Consultation Team/DPOD in terms of justification based on trackability of MSS, administrative capacity and affordability. In particular, attention needs to be given to costing of MSS and reflecting expenditure needs/norms in central level transfers in ways that encourage regional government to apply financial resources to closing MSS gaps. At the very least, financing schemes should not create perverse incentives at regional level (i.e., of the "more MSS gaps - more transfers" variety).

- ☞ The aim of some ministries to launch significant capacity building associated with MSS application merits support from donors. This will require:
  - o guidance from MoHA and ministries on MSS application that are in line with key financial management regulations
  - o stepped up efforts to reach all districts/cities equitably with technical support/training, through institutionalized channels/delivery approaches
  - o adaptation or intensification of donor supported regional projects (LGSP, ALGAP, GLG, etc.)
  - o alignment of relevant donor funded sectoral investment projects with the placement of OF/MSS.

- ☞ Some support will also be needed at national level, particularly on financing issues (see Section 4). In 2008 there will likely be some need and demand for technical assistance from donor projects currently engaged in policy development and decentralization to assist in preparing strong proposals to the Consultation Team/DPOD. Donors might wish to consider a sectoral division of labour, complementary to the GTZ-ASSD support provided principally to MoHA.

- ☞ With the recent signing of the DSF-GoI Memorandum of Understanding, it may be possible to formalize the working group on MSS that was about to form under the Permanent Secretariat of the Joint Working Group for Decentralization. This group could assist donors in supporting various counterparts and regions in a harmonized and aligned way.

Donor support on obligatory functions has been largely provided through the entry point of MSS. Some support was provided in the run up to the revision of the law that lead to Law 32/2004, but most of the donor input on this theme was not utilized. There has been at least a two year absence of donor assistance on the broader issue of functional assignment.

A number of donors have been supporting GoI's efforts in MSS since 2002. Others are working at the regional level in helping regional government work with the incipient MSS in the planning/budgeting process. GTZ is still involved at the national level and on occasion so are USAID-LGSP and CIDA-GRSII. Their effectiveness has been hampered by the shortcomings of GoI lead coordination.

9. Discretionary functions/right of initiative

International practice

If a country opts to specify obligatory functions for SNG, this choice suggests that some room should be given to SNG to take on other activities other than those specified as obligatory functions. What is done purely of the initiative of SNG might be deemed to be discretionary functions; such a complement to obligatory functions would enhance local autonomy in view of the somewhat restrictive nature of obligatory functions (the degree of restriction depends on the nature of the performance expectation attached to obligatory functions).

Various countries have instituted discretionary functions, explicitly or implicitly. For instance, Cambodia allows, in principle, communes to undertake functions not set out in regulations, if these are proposed first and approved by a central level body – this is a rather awkward form of local level discretion and belies the general competence formulation of functions of the communes. In some countries, the functional architecture includes a provision that can be called a "right of initiative"; this may be particularly helpful to complement a positive list that is obligatory (explicitly or otherwise), which might induce an unduly self-restricting stance on the part of the LG. The "right of initiative" provision encourages the LG to take on activities that are not spelled out in the positive list. The Philippines is one country with this construction.

Some countries prefer to list discretionary functions, prefacing their formulations with terms such as "may", "can" or soft obligations, such as "to the extent that funds are available." The advantage of making such a list is that it is widens the SNG scope for action, but the danger is that the list is also seen as part and parcel of the *ultra vires* construction – nothing else beyond what "may" be done will be deemed possible. Furthermore, the term "may" could be intended as a polite way of indicating what must be done by SNG, rather than as a choice. To avoid these pitfalls, it is preferable to have a right of initiative provision, or a general competence formulation (though this is usually only proper for only one level of government – having a general purpose nature, where most basic services are provided).

It is important to note that there can be no discretionary functions in an absolute sense; at a minimum SNG activities must comply with the higher level legal frame (e.g., must be non-discriminatory, in line with the criminal code etc.). The discretionary functions are those that are evidently local/regional in nature, arise from the creativity and priorities of the SNG, and are taken up as resources permit, after a determined effort to take care of the core business of SNG. They are local priorities, but do not displace what are the highest priority functions of SNG, which are set as the obligatory functions of SNG.

In a multilevel sub-national government context, discretionary functions/right of initiative provisions are ideally accompanied with rules to adjudicate who in fact has the right to move forward in a particular activity if two levels are vying to do so. There may be rules that allow both to do so for particular kinds of activities. It is difficult to find information on such arrangements, but some good practices could be imagined. For instance, if parallel or joint approaches (concurrency) are not practical then the first to initiate may be given preference, or if activities have yet to be launched a particular level may be given blanket precedence (e.g., the level designated to be the general local purpose local government).

Indonesian status

Discretionary functions (*urusan pilihan*) were introduced in Law 32/2004, and reiterated in GR 38/2007. They are defined in a vague fashion as those functions that "exist in practice and can improve the public welfare and correspond to the condition, uniqueness, and potential of the region concerned." They are to be set in regional government regulations within a year of the issuance of GR 38/2007, forcing regional government to make them explicit *a priori*, rather than when they wish to define them. The regional regulation must refer to the appendix of GR 38/2007 which presumably lists the discretionary functions – uniformly for all regional governments. The following observations can be made:

- Discretionary functions are poorly defined in the main text of the law/regulation; they are tied to sectors rather than being defined on the basis of who take initiative.
- The norms/standards for discretionary functions are not differentiated in any way from those pertaining to obligatory functions.
- The regulations are inconsistent on the matter of who sets the discretionary functions; they are in any case apparently not set when regional government wants to set them.

If the intent was to allow for flexibility/added autonomy, the concept would need some rework. It would need to clearly focus on a "right of initiative" formulation. Additionally, some rules might be devised to adjudicate between provincial and district/city level uptake of discretionary functions.

Motive for Discretionary Functions

MoHA in particular felt that regional governments cannot be trusted to establish organizations that are commensurate with the work load demanded by functions. This danger seemed all the more real for sectors with highly variable circumstance - the leading (economic) sectors in particular (*sektor unggulan*). In contrast, presumably, the sectors containing basic services (*pelayanan dasar*) that are the realm for obligatory functions, have much less room for

irresponsible behaviour of this sort. Hence, the message to the regions is that you should (more) carefully make your choice (*pilihan*) of structures for functions in these economic sectors – in accordance with local potential; "there is no need for an agriculture department in a city" was an often heard MoHA illustration.

But it seems that the drafters may have simply used this category of functions to pre-empt regions from automatically establishing organizational structures. The argument is framed as "developing organizations for discretionary functions could be wasteful since these depends on actual conditions in the regions – hence the organizational choice is optional - so goes the argument (see box to the left).

This organizationally focused argument is not taken up in any consistent way elsewhere in the legal framework (on organizational structures), and merely serves to confuse the functions discussion.

In view of this confusing state of affairs, it seems that the current concept needs to be put to rest first, in favour of other means to encourage responsible setting of organizational structures.[23] Subsequently, the discussion should lead to elements of the architecture that would allow for a hybrid between general competence and *ultra vires*; that is, it should provide regional governments with freedom to initiate activities beyond what the obligatory functions require.

Further work suggested

- ☞ The current concept of discretionary functions should be dropped as it does not relate strictly to functions and is not useful in any case in guarding against organizational excesses.

- ☞ The more internationally recognizable notion of discretionary functions could be pursued (e.g., introducing a clear "right of initiative") by:
  - o shifting it away from a sectoral definition of discretionary function to one related to scope and initiative;
  - o removing necessity for higher levels to acknowledge discretionary functions or for regional government to specify them *a priori*;
  - o introducing rules of the game to ensure harmony between levels in taking on discretionary functions;
  - o adjusting the approach to norms and standards to reflect the nature of discretionary functions (in contrast to obligatory functions).

10. Kecamatan level functions

International practice

Local governments that are the penultimate level of government can choose to have direct relationships with the lowest level or can mediate these through special bodies/institutions. These entities extend the reach of the local government and act as sources of information and tools of integration. The administrative "development areas" used in conjunction with elected local government in Nigeria is one example.

[23] Government Regulation 41/2007 has just been issued to address this issue.

Indonesian Status

A number of factors have pushed policy makers and stakeholders to reassess the role of the kecamatan level. The change of the Camat from the main figure in the kecamatan (responsible to the President) to an extension of the district/city (*perangkat daerah*) reduced the role of the Camat, but not the expectations of the public who did not update their perceptual scheme. Demands on the Camat increased, even as his authority decreased as s/he lost the supervisory and guiding role traditionally played. A recent study by researchers from the Bogor Institute of Agriculture, supported by USAID DRSP, indicates that most kecamatans now are reduced to making recommendations to the district/city, largely on civil registry procedures. This same study suggests that the Camat/kecamatan should take up a strong role in spatial planning, coordinating both government units and NGOs; providing key service, resolving conflicts, and serving as an information clearing house.[24]

The preliminary findings of the mentioned study suggests that an enhanced role may be possible within the current construction, where the Camat is an extension of the district/city. However, there are concerns that this construction should not:[25]

- lead to uniformity; urban regions should be able to reduce or eliminate kecamatans – rural districts should be able to increase their number and strengthen them;
- prevent the fit of kecamatan structures with traditional structures in those regions where a blend is desired.

Whatever the standing of the kecamatan, there is fairly broad consensus that it must be better utilized, particularly in the provision of services.[26] The possibilities for pushing delivery down to this level are shown by the one stop service innovation that reaches down to the kecamatan in Aceh Besar and Aceh Barat,[27] where several types of permits can be issued, e.g., for business location and trading.

Some districts have taken steps to formally delegate tasks to the kecamatan. However, the formulation is often in terms of "coordination" or "recommendation"; it is not clear in these cases how much authority the Camat/kecamatan has, particularly in terms of initiating and directing service provision.[28]

If the current construction is to be maintained, the challenge for national level policy makers is to determine how districts/cities can be lead to explore various arrangements and delegate significant services and other tasks to the kecamatan. One alternative, a more centralistic approach, is to assign tasks to the kecamatan level directly through central government

[24] PSPPP, Lembaga Penelitian dan Pemberdayaan masyarakat (2007). Temuan sementara studi tentang Kecamatan, Oktober, USAID-DRSP.
[25] PSP3-IPB (2007). Posisi Institusi Kecamatan dalam Tata-Pemerintahan Daerah Sekarang dan Ke Depan (Isyu Kritikal dan Pelajaran dari Lima Kabupaten Studi).
[26] See for instance the notes from the Tim Revisi UU 32/2004 on the role of the kecamatan and village, October 2007.
[27] AIPRD-LOGICA (2007). Panduan Pelayanan Satu Pintu – Inovasi Pelayanan Administrasi di Kecamatan, AusAID.
[28] Peraturan Bupati Karangasem Nomor 30 Tahun 2004 Tentang Uraian Tugas Kecamatan Kabupaten Karangasem; Peraturan Bupati Karangasem Nomor 28 Tahun 2005 Tentang Pelimpahan Sebagian Wewenang Bupati Kepada Camat Untuk Menangani Sebagian Urusan Otonomi Daerah Kabupaten Karangasem.

regulations. This would have the disadvantage of possibly creating uniform delegation that is in places inappropriate or not workable.

Further work suggested

- ☞ The current exploratory effort on the role of the kecamatan should be brought to its conclusion in time to affect the revision of Law 32/2004. It will be important to confirm if there is indeed potential within the current construction to enhance the kecamatan's role/functions, considering the two main options (or other options) available to ensure meaningful delegation of tasks to the kecamatan. The two main options are:
  - o guidance to districts/cities (model bylaws) indicating how kecamatan can be structured and mandated through delegation from the district/city.
  - o central level imposed minimum list for kecamatan functions.

- ☞ If the government opts to keep the kecamatan formation process largely under the control of districts/cities, consideration should be given to removing the "minimum number of kecamatans" as one of the requirements for regional splitting, as this requirement could lead to the proliferation of kecamatans beyond what is necessary, or conversely, tighter rules for kecamatan formation from central government to avoid "artificial" kecamatans, established merely to facilitate regional splitting. Either scenario is undesirable.

11. Village level functions

International practice

There is much variation in how countries treat the lower level tiers of government. They can be quite "autonomous" or dependent on a higher level SNG. Sometimes they are well acknowledged in the constitution, or they are merely bundled under a broad local government sphere of jurisdiction assigned to federal formative units (e.g., Canada).

Many countries have to deal with the challenge of large variation in size and capacity of the village level (e.g., communes in Cambodia can vary in size from 500 to 50,000). The appropriateness of functional assignment of villages must be seen in terms of the characteristics of the village and its positioning in the multi-level political-administrative system.

Indonesian status

The Indonesian constitution is silent on the nature of autonomy for the village level, and Law 32/2004 and GR 72/2005 specify that the district/city should delegate tasks (agency tasks) to the villages. There has been little activity in this regard in the vast majority of districts/cities despite the provisions in these two instruments. In late 2006, MoHA issued its regulation (Permen 30/2006), in accordance with a provision in GR 72/2005[29]. Key observations on this regulation are:

[29] Peraturan Menteri Dalam Negeri Nomor 30 Tahun 2006 Tentang Tatacara Penyerahan Urusan Pemerintahan Kabupaten/Kota Kepada Desa

- It provides a positive list of functions (menu) that can be "transferred," but oddly states that entire sectors can be given to the village to regulate – this is patently not possible.
- It is not clear if the district/city can "transfer" functions or part of functions that are obligatory (for the district/city).
- The difference between "transferred" functions and agency tasks given by the district/city is not well differentiated.

Within the context of the revision of Law 32/2004, a Naskah Akademik (policy discussion paper) has been prepared by MoHA (PMD) with the assistance of an NGO forum network concerned with village governance (FPPD). This policy text assumes a separate law for village governance and functions for the village that are based on the principles of acknowledgement and subsidiarity.[30] Specifically, the three types of functions at the village level would potentially be the following:

(a) Original functions (*kewenangan asal-usul*) acknowledged by the state.
(b) Attributed functions (*kewenangan melekat*) that are assigned.
(c) Agency tasks (*tugas pembantuan*) from central government, described also as cooperation on concurrent functions.

Original functions would only be given if "*adat*" (traditional customs) are integrated in the village governance structures. For attributed tasks, it appears that the village is to choose from a "positive list" in accordance to its own interest/capacity.

Agency tasks are to be followed by funds, staff and facilties; the tasks can be rejected if this match is not evident. In addition to the stated agency task financing principle, the ADD financing mechanism (previously operated from the district level) would be continued, but the funds would be derived directly from the APBN (from the regional government envelope). The category of "accelerated" funds is also introduced to allow left behind village to catch up. It is not specified how this would be set/distributed – a connection to functions is not indicated.

The proposed functions scheme for the village, as seen in the Naskah Akademik, raises several issues or questions:

- How would "acknowledgment" work for Original Functions?
- From where do Attributed Functions come from?
- Would the regional governments now be able to assign tasks to the villages?
- How would the concurrency be achieved (for functions that become the focus of district-village cooperation)?
- Is the agency task concept appropriate (in line with general concept)?[31]
- How would the APBN determined ADD or Accelerated Funds be attuned to "attributed" or other functions?

Further work suggested

[30] PMD-MoHA (2007). Naskah Akademis Rancangan Undang-Undang Desa, August 30.
[31] e.g. the particularistic (micro) approach to funding agency tasks can be too rigid.

- ☞ Option A: Maintain the current district lead approach to village governance framework (including agency tasks), with efforts to make improvements where needed, in relation to the functions of the village, and make it work as intended.

- ☞ Option B: Make the village essentially a third level of autonomous government, as implied by the academic paper prepared by PMD/FPPD, where an expanded set of functions is guaranteed to the village, and perhaps an additional set is left to negotiation with districts.

USAID-DRSP is assisting MoHA in this effort, though it is facing some fragmentation and reduced intensity in the effort in recent months. Nonetheless, the effort seems to be on track, and could benefit from some continued assistance.

12. Organizational expression of functional assignment

International practice

The often heard decentralization dictum "money follows functions" has as companion the equally valid "form follows function." This guide is relevant to decentralization with respect to both regional and central government structures. Regional government structures are adapted to discharge the new functions and organizational adjustments must also be made to resize ministries in accordance with functions that have been shed and their new/revamped roles. It is often the case that decentralization designs/legal frameworks address only the former, but it is widely acknowledged that the success of decentralization depends also on the proper and timely undertaking of central government organizational adjustments. The experience of decentralizing countries where central ministries resist change has been noted (e.g., The Philippines), and this resistance leads to substantial inefficiency at central level and less than adequate preparation to play out the revamped role of the ministries.

Indonesian status

For regional structures, some basic organizations and organization types are set out in Law 32/2004, with the specifics on the number/composition of regional implementing units (Dinas) and technical units to be worked out by the regional government according to "certain factors" (explained in the elucidation as the volume of work, catchment area and population). This general approach is sensible. However, fearing local excesses, implementing regulations have in the past narrowed the discretion of regional governments to organize themselves in line with the functions they must discharge. A new regulation (GR 41/2007) has just been issued, allowing between 12-18 Dinas and 8-12 technical units, depending on the size and budget of the region. It is not clear if this form of guidance will work to effectively balance the values of uniformity/economy (stressed by the centre) with local tailoring to the specific work load and characteristics of the area and service users.

As is the case in many countries undergoing decentralization, there are no provisions in the legal framework related to decentralization to reorganize ministries that have shed functions or are shifting roles. It might be expected that a shift to policy making and supervision, with greater use of the provincial level for supervision, would work to significantly change the organization and staff levels of some ministries. Some pressure to do so has been exerted by

the Ministry of State for Administrative Reform (Menpan), but on the whole this has not spurred much reform.

In the Education and Health ministries there has been some effort to focus decentralization efforts through a special unit or expert to the Minister. However, often the work of this unit is not well embedded in the line units and other units of the secretariat general, limiting its usefulness. It appears that these units have focused on the regional level, rather than both regional and ministry levels. It is likely that several approaches are workable to gain coherence on decentralization and work toward ministry reorganization; the key is to have leadership support for it and capable people assigned to facilitate the process.

Of equal concern is the lack of clarity in the various regulations being drafted on the role of the province and governor. The nature, scope and size of the implementing units can become complicated and averse to accountability if the wrong choices are made. Clarity is required on the modes of decentralization to be applied and how they relate to each other. As mentioned earlier, "form follows functions."

Further work suggested

- ☞ Additional efforts will be needed to guide central level reorganization as deconcentration shrinks and strategic support to regional government is intensified.

- ☞ The role of the provincial level will need clarity to understand how the decentralized (devolved/autonomous) units relate to any central government extensions (deconcentration).

- ☞ The right of ministries to establish deconcentrated units and their obligations to use the Governor as a representative of the central government will need to be clarified.

- ☞ An effort needs to be made to ensure that regional government are given incentives/directives for efficient regional organizations, encouraging the tailoring of regional organizations to the functional load and local characteristics.

13. Functional assignment in special regions

International practice in special autonomy

Special deals with sub-national regions have been a feature of nation building over the last two centuries, and probably long before (they can be seen in the Roman empire for instance). What distinguishes these regions from the rest, with any national polity, is a measure of "asymmetric decentralization" in political, economic and socio-cultural fields. These asymmetric arrangements can be found in both unitary and federal nations. Some agreements focus specifically on cultural matters, but it is common to have a combination of drivers and dominant features in these agreements. Some examples are:

- Basque region of Spain – a unitary state (political, cultural)
- Quebec province in Canada – a federal state (political, cultural)
- Aceh in Indonesia – a unitary state (political, economic, cultural)

The SNG involved generally have in common with similar jurisdictions the same basic set of governmental functions (to which are added their special features) but they may have a special name indicating the difference in status (e.g. Regione ***Autonoma*** [author's emphasis]Trentino-Alto Adige in Italy). Special laws are generally employed to set the special functions assigned to these regions.

A common aspect found in these nations is the effort to balance the demands for special treatment with the concern of other units for equitable treatment and the maintenance of national integrity and identity. Suppressing special regions' demands may lead to separatist/irredentist sentiments. Allowing too great a difference may cause other regions to feel shortchanged (e.g., on fiscal matters) and lead them to make similar demands. Moreover, some fear that a deal that gives "excessive" autonomy may in any case be used as a stepping stone to separation.

Indonesian status

Indonesia also has established specific laws to govern the special status of some regions, under a provision of the Constitution. While the 1999 decentralization reforms have been focused on the district/city level, special status or autonomy has been granted to the following provincial regions:

- Province of Yogyakarta – Law 3/1950 on the establishment of the Special Province of Yogyakarta[32]
- Province of Papua – Law 21/2001 on Special Autonomy for Papua Province[33]
- Province of Aceh - Law 18/2001 on the Special Provincial Region of Aceh as Province of Nanggroe Aceh Darussalam; followed by Law 11/2006 on the Government of Aceh
- Province of Jakarta – Law No. 34/1999 on the National Capital of the Republic of Indonesia Regional Government of Jakarta[34]

All of the provisions of Law 32/2004 apply to the special regions, as long as they are not superseded by laws on special status. However, only the law on Aceh has come after Law 32/2004. From the standpoint of sequence, this law might be expected to indicate how it veers from the general framework (Law 32/2004).

Differences in Functional Assignment for Aceh

The differences in view of the special status could come from having functions that normally would not be given to the province/district/city or having the power to assign functions between levels within a region. Such differences would achieve what the International Crisis Group refers to as "a genuine autonomy for Aceh that is qualitatively different than that of other provinces."[35] A comparison of the Law 32/2004 versus the LoGA provisions reveals a

[32] Undang-Undang Nomor 3 Tahun 1950 tentang Pembentukan. Daerah Propinsi Daerah Istimewa Yogyakarta
[33] Subsequently there has been splitting of this province but its legality is contentious.
[34] Undang-Undang Republik Indonesia Nomor 34 Tahun 1999 Tentang Pemerintahan Propinsi Daerah Khusus Ibukota Negara Republik Indonesia Jakarta
[35] ICG (2007). Aceh: Post-Conflict Complications, Recommendations of International Crisis Group, Asia Report N°139 – 4 October, pg ii.

rather complicated and confused situation in terms of what pertains to Aceh and which level in Aceh (Appendix 7).

Because the list of functions in LoGA is more elaborated than in Law 32/2004 but does not cover nearly as much as is found in GR 38/2007 (which came after LoGA), there is a need for some kind of follow up regulation to determine what other functions are to be found in Aceh. There is actually no regulation of this kind stipulated in LoGA, but the CG is approaching this oversight in a pragmatic way by announcing it will issue one regardless. When initially discussed, the Governor had a strong negative reaction to this possibility, as the GR was seen to go beyond the "exclusive" jurisdiction of the CG to cover some ground in practically all sectors of government. This was seen as an intrusion by those who understood that Aceh had total jurisdiction over those sectors that the CG did not claim entirely as its own. This misunderstanding dogged early discussions and indicates how careful the CG needs to be in fashioning the architecture for functional assignment, in terms of raising awareness of the scope of CG functions in "regular" provincial matters and in special autonomy provinces.

The functions listed in LoGA are generally assigned to both the provincial and district/city levels,[36] which is somewhat problematic if concurrency is to be minimized. Therefore the government of Aceh itself is taking the initiative to distribute functions between the provincial and district/city level through several sectoral provincial Qanun. Governor Instructions No. 12/2007 sets out a program of regulation making with key sectors staggered over the 2007/2008 legislative sessions. The instructions calls for the provincial unit preparing the draft Qanun to consult with the district/city level, under the coordination of the provincial government secretary.

It is to be hoped that Aceh will also fashion a mechanism to adjust functions over time, since the "remaining functions" mechanism of GR 38 does not seem to apply to Aceh.

Revision of Law 21/2001 for Papua

The Ministry of Home Affairs has set in motion an evaluation of the special regional autonomy of Papua, implemented largely through the University of Satyawacana (Salatiga). The University of Cendrawasih is also expected to have a role, but this was not specified to the Consultant. It is also not clear if the evaluation is a pre-requisite for the revision of the law, or if these are to be done simultaneously. In any case, the revision process has yet to be specified, although MoHA is already beginning to consider what this may entail.

The revision of the law is bound to be contentious. Some stakeholders will insist that the law be applied fully prior to making any changes – the argument here will be that if there is to be any evaluation it should focus on the lack of fulfillment of this law. Some feel that the law has already been shown to be a failure.[37] Others believe that no "regional autonomy" law of any sort can address the aspirations of Papuans – only independence can.

[36] The only explicit permission to determine the assignment between levels is for Syari'at Islam – to be done through Qanun Aceh (can be facilitated by CG).
[37] *Berita Daerah* (2007). Inpres Percepatan Pembangunan Harus Direalisasikan, Selasa, 21 Agustus, http://www.depdagri.go.id/konten.php?nama=BeritaDaerah&op=detail_berita_daerah&id=904

There is little doubt that the creation of West Papua and the issuing of Presidential Instructions 5/2007 on the acceleration of development in Papua and West Papua[38] have complicated the political situation, and is making it more difficult for Papuans to forge common ground and positions regarding the form of autonomy desired. The Presidential Instructions themselves undermine the autonomous provisions of Law 21/2001 in establishing funds that flow through sectoral departments in deconcentration style, for functions that are supposedly of the regional governments of Papua.

In particular, the role of the Papua People's Assembly (MRP) is in question in view of the new province, and possibly additional provinces to be formed. It is not clear whether the MRP should take on additional political roles to maintain some overall identity for Papuans, or whether the new law should merely accept the "facts on the ground" promoted by the central government, increasingly marginalizing the MRP as a result.

In the revision of the law, the issue of functional assignment will be important. One only needs to check the newspapers to see the saliency of this issue. The recent effort of the province of Papua to prohibit the sale outside the province of raw logs, based on its understanding of Law 21/2001, underscores the possibilities and challenges faced.[39] In this case, central level actors maintain that Law 41/1999 on forestry is valid for all parts of Indonesia, whereas traditional leaders in Papua stress that what makes Papua special is the traditional collective (tribal) ownership of the forests, and that it is this understanding that should be derived from the special status provided in Law 21/2001.

Unfortunately, Law 21/2001 is not well crafted when it comes to what is special about functional assignment in Papua. The current law sets out explicit duties, in the sense that Papua is expected to look after language and cultural promotion and other general welfare goals, but these do not set out specific functions that Papua has beyond any other province or districts/cities. It does do so however in allowing traditional authorities to have a role in some aspects of judicial processes – which mirrors the religious based shariat law authority given to Aceh. It also makes Papua responsible for all levels of education within prescribed norms of the central government. It requires the province to establish health standards and provide health services. This raises the question of whether Papua is subject to national health standards – a question that also arose in the Aceh case when the GR for central government functions in Aceh was discussed.

In an odd twist, the autonomy law explicitly indicates that supervision over districts/cities is a central government role that can be assigned to the Governor, as the representative of the CG. In this respect then, Law 21/2001 is clearly more centralized than for other provinces, who have been largely given this role (perhaps inadvertently) through the sectorally defined functions in GR 38/2007.

Further work suggested

- ☞ The special region laws need to be examined to see if there is clarity in what provisions of Law 32/2004 prevail and which provisions of the autonomy laws

[38] Instruksi Presiden Republik Indonesia Nomor 5 Tahun 2007 Tentang Percepatan Pembangunan Provinsi Papua Dan Provinsi Papua Barat.
[39] *Suara Pembaruan* (2007). Larang Jual Kayu Gelondongan – Pemprov Papua Dinilai Salah Menafsirkan UU Otsus, Jumat 23, November, hl. 12.

override or add to these. Clarity should also be evident on the division of functions between the provincial level and lower levels, or how this is to be attained.

- ☞ Discussion needs to be widened on what justifiably promotes national unity in functional assignment, and specifically what the role of the central government will be in setting standards for any functions given to regions, regardless of the autonomy regime.

- ☞ The central government should pay particular attention to Aceh's efforts to allocate functions between the provincial and district/city levels (and to agree on a forum for ongoing consultation for central level policies affecting Aceh), to see if the processes and legal architecture may be useful models for other provinces as well.

- ☞ In view of the importance of functional assignment, the evaluation of the autonomy experience in Papua should pay attention to:
  - o what is special about the Papuan functions compared to other provinces;
  - o how this special character has been realized in practice;
  - o the extent to which funding and other features of autonomy have been consistent with functions;
  - o how the MRP has been able to discharge its functions;
  - o how the proliferation of provinces will aid or inhibit the intended functions of the MRP and the implementation of resource management functions;
  - o whether there are prospects for strengthening/reconstituting the MRP to act in all relevant governmental sectors to compensate for the splitting of Papua into provinces, acting as a binding body for "Papua." Functions would then be recast between the MRP, provinces, and districts/cities or other territorial divisions as decided in Papua (see Section 14 on territorial divisions).

14. Territorial divisions' impact on functional assignment

International practice

The creation of territorial divisions is generally driven by a number of factors, including the ability of the anticipated SNG to sustain the functional assignment set for that level. In some cases entire tiers are established, and again the number of units formed are determined in part by the burden of functions they are to carry out.[40]

Indonesian Status

Territorial reform, or at least a more purposeful pattern of territorial divisions, is being attempted as part of the revision of Law 32/2004. While there is concern that some new regions are not able to shoulder the functions associated with the level of districts/cities, there is little discussion of the obvious inability of small regions, e.g., Papuan district of Supiori with 12,500 people, to meet the performance expectations for this level of government.

[40] See Ferrazzi, G. (2007). International Experiences in Territorial Reform – Implications for Indonesia, preliminary draft, USAID Democratic Reform Support Program (DRSP), January.

Papua had 10 districts prior to decentralization, and now has 30 (taking into account both provinces), with more proposals in the wings.[41] The demand is "grassroots" and the response is from national level (DPR largely); the provinces are largely passive so far. This provincial passivity is particularly difficult to understand in the case of provinces with special autonomy. It might be expected that these regions would have the authority to arrange their internal local government structures and to match functions to the scale and hierarchy selected. A "kabupaten" in Papua therefore could have very different functions than one in Java.

Some discussion has been noted among CG officials on the possibility of introducing population limits to guard against insufficient capacity to undertake functions, but it is not clear how much support this option has among policy makers.

Further work suggested

- ☞ Serious consideration should be given to placing limits on the size of districts/cities (population) to avoid regions that cannot cope with the functions that have been uniformly given to all districts/cities.

- ☞ For regions with special autonomy, consideration should be given to empowering the region to arrange its own territorial divisions and to match functions to the scale/hierarchy selected.

15. Process of functional assignment

International practice

The quality of functional assignment very much depends on the quality of the process used to attain it. It is apparent from experiences in several countries that a sectoral decentralization lag occurs when one part of government forges ahead with decentralization, expecting the sectors to follow. A quick adjustment by central line ministries rarely happens.

To overcome the sectoral decentralization lag, a dialogue is needed that leads to sufficient understanding among stakeholders and to agreement on some basic principles and overall legal architecture (where functions will be listed, what kinds of functions, what will be the roles between levels of government).

The key to legitimate and workable functional assignment is the genuine involvement of key stakeholders, among them of course the central line ministries/agencies (shortened to CLM). CLMs generally fear the following:

- ***Capacity gaps*** - inability of LG to rise to the challenge given their low capacity.
- ***Service disruptions*** - due to capacity and transition challenges, service provision may be placed in peril.
- ***Misalignment with national objectives*** - in view of insufficient time or experience in reworking vertical relationships, or overly permissive LG framework, LG efforts will not be sufficiently aligned with national objectives.

[41] Several new districts were formed in early 2008 that are not counted in the 30.

- ***The motives of the Ministry responsible for LG*** - there is sometimes fear among CLMs that the ministry responsible for LG promotes decentralization as a way to shift control away from specific service sectors and augment it in its own " LG sector."

The above concerns are often justified, and must be constructively addressed. A prolonged period of misalignment of CLMs with the central policy of decentralization can have debilitating consequences for the decentralization effort and for the entire policy making environment of the country/state. Specifically, the following unwanted results may come to pass:

- Inefficient use of limited sectoral resources due to stagnation in adjustments/innovation in service delivery arrangements within the lagging sector.
- Sub-optimal decentralization results in other sectors/services (that have moved forward) in view of lack of synergies with related services/sectors (e.g., decision making is still vertical for related services; critical mass of administrative staff/resources is not obtained in LGs).
- Unhealthy tensions between policy actors.
- Persistent contradictions between legal provisions and reality on the ground, or conflicting legal provisions in LG versus "sectoral " legal frameworks leading to a loss of public trust/confidence in the rule of law and government policies.

A sectoral lag can sometimes be turned to good advantage, as a leading sector becomes a "pilot" and thus a model for the rest, in a sectorally phased approach. But a lag that is unduly prolonged and is not used in preparatory work will only invite the downside listed above.

Gaining the interest of a CLM to take part in the piloting rests to a large extent on the leadership to be found in the CLM itself. At the same time, some body is needed to ensure cross-CLM coherence. Some functions cross CLM boundaries and it is important that the receiving SNG receives functions in a unified fashion. This can be established early in the functional assignment process, involving a dialogue/policy development platform cutting across CLMs. The ministry concerned with LG, planning, finance, or administrative reform may be well placed to facilitate this dialogue and joint policy development; the choice may rest on past relations of trust and on capacity.

Within the CLM itself, it may be helpful to establish some form of organization to undertake functional assignment, on a temporary or permanent basis. Several options can be considered, and the chosen option must be suited to the CLM in question with respect to achieving the following:

- Cross-unit analysis and dialogue within the CLM.
- Flow of information from technical to political level in the CLM.
- Engagement with the coordinating ministries and any inter-ministerial coordinating committee.

The CLM may choose any, or a combination of the following:

- ***A focal point***; a person with overall responsibility to facilitate internal activities and be the technical link to cross-sectoral dialogue/policy platforms and stakeholders. The individual should be senior, in a deputy minister or secretary general role, or an advisory/staff position that requires technical and political expertise.

- ***Existing ministry policy unit*** that is established as a staff function and draws in part from line units for information and views on decentralization.
- ***New decentralization policy group*** that is established as a staff function and draws in part from line units for information and views.
- ***Sectoral stakeholder forum***; a formal or informal organization that brings together the CLM with relevant stakeholders.

There is no best way to set internal organizational structures for decentralization, but having well respected individuals in these positions/structures is certainly advantageous.

The internal and external dialogue can be enhanced through a number of measures that together form a **Communication Strategy** on decentralization for the CLM, for example:

- ***Pamphlets*** explaining the CLM task structure for decentralization or specific initiatives.
- ***Web site*** or a devoted page in the CLM website to indicate the organization, work plan, initiatives, progress, and events.
- ***A feedback mechanism*** (e.g., telephone, email) linked to the organization/focal person charged with decentralization.
- ***Internal orientation sessions*** should be provided for the CLM staff to understand the approach and work plan and other matters relating to the decentralization efforts of the CLM. In particular, the sessions should clarify what is expected from each relevant unit in the CLM and the opportunities provided to make a contribution or to gain skills and knowledge.

The dialogue should at some point extend beyond the CLM officials, encompassing local governments and their associations, relevant professional associations (e.g., teachers, health workers), experts from research and higher education organizations, non-government and private sector organizations involved in service delivery or in advocacy.

Great care must be taken in explaining how external actors will participate in the implementation of the sectoral decentralization work plan. Identifying stakeholders is a useful step, and there will be differences of opinion regarding who should participate, or at what point they should participate.

Content of piloting work plan of the CLM:

- Confirming or establishing the internal organizational set up of CLM to boost/guide decentralization/piloting.
- Diagnostic work to be undertaken; including desk work and field work.
- Key internal meetings to gain support and launch key activities.
- Participation in cross-sectoral CD activities.
- Progress meetings in the CLM.

It is exceedingly difficult in a complex undertaking of this kind to set out a work plan that will hold for the period in question. Nevertheless, an adaptable work plan can be useful to keep the focus on key milestones.

It may not be possible for the CLMs or the coordinating ministries themselves to point to a clear timetable for sector decentralization. Policies may be made in an ad hoc way, as political pressures make themselves felt. A realistic time frame needs to be set, usually spanning one or two years, giving enough time to explore current arrangements, develop and explore options, and make decisions. It may be necessary to undertake some pilot activities, or to phase in functions across or within sectors.

Indonesian Status

If the current effort to revise Law 32/2004 is counted, there have been three rounds of reform in regional autonomy (including functional assignment) over the last ten years. A reasonable question, posed by stakeholders and supporting donors,[42] is whether there has been any improvement in the approach used by GoI to (re)fashion policy, in this case functional assignment. The assumption behind this query is that the quality and sustainability of decentralization policy depends to a significant degree on the appropriateness of the process used. The latter entails the quality of inputs, participation and legitimacy. The differences seen in the processes to date have not varied significantly and fall short on several counts.

In the second round (to prepare Law 32/2004) there was significant interaction with the sectoral departments, more so than in the preparation of Law 22/1999 (specifically the GR 25/2000). Perhaps that explains the long time taken (three years) between the law and the details that came in GR 38/2007. MoHA points to the "ownership" of sectoral ministries, explaining that each minister/head of agency signed a communiqué (*berita acara*) agreeing to the functions lists that made their way into GR 38/2007. It also has to be acknowledged that some regional government associations took part in the sectoral discussions, although this was more as observers than participants. Some sectoral ministries can also point to consultations they have held with sectoral stakeholders (in addition to the MoHA facilitated events). In the preparation of the functional assignment provisions in the law itself, donors (particularly GTZ, but also UNDP, CIDA and USAID) sought to provide input, though their inclusion was occasional and ad hoc.

The above process improvements were apparently not sufficient or fully utilized to achieve substantive progress. It is puzzling to note that the quality of the architecture for functional assignment in Law 32/2004 and GR 38/2007 is not much better than the problematic construction found in Law 22/1999 and GR 25/2000. There was a shift from a residual to positive list construction for districts/cities, and an attempt to introduce/strengthen some potentially helpful concepts, but on the whole the outcome is not satisfactory; one set of shortcomings has been exchanged for another. This assessment is in part shared also by government officials who find the GR 38/2007 lists to be unwieldy.

It might be expected then that the current revision of Law 32/2004 would be undertaken with reflection on the previous two rounds. This was the case in the planning stage, where donors (especially GTZ) offered support in the way of process facilitation. Some effort was made to stretch participation and structure it well. The regional conferences of June 18th (Semarang)[43] and July 26th (Lombok)[44] were a good start, and well documented, though the discussions were not particularly well structured or executed.

The process of bringing specific expertise to bear on well defined topics and reform possibilities for improvements soon ran into difficulty, so that by November 2007 the core team seemed to have shrunk to a small MoHA team forging ahead with legal formulations to replace those in Law 32/2004, rather than explorations of possibilities in appropriate forums –

[42] This question was raised in the presenttion of preliminary findings of this study to the Decentralization Support Facility, November 21, 2007.
[43] DDN/GTZ, Forum Diskusi Kajian Isi Kebijakan dan Penggalian Fakta Penerapan Undang-Undang 32/2004 Tentang Pemerintahan Daerah, Hotel Grasia, Semarang, 18 Juli 2007..
[44] DDN/GTZ, Penggalian Fakta dan Aspirasi Daerah untuk penyempurnaan Undang-Undang 32/2004 Tentang Pemerintah Daerah, Hotel Jayakarta Senggigi, Lombok, 26 Juli, 2007.

based on well prepared empirical and conceptual inputs. The expert team involved since mid-2007 has found itself used sporadically and without a clear sense of the scope, outputs, timelines and process to be used. What is also troubling is that these experts seem to separate their role within the government expert team from their own academic/outreach roles. Hence the dialogue/presentations made outside of the revision process do not adequately reflect the discussions held within the revision team, missing the opportunity to air possibilities and to bring back into the team fresh views on emerging revision ideas.[45]

On the positive side, MoHA seems to be retreating from a rushed exercise, initially slated to end in December 2007. It is now foreseen that further policy review/development activities will be undertaken in 2008, and given the proximity of the 2009 elections the possibility of a post-election finalized reform has been acknowledged. This slower pace would be preferable, to give time for adequate attention to the many issues that need to be addressed.

Further work suggested

- ☞ A more relaxed and systematic pace of policy review and policy development is required, with greater specificity, preparation of empirical information (Indonesian and international) and policy options considered.

- ☞ Consideration should be given to managing the functional assignment policy process through a special task force of government, or a special commission that can act more intensively and flexibly in obtaining expert inputs and participation of stakeholders. Alternatively, a number of possible actors (beyond the narrow expert group presently used) should be encouraged to undertake efforts on certain areas of revision and contribute these to the government.

- ☞ A longer tem strategy is required to strengthen the policy network on issues of regional autonomy, particularly on politico-administrative issues that have proven problematic (functional assignment, role of levels of government, dual roles of regional heads, supervision, regional splitting, special regional autonomy). Target groups could include academic and research organizations and representative organizations of regional government.

Donors have been interested in supporting indigenous policy networks in the past, but have not scored many successes, primarily due to the short term orientation and lack of learning from past efforts or efforts in other countries. While the notion of using intermediaries to support policy is increasingly accepted, and to some extent employed, it is not clear if there is appetite among donors for a longer term commitment that would be needed to support such networks. The acceptance of these networks in MoHA and other GoI organizations is also questionable. The selective use of individuals from favoured academic institutions, their participation preferably funded by donors in a hands-off approach, may be the desired mode for using intermediaries of these actors.

[45] This was very evident in the seminar held by the University of Indonesia November 22, 2007, essentially by the same UI experts engaged in the revision of Law 32/2004. Key issues discussed in the revision (hierarchy between levels, introducing a "preparation period" for regional splitting) were hardly mentioned in what was billed as a focus on relations between levels of government and regional splitting.

III. OVERALL CONCLUSIONS

Considerable changes have been made in functional assignment with the advent of the reform era in Indonesia. Positive feature include a commitment to the three modes of decentralization, in line with international practice. The district/city has been made the general purpose local government level responsible for much of basic service provision. As well, an effort has been made to identify those functions that regional government must perform, and to define the performance level for basic service delivery. Increased consultation across central government sectoral organizations and with regional government has also been noted.

However, little progress has been seen in in terms of clarity and sustainable rules, as indicated in the continued incidence of deviation by central line ministries (CLMs) from the organic law on decentralization and its government regulation on functional assignment. A major weakness has been the lack of attention to the legal and other aspects of the architecture of functional assignment. The latter is a foundational aspect of intergovernmental relations and must be seen in its linkages to the legal framework, territorial divisions, roles between levels of government, organizational structures, funding and other features of governance.

Much work remains to be done to improve functional assignment. Some options for this work have been identified in this report, in terms of policy and also in the preparatory/process work required. Some improvements may be possible within the current effort to revise the organic law on decentralization/regional government (Law 32/2004 and GR 38/2007), but a longer term perspective is desirable to tackle some fundamental issues, particularly in relation to a constitutional amendment and the harmonization of the legal framework.

A great deal of dialogue and analytical work, including drawing from Indonesian experiences (such as the Aceh approach now underway) and comparisons with international practices, will be required to provide the base for joint understanding of key concepts, reach agreement and formulate sustainable rules.

Donors have been variably involved in supporting functional assignment. In recent years the support has been reduced compared to early years of decentralization, with obligatory functions and minimum service standards being the main focus of support. Absorptioon of donor inputs has been fairly high at times (particularly in law 22/1999 and GR 25/2000) and very low at other times (such as in the Law 32/2004 and GR 38/2007 formulation). Donors have supported, and are supporting, practically all of the reform work described under the above fifteen themes related to functional assignment. The support has waxed and waned over the three rounds of reform, and has yielded some success, and little take up in other instances. This is par for the course in technical assistance.

Experience in this broad field of reform suggests that donor support could have been more effective at times had it been more constant, or pervasive (e.g., acting in concert through sectoral projects/technical assistance, and across donors), or offered in a different way. In particular, it suggests that a shift in the approach may be needed, where a long term investment in Indonesian actors that could form a policy network is made, avoiding the shortcomings that direct donor technical assistance poses in terms of acceptability and sustainability.

Donors have shown interest in supporting indigenous policy networks in the past, but have not scored many successes, primarily due to the short term orientation and lack of learning from past efforts in Indonesia or elsewhere. While the notion of using intermediaries to support policy is increasingly accepted among donors, and to some extent employed, it is not clear if there is appetite among donors for a longer term commitment that would be needed to support such networks.

Indonesian academics and other stakeholders appear to be fairly receptive to the idea of establishing policy networks in this field. Acceptance and participation should however not be taken for granted; sometimes the interest is very much as individuals rather than institutional, and it is conditional on a particular kind of relationship to donors. The desirability of developing these networks among MoHA and other GoI organizations is also an issue. The selective use of individuals from favoured academic institutions, their participation preferably funded by donors in a hands-off approach, may be the desired mode for using intermediaries. Despite these cautions, a dialogue on this longer term perspective is needed to make progress in this policy field.

Appendix 1: Extract from the Terms of Reference

Background

Some refinement of functional assignment has been accomplished through the revision of Law 22/1999, yielding the provisions of Law 32/2004, in particular the Government Regulation 38/2007 on the division of functions between the center and the regions. Progressive features of the framework (related to functional assignment) include the concept of obligatory and discretionary functions, and more elaborated connection of obligatory functions to minimum service standards.

It is widely acknowledged that several challenges remain, particularly the following:

- The main typology of functions (decentralization, assistance tasks and deconcentration) need to be more consistently developed
- Obligatory functions and discretionary functions require additional clarity
- Delegation to villages needs to be more fully addressed
- An ongoing mechanism for dialogue and adjustment needs to be developed
- The functional load for districts/cities need to be considered in light of the creation of regions that is reducing the average size drastically.
- The assignment of functions in Aceh and Papua need clarification and likely special treatment.
- The legal framework needs to be made more robust in terms of type and number/strength of legal instrument used, to ensue adherence and harmonization.

The above challenges are an initial list, and one that needs validation and adjustment in the initial stage of the study.

Objective of Study

The objectives of this exploratory work is to assess the current framework for functional assignment, indicating the progressive elements that should be maintained and refined, and changes needed to lend clarity and make the framework more workable.

The study is expected to shape the reform effort in the context of the review of Law 32/2004, already underway and slated to conclude sometime in 2008.

Approach to the Study

The study will be conducted by an international consultant familiar with the decentralization scene in Indonesia and with functional assignment issues in Indonesia and other countries. The intent is to raise awareness of the progress made in Indonesia and the improvements that still need to take place to gain a proper implementation of functional assignment. Hence, close consultation will be the order of the day in this study, with opportunities provided to GoI officials to explain and comment on the current framework and to jointly examine possible improvements for the future.

Because of the complexity of functional assignment, it is desirable to build a network of academics/experts in this area in Indonesia, to support the GoI in its future efforts. The study will engage selected individuals and note the potential to continue to develop such a network in the future.

The study will also include views of the regional government associations, and point out opportunities for undertaking capacity development of all implementing actors in realizing the policy and legal provisions on functional assignment. The possible supporting role of donors will also be indicated.

The GTZ supported project ASSD will provide guidance to the study and support the study in terms of logistics and assistance with the seminar to be held in February 2008.

Preliminary list of Key Informants

Government of Indonesia:

- Directorate for Functions, MoHA
- Directorate for Special Autonomy, MoHA
- Directorate for Territorial Divisions, MoHA
- Directorate General for Village Governance (PMD) MoHA
- Deputy for Regional Autonomy, Bappenas
- Government members of the drafting team for GR 38/2007
- Aceh/Papua government officials

Other Stakeholders:

- University based academics (UI, UGM, STPN)
- Provincial and district/city associations
- Non-government members of the drafting team for GR 38/2007
- Donor TA advisors related to functional assignment

Appendix 2: Key Informants

Central Government	
I Made Suwandi	Director for Regional Government Functions - MoHA
Dedi Koespramoedya	Direktur for Regional Autonomy Bappenas
Son Diamar	Expert Staff Bappenas/on Drafting Team for revision of Law 32/2004
Hasudungan Hutalungan	Sub-director for Minimum Service Standards - MoHA
Herbert Siagian	Staff sub-directorate for Minimum Service Standards - MoHA
Prabowo	Staff sub-directorate for Minimum Service Standards - MoHA
Herry Yuherman	Director for Territorial Structure and Special Autonomy - MoHA
Safrizal ZA	Sub-Director for Special Autonomy - MoHA
M. Dwidjo Susono	Acting Head – Team Decentralization Unit - Ministry of Health
Tri Tarayati	Sub-section Job Analysis and Procedures – Ministry of Health
Regional government Associations	
Rusfi Yunairi	Director of Cooperation and Advocacy APEKSI
Rudi Hauter	CIM Expert ADEKSI
Special Autonomy Functional Assignment	
Mawardi Ismail	Rector – Faculty of Law University of Syiah Kuala
Anwar Muhammad	Deputy Head of Education Office NAD
May Bernhard	Team Leader ALGAP II (legal advisor to Governor)
Adriana Elizebeth	Researcher, LIPI
Key Informants Related to Functional Assignment Issues	
Bhenyamin Hoessein	Professor & Chair of Graduate Studies of Administrative Sciences, UI
Eko Prasojo	Professor and Head of Department of Administrative Sciences, UI
Roy Salomo	Professor Department of Administrative Sciences, UI
Irfan Ridwan Maksum	Professor Department of Administrative Sciences, UI
Koswara Kertapradja	Professor Ilmu Politik/Pemerintahan Universitas Satyagama
Siti Zuhro	Researcher, LIPI
Elke Rapp	Program Manager Decentralization USAID-DRSP
Martha Gutierrez	Principal Advisor Advisory Service Support for Decentralisation (GTZ)
Erita Nurhalim	Advisor for Advisory Service Support for Decentralisation (GTZ)
Susanne Lubis-Sproesser	STC for Advisory Service Support for Decentralisation (GTZ)

Appendix 3: Typology of decentralized functions/tasks[46]

Aspect of the service	Deconcentrated Task	Delegated/Agency Task	Devolved function
Instrument	Ministerial decree and circular.	Law, regulation, government decree, or ministerial decree/circular.	Constitution, law and related regulations.
Source and receiver of authority	From Ministry, "delegated" to its own dispersed branches.	From representative body or ministry/agency to local government or special agency.	From state, or central level representative body to local government.
Funding	From ministry to its branches directly (does not show in local government budget).	From the assigning entity to the local government/special agency. In cases task is funded from broader transfers that are deemed to be sufficient to cover delegated tasks.	Receiving level (through assigned revenues or block or conditional grants).
Staffing	Branch staff are central level civil servants, part of the Ministry establishment. Their duties may include coordinating with local government.	Local government/ special agency have own staff, but operate under a national frame. May also use seconded staff of central government.	Local government have own staff, but operate under a national frame; considerable discretion in hiring, firing, size of establishment etc. May also use seconded staff of central government, who is treated essentially as local government staff.
Internal organization structure discretion	Branches are structured by the Ministry, though often approved at cabinet or higher level.	Local government/ special agency can shape their units within a national frame, and handle tasks in/within units of their choosing.	Local government can shape their units within a national frame, and handle functions in units of their choosing.
Implementation Discretion	Variable but usually limited by Ministry regulations, procedures, standards and instructions. May be considerable ad hoc guidance.	Considerably constrained by policy, procedures and standards set by assigning entity; some discretion on implementation in some cases.	High degree of discretion, but may be limited somewhat by national standards.
Reporting/ Accountability	From branch to Ministry headquarters.	Primarily to the assigning entity, but also to the local council and citizens.	Primarily to citizens of receiving level, through the local council and directly; vertical accountability remains and in principle is more pronounced in early stages of decentralization

[46] Developed by Ferrazzi (2007), based on previous elaborations basic typology of decentralization modes (e.g. report from Yemen's sectoral support provided through UNCDF/UNDP, see Ferrazzi 2006).

Appendix 4: Agency vs. Deconcentration Tasks in draft GR

Aspect	Agency tasks description in draft government regulation	Deconcentration tasks description in draft government regulation
Criteria for selection of tasks	Externalities, accountability and efficiency, and harmonious relations between levels of government	Externalities, accountability and efficiency, and harmonious relations between levels of government
Scope of tasks	For central government (CG): Must fall outside of exclusive CG list Can't cause a burden to APBD (if from CG) For provincial government (PG): must be from PG list of functions From district/city (D/C) government: must be from D/C list of functions	Non-physical activity Can't cause a burden to APBD
Assigning entity	Central government (and ministries/agencies with President's approval for tasks going to the village) Provincial government District/city government	Central Government
Receiving entity	From CG: to region (*daerah*) or village (but also mentions regional government, and village government) From PG: to district/city or village (but also mentions district/city government) From D/CG: to village	Governor as representative of CG Vertical agencies Central government official in the region
Confirmation schedule	Ministries/Agencies indicate latest by mid-March for following budget year – submitted to Musrenbangnas. Ministries/Agencies inform governor, bupati/mayor or village head mid-June and formalize in ministerial regulation – sent to governor, bupati/mayor or village head by mid-December.	For governor tasks Ministries/Agencies indicate latest by mid-March for following budget year – submitted to Musrenbangnas. Ministries/Agencies inform governor mid-June and formalize in ministerial regulation – sent to governor by mid-December.
Implementing Organization	Work units (SKPD) of province or district/city as decreed by Governor or Bupati/Mayor respectively; village head in case of tasks received by village	Work units (SKPD) of province as decreed by Governor
Financing arrangement	From APBN – implemented by region (*daerah*) and village From APBD province – implemented by district/city and village (but also uses the term district/city government) From APBD district/city – implemented by village	From APBN – implemented by Governor as representative of CG From agency budgets – implemented by vertical agencies
Role of DPRD	Is informed by Governor/Bupati/Walikota after DPR approved RKA-KL (when RAPBD is	Is informed by Governor after s/he receives the DPR approved RKA-KL (when RAPBD is being

	being prepared) and in preparing to discharge tasks.	prepared) and in preparing to discharge tasks.
Reporting	To assigning entity	Reporting quarterly and annually by head of provincial Work Unit to Governor and financing Ministry/Agency - on target achievement and financial aspects. Governor gathers reports and sends to MoHA and MoF and Bappenas. Annual report attached to Annual Budget Accountability Report sent to DPRD.

Appendix 5: Options for provincial level role

Option	Configuration	Remarks
1. Governor is only political figure at provincial level	- Provincial parliament is dropped - Governor is a central level representative - only central level and district/city level functions	➢ It would seem odd to have the Governor directly elected if s/he has no "regional autonomous" role. ➢ Expect strong political reaction from current provincial DPRD members and provinces with strong provincial identity.
2. Overlap on roles is resolved in favour of Governor as representative of central government (CG) and **deconcentration** mode	- Deconcentration is retained to mean Governor as rep. of CG - Governor obtains own deconcentrated apparatus - Dinas are restricted strictly to pared provincial autonomous functions - Deconcentrated units funded from APBN	➢ Most dinas would be small in comparison to deconcentrated units (essentially vertical agencies would be reestablished - under the Governor as CG). ➢ DPRD role would be limited to review of modest provincial own budget and have no role toward districts/cities. ➢ Dinas would not be efficient and tension would exist with Deconcentrated units as disentanglement on some functions would be difficult to achieve. ➢ Expect strong political reaction from current provincial DPRD members and provinces with strong provincial identity.
3. Overlap on roles is resolved in favour of province as autonomous body and recipient of GC tasks via **agency** mode	- Deconcentration is retained only to mean vertical agencies that are mainly responsive to their HQs - Province/Governor as "autonomous" actors dominate - Governor as rep. of CG is retained for special tasks (appointments etc.) but not referred to as deconcentration - No special deconcentrated units under the Governor - CG gives key tasks (e.g. supervision) to autonomous region as agency tasks.	➢ Governor's reduced role as CG representative would need to be renamed to avoid confusion with stand alone deconcentrated mode. ➢ Would require that tasks be funded from APBD sources – transfer of deconcentrated funds would need to occur, e.g. to DAU/DAK or in form of local tax assignments.
4. Political accountability through District/City council projected at provincial level	- only central level and district/city level functions - Some functions are handled, by agreement (dynamic) at provincial level with accountability to provincial council – made up of chairs of district/city councils	➢ Would still have to resolve a different kind of dual role of the governor; s/he could be responsible to the provincial council on the functions handled on behalf of the districts/cities, and also responsible to the CG for tasks assigned vertically. Complexity of provincial own functions vs. CG assigned tasks would be removed. ➢ Separate organizational set up for CG tasks would be needed still.

Appendix 6: Criteria for functional assignment

Criteria Reviewed by ACIR (USA)

1. Spillover minimization
2. Scale economy maximization
3. Geographical area sufficiency
4. Legal and Administrative ability
5. Functional sufficiency
6. Controllability and accessibility of constituents
7. Maximization of citizen participation consistent with adequate performance

Source: Advisory Commission on Intergovernmental Relations, Performance of Urban Functions: Local and Areawide, September 1963.

Criteria Suggested by ACIR (Australia)

General Criteria:	1.	National unity
	2.	Co-ordination
	3.	Overriding importance
	4.	Multi-functionality
Responsiveness:	5.	Responsiveness
	6.	Community
	7.	Accessibility
Equity and Equality:	8.	Social justice
	9.	Redistribution
	10.	Equalization
	11.	Uniformity
	12.	Portability
Efficiency:	13.	Mobility
	14.	Stabilization
	15.	Internalization
	16.	Economies of scale
	17.	Regional unity

Source: Advisory Council for Inter-government Relations, Towards Adaptive Federalism - A Search for Criteria for Responsibility Sharing in a Federal System, Australian Government Publishing Service, Canberra, 1981.

Criteria Proposed by Advisory Committee in Ontario (Canada)

1. To the extent that income redistribution is a program or service objective, policy/service management and program financing should be provincial responsibilities.
2. The degree of involvement in policy/service management for each level of government should be determined by the type and level of spillovers.
3. Services should be produced at the level of government that can do so most economically.
4. Services should be delivered by the level that can do so most effectively.
5. The degree of involvement in service management for each level of government should be dictated by the level of interest or the need for standards.

Source: Government of Ontario, Report of the Advisory Committee to the Minister of Municipal Affairs on the Provincial-Municipal Financial Relationship, 1991.

Criteria Formulated Under Auspices of World Bank

1. Economies of scale
2. Economies of scope (bundling of public services that brings other consequences)
3. Benefit/cost spillovers
4. Proximity to beneficiaries
5. Consumer preferences
6. Economic evaluation of sectoral choices

Source: Shah, A. (1994). The Reform of Intergovernmental Fiscal Relations in Developing and Emerging Market Economies, Policy and Research Series # 23, The World Bank, Washington D. C.

Appendix 7: Comparison of Functions Between Regular Regions and Aceh[47]

	Law 32/2004 and GR 38/2007	Law 11/2006 (LoGA)	Comment
Principle of Autonomy	"broadest possible" – for the region, without differentiating regional level	"broadest possible" aimed at people (*masyarakat*) of Aceh	Similar; not clear if nuance is meant to signal some difference.
Exclusive central government (CG) functions	Foreign affairs; security; defense, justice; national monetary/fiscal, and religion	*Functions that are national in character*; foreign affairs; security; defense, justice; national monetary/fiscal, *and certain religious functions*	The first alteration potentially opens up a broad range of functions, depending on definition of "national in character"; elucidation narrows and then enlarges coverage – leaving it open to anything CG deems it to be; this was not in the Helsinki MOU. Some religious functions are allowed to be in the hands of regional actors (see modes below). MOU leaves "freedom of religion" to CG "in accordance with Constitution".
Involvement of regions/ villages and Governor in exclusive CG functions	Exclusive CG function can be in part given as agency tasks to regional or village council/government[48]. Can delegate in part to CG representative in region.	Some functions (*kewenangan*) can be in part *transferred* to Aceh or district/city *regional government.* Can be given as agency tasks to Aceh or district/city or *gampong government.* Can delegate some functions (*urusan*) in part to *Governor* as CG representative in region. *International agreements affecting Aceh council/government will be made with consultations/considerations of Aceh council (DPRA). National laws affecting Aceh council/government will be made with consultation of DPRA. Administrative policies affecting Aceh council/government will be made with consultation of Governor.*	Would seem to contradict the exclusivity statement as it uses the language of own functions (*menyerahkan*). In transferring or using agency mode the recipient is the executive rather than the combination of council/executive – no explanation given for difference. It is not clear if the different terms (*kewenangan* and *urusan*) in LoGA has any significance. Aceh does have a role in foreign affairs (is consulted). In fact, for any matter decided by law or administrative instrument affecting Aceh, there is an obligation to consult with the DPRA (laws) or Governor (administrative instruments of policy). Should be noted that MOU called for "consent" on above items; not just consultation.
Involvement of regions/villages and Governor	Can be in part given as agency tasks to regional or village council/government. Can delegate in	Not addressed	The Law 32 formulation invites the question of whether there is any meaning in "exclusive" functions. Hence, the apparent gap in the LoGA may simply reflect that there was no felt

[47] For maintain the focus on regional actors, the comparison does not include the treatment of vertical agencies of the central government.

[48] The term council/government denotes the Indonesian term "*pemerintahan*", combining the legislative and the executive elements. In the Indonesian system, the government is defined as the head of the executive side and the executive organs of implementation. In many OECD countries the term "government" would capture both legislative and executive elements. Council and legislature are used interchangeably in this analysis.

in non-exclusive CG functions	part to Governor as CG representative in region.		need to differentiate between exclusive and non-exclusive.
Oversight role of CG in the functions of regions	CG sets norms, standards and procedure for functions (urusan) implemented by regions. Can delegate to Governor as representative of CG the supervision of district/city.	CG sets norms, standards and procedure for functions (urusan) implemented by Aceh and district/city *governments*. Can delegate to Governor as representative of CG the supervision of district/city.	Similar construction to other regions. Not clear why councils are excluded in the target of supervision.
Criteria for assigning functions	Externality, efficiency and accountability, taking into account harmonious relations between levels of council/government.	Externality, efficiency and accountability, taking into account harmonious relations between levels of council/government.	Would expect from this provision that a similar assignment would occur in Aceh as in other provinces/districts/cities.
Principles in discharging own regional functions	Regulated (*diatur*) and implemented (*diurus*) by regional council/government according to principles of autonomy and agency (assistance) tasks.	Regulated (*diatur*) and implemented (*diurus*) by Aceh and district/city council/government	Not clear why agency tasks are not mentioned in LoGA, but this may be a good thing, as Law 32/2004 (and the constitution) give the impression that regions can regulate agency tasks assigned to them by higher level (the formulation could also be understood that they discharge their autonomous tasks and assign agency tasks to lower levels - but the first interpretation is just as likely).
Assignment between province and district/city level	All set in Law 32/2004 and GR 38/2007.	The assignment of syari'at Islam between council/government Aceh and council/government district city is done through Qanun Aceh (can be facilitated by CG).	It appears that explicit permission to assign between the province and district/city levels is only given for this special area of governance.
Types of functions	For province and district/city levels: ➢ Obligatory functions ➢ Optional functions ➢ Remaining functions (in GR 38) Lists are similar between levels. Details on obligatory and optional functions to be in Government Regulation (GR 38/2007 presently) Remaining functions mechanism is poorly delineated.	For province and district/city levels: ➢ Obligatory functions ➢ Optional functions ➢ Several "undefined" functions of districts/cities ➢ Several "undefined" and unassigned functions of province/district/city level Details on obligatory and optional functions to be in Qanun Aceh and qanun district/city respectively for Aceh and district/city lists – with reference to the exiting legal framework. Does not seem that "remaining functions" exist for Aceh since these are	Overall impression is that of similarity between Law 32/2004 and LoGA, but that GR 38/2007 may not apply to Aceh. Same basic list of OF; Aceh is missing last item allowing for other OF that the legal frame may hold. Also Aceh has five religious OF not found for other provinces; districts/cities also, but less the fifth item - the "ibadah haji." Obligatory functions related to land is given more detail in LoGA. Essentially the same vague/problematic definition of optional functions for both levels as for other regions. The important difference is that the elaboration of these poorly crafted lists is to be done by each regional government in Aceh. How that could work is difficult to see; a patchwork of functional lists could result if the province and district/cities do not do this together to ensure coverage and complementarity.

		in GR 38/2007 and its relevance to Aceh is not clear.	What is most puzzling, in the absence of GR 38/2007 for Aceh, how the functions for Aceh provincial government will be determined as distinct from those of the central government. This challenge is somewhat mitigated by the listing in LoGA of several functions of districts/cities (e.g. madrasah, airports and sea ports) and others that are not assigned between levels (attracting visitors and investors, and approvals for investment and import/export and several other fields); it is not clear why these were made explicit as belonging to Aceh's regions and how other sectors are to be made explicit. Also, it is not clear why some were or were not specifically assigned and whether they are obligatory or optional. Since the "remaining functions" do not seem to apply to Aceh, a mechanism is lacking in LoGA to adjust the assignment of functions over time.
Minimum Service standards	Pertain to obligatory functions and governed by GR 65/2005 and subsequent subsidiary instruments.	The same ambiguous formulation of Law 32/2004 is used, linking the MSS to obligatory functions, to be implemented in a staged manner, and to be set in government regulation. GR 65/2005 does not differentiate between regions.	Very little is said in the LoGA about minimum service standards. If the assignment of obligatory functions (to which MSS are attached) will differ from other regions, it raises the question of whether the Ministerial instruments for MSS will be valid in a general sense. If so, it may be that special provisions will need to be made in these for the specific assignment seen in Aceh. In either case, Aceh could embed the MSS in their Qanun in accordance with the specific assignment of Aceh.
Provisions for regions with special status	Law 32/2004 refers to the special autonomy of the Distinctive (Istimewa) Province of Nanggroe Aceh Darussalam; the law pertains to it unless other laws specifically regulate this region. In GR 38/2007 council/government of the province of Nanggroe Aceh Darussalam is regulated by the legal frame regulating special autonomy.	(see this column in its entirety) Functions (*kewenangan*) for the Aceh government is to be regulated in Qanun Aceh Functions (*kewenangan*) for the Aceh government is to be regulated in qanun district/city	Not clear why in this formulation (art. 270) the formulation relates specifically to the government and not the councils, but it does in any case reinforce that GR 38/2007 does not apply, and that the regions must sort out their own functions (it is to be hoped that this will be done in concert).
Establishment of Special Zones	Relates to activities of national interest, and their establishment is to involve the regions.	Government is obligated to involve Aceh government and/or districts/city governments in establishment of zones	Similar, but MOU calls for consent of DPRA/Governor on laws or regulations respectively affecting Aceh