Part I. Law and Socio-Economic Changes in Asia : 4. Decentralization and Environmental Management in Indonesia

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Decentralization and Environmental Management in Indonesia

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I. Introduction

It is generally taken for granted that the decentralization process in developing countries supports the development of democracy, as it promotes public participation to establish regional autonomy. There is no denying that decentralization of concentrated political powers, as well as the establishment of a participatory system, has benefits to strengthen the fundamentals of democracy. However, an opposite discussion is emerging: That decentralization is not a good choice for the environment. Indonesia, as one the world's richest countries in natural resources, is annoyed by today's unprecedented and relentless exploitation of natural resources.

Indonesia was under the Suharto authoritarian political regime for 32 years. It collapsed in 1998 amid a whirl of people's democratization movement that resulted from an economic crisis in 1997.[1] The authoritarian political regime, sustained by the 1945 Constitution of Indonesia since it gained independence, was de facto disorganized and was transformed into a democratic and decentralized constitutional structure. The Constitution went through four occasions of amendments[2] after the downfall of President Suharto; however, discussions for further constitutional amendments have been temporarily suspended, aiming to avoid unnecessary strife among political factions before the coming general election in 2004.

Under Suharto's rule, executive powers were exclusively concentrated in the hands of President Suharto. Independence of the judiciary was not guaranteed, and not the slightest idea of separation of powers was seen in its pre-modern legal framework. Though the Elucidation of 1945 Constitution states that the system of State Government is Rechtsstaat (a State based on

law) and the Government is based on constitutionalism; however, it actually was a superficial constitutionalism. The establishment of "rule of law" principle instead of "rule of man" was a long-cherished aspiration of the people. Decentralization efforts were made in two directions; horizontal and vertical. Horizontal decentralization took place in the central part of the governmental structure, by means of decentralizing extremely concentrated political powers in the executive branch to the other power branches of the central Government. Vertical decentralization took the form of decentralization of powers from the central Government to local governments.

One drastic change in the democratization is the start of regional autonomy as declared in the second amendment of the Constitution in 2000. Decentralization has long been discussed in Indonesian history, since its colonial period. The Act on Decentralization of 1903, in its Netherlands Indies' colonial period, was the first to be enacted. Since its independence in 1945, a number of laws and regulations related to decentralization were provided. The present discussion of regional autonomy in Indonesia can only be understood in such a context of consolidation of democracy in the transition period from the oppressive Suharto authoritarian political regime.

Present decentralization was mandated during the former President Habibie's period, with the enactment of two major Acts: No. 22/1999 and No. 25/1999. These Acts followed MPR Decree No. 15/1998 made by the MPR (*Majelis Permushawaratan Rakyat*: The People's Consultative Assembly), that is, the supreme national decision-making body in Indonesia. East Timor became independent, and both Ache and Papua provinces (former Irian Jaya) became autonomous regions, under specific Acts[3] of regional autonomy in Indonesia. The Province (*Provinsi*), the Regency (*Kabupaten*), and the Municipality (*Kota*) became the autonomous units at a regional level. Five national interest related areas such as foreign policy, defense and security, the judiciary, monetary/fiscal policy, religious matters, and "other areas" as expressed in Article 7 of Act No. 22/1999, are excluded from the jurisdiction of regional governments. Environmental management issue is included in one of "other areas," as provided in Article 8 of Act No. 22/1999, which provides that authority regarding the efficient use of natural resources belongs to the authority of central Government.

However, Indonesia is suffering an unprecedented environmental crisis. Destruction of natural resources and degradation of environmental conditions are seen throughout the country. It is often discussed that the environmental situation became much worse after Suharto's oppressive control and supervision ended. At present, environmental resources are exploited at a much faster speed, and in a lawless manner. It has created

disorders and a vacuum-like lawless situation in regions. KKN (*Korupsi, Kolusi, Nepotisme*: corruption, collusion, and nepotism) behaviors related to the environment became common attitudes at regional elite levels, and authority to issue licenses on natural resources is often abused.

Illegal logging operations, over-exploitation of marine resources, mining and energy activities, and excessive expansion of plantation areas without due environmental consideration, are found throughout Indonesia. A recent World Bank report on the environment[4] said that the lowland forests outside protected areas in Sumatra's lowland forest will disappear by 2005 and Kalimantan by 2010. It is surprising that the amount of illegally cut logs far exceeds the amount of logs legally cut.[5] Presently, two million hectares of forest cover, almost equal to the area of the State of Florida, U.S., is disappearing annually in Indonesia.

In the developing process of decentralization, more authority to issue numerous licenses on the natural resources are being delegated to regional governments. BAPEDAL (*Badan Pengendalian Dampak Lingkungan*: Environmental Impact Management Agency) was established directly under the President in 1990, based on Presidential Decree No. 23 of 1990, as an executing authority to implement environmental control at the national level, and BAPEDALDA (*BAPEDAL Daerah*: Regional Office of BAPEDAL) was established at the regional level, based on the decentralization principle. Environmental management at the regional level much depends on the functions of BAPEDALDA.

This article aims to discuss environmental management in the process of decentralization in Indonesia. To analyze this topic, two tasks must be examined and discussed.

First, as the present situation of regional autonomy in Indonesia is still uncertain and unstable, I must examine the development of regional autonomy critically. Decentralization policy is being confronted by strong protests, especially from the central Government. Java used to be the center of politics, and separatist movements were seen in many parts of the outer islands, such as Ache and Papua. Economically, most of the profits based on natural resources were pumped up to Jakarta to support Jakarta and Java island, and only a small portion of the budget, compared with the riches of natural resources, was redistributed to regions.

Second, as for environmental management in Indonesia, there is a need to see the extent to which regional autonomy for environmental management in Indonesia will be implemented both at the national level and at the regional level. In order to supplement this task, I would like to take up Jakarta's environmental administration in the coming Section, as an example case to

be studied. Of course, Some allowances should be made in order to compare Jakarta's environmental administration with other regional governments, because Jakarta is exceptionally developed.[6]

II. Issues Related to Regional Autonomy in Indonesia

A. Development of Regional Autonomy

1. A legacy of dualism remains in regions

Discussion on the decentralization of political powers to regional governments had already started in the colonial period, with the Act on the Regional Government Decentralization of 1903 (Ind. Stb. No. 329), which was revised later in 1922 by the Reorganization Act (Ind. Stb. No. 216). Netherlands Indies was forced to apply two sets of ruling methods, as the country is primarily a geographic archipelago, with many different tribes dispersed all over Indonesia. Indonesia, composed of more than 17,000 islands, is often referred to as the necklace of the Queen of the Netherlands. Indonesia is also a pluralistic society that includes more than 200 tribes with respective customary laws, called *Adat* law.

The first ruling method is based on regions, and the second is based on tribal groups. Netherlands Indies categorized Indonesia roughly into two types of regions: one is where the direct rule method was applied, and, in the other region, the area called the "Outer Islands," indirect colonial rule was applied. The Outer Islands include the rest of regions except for Java and the Madura Islands. Where indirect rule was applied, they were under their own rules, unless there was otherwise conflict with the Central Orders from Holland and the mandates issued by the then Governor-General of the Netherlands Indies.

It is often discussed that regional autonomy was realized to a certain extent in the second category where indirect rule was applied. Under the 1903 Act on the Regional Government Decentralization, regional councils were established in regions, and the council members were nominated from among Europeans. However, it could be concluded that it was not aimed at establishing regional autonomy in the modernized sense, but rather was done as a reflective and unavoidable result of the Netherlands' method of regional governance. Of course, I must note that in the beginning of twentieth century there were well-known hot debates regarding the unification of laws throughout Indonesia and the position of *Adat* laws, between the Governor

General and the school of C. van Vollenhoven.[7] It can be understood that decentralization process was an inevitable result of the local governance system as part of the colonial ruling system. Rather, regional autonomy in the modernized sense was initiated after enactment of the Act on Governmental Reorganization of 1922.

The jurisdiction of population groups among different tribes in Indonesia is another source of dualism. It was divided into three: the European group, the Asian group, and the natives group. The respective population groups were ruled by different systems of law; that is, European law was mainly applied to the first group, respective Asian laws were applied to different Asian people groups (such as Indians, Arabs, and Chinese), and respective *Adat* laws were applied to the native Indonesians. These two types of ruling methods supported the development of dualistic legal system of Indonesia that constitutes the basic legal structure throughout Indonesia today.

Of course, in the official context of the legal system after its independence, such a ruling method was abolished and invalidated by the amendment of the Civil Code (*Burgerlijk Wetboek*). However, in the legal structure, especially in private law in Indonesia, *Adat* law is regarded as active living law, and much consideration in respective official law areas is paid to the existing customary laws, whether in written form or not. Besides *Adat* laws, religious laws, such as Islamic law, exist in parallel with formal laws. Decentralization certainly affects the entire legal system of Indonesia; however, there is much to remain with the dualistic legal system in Indonesia as the *Adat* laws and religious laws in Indonesia are deeply rooted in the traditional economic and societal patterns. This reminds us of the discussions on the dual economy in Indonesia as described by J.H. Boeke and J.S. Furnival in 1930's and 1940's respectively.[8]

Adat law has functioned as an in-born living law, which used to work as a legal shelter to protect life from outside, and as a regulatory discipline inside, for centuries. Such a dualistic legal system has persistently prevailed especially in the Outer Regions in Indonesia. In other words, national integration in terms of an officially unified legal system does not yet prevail throughout Indonesia.

2. Federalism vs. a unitary system

It must be noted that the present 1945 Constitution of the Republic of Indonesia adopts a solid unitary principle, since its independence, as a founding principle of the Government. A unitary system means a centralized governmental system, not a federalism. Indonesia experienced the introduction of federalism with the Constitution of 1949. The Constitution of 1949

excluded the unitary principle as a governmental structure and introduced a federal government system as a democratic country ruled by law (Article 1). Governmental powers, which derive from sovereignty, are all executed under a parliamentary system. The 1949 Constitution was lengthy and included about 200 articles, including 35 on human rights, and 93 on the governmental system. However, it was exposed to the establishment of multiple political factions, and political conflicts among factions, as well as economic instabilities, and was soon suspended and amended by the Constitution of 1950.

In the 1950 Constitution, a unitary system based on a Presidential system and a unicameral system, was again taken back, which opened the door to go back to the 1945 Constitution.[9] In 1957, then President Sukarno declared martial law soon after exposing his idea of a "Guided Democracy," and, in 1959, Indonesia returned to the 1945 Constitution, which concentrated political powers in the hands of the President. In his advocating speech: "A Return to the 1945 Constitution,"[10] he explains that a disciplined way of democracy not based on Westernized values is most suited to the Indonesian people's value concept, as symbolized by mutual help (*Gotong-Royong*).

At present, conflicts between federalism and a unitary system still exist at the root of various political struggles in Indonesia. Separatist movements, including massacres, and independence movements are active in Ache, Papua, and the other areas, where natural resources are abundant. The perceptions of decentralization by the people in Indonesia are totally different and vary from separation; that is, independence from Jakarta/Indonesia, to the realization of regional autonomy in the nation's democratization process. Provinces that are rich in natural resources have constantly insisted on political independence, as well as the adoption of federalism as a political system of Indonesia. Two Acts of Special Autonomy of the two Provinces of Ache and Papua, enacted respectively in 2001, show the negotiated result with Jakarta and the Provinces.

Behind these backgrounds, there are conflicting economic and political interests between the central Government and the regions, as well as antipathy toward Jakarta's centralized ruling system, which have accumulated through its long history.

3. Immature decentralization under the Suharto regime

In 1974, a specific Act: No. 5/1974, on the regional government was enacted, and emphasis on regional autonomy was laid at the Regency and Municipality levels, which were established as the Second Level Administrative Region (*Daerah Tingkat II*). Provinces were structured as the First Level Administrative Region (*Daerah Tingkat I*), and the region was

administratively managed and headed by Provincial Governors, who were politically responsible to the President. The central Government could assign part of its administrative job to the Provinces by law, and the Provinces could assign their job to the Second Level Administrative Region, according to their regional regulations.

Three basic norms of decentralization including decentralization, deconcentration, and co-administration were defined in this Act. Local Councils (*Dewan Perwakilan Rakyat Daerah* (DPRD)) were set up, and the 15 qualifications to be elected as a Council member were provided in Article 14 of this Act, whereby, among others, those who had been directly or indirectly involved in treasonable activities against the unitary state system, or in communist activities, were strictly excluded, in the Article (d). The relationships between regional heads of regional governments and the President were hierarchal, and regional heads were all politically responsible to the President, through the Minister of Interior. However, the Act was hardly implemented,[11] as the political powers were not fully devolved to regional governments, and the financial sources were not fully distributed to regions, under Suharto's centralized political structure.[12]

It can be concluded that a legal basis for decentralization was, to certain extent, implanted under Suharto's authoritarian rule. However, this New Order period under President Suharto should not be understood as the development process of decentralization, but as a permeating process of political integration through establishing regional governments. For example, such a balancing Act, on the fiscal distribution between the central Government and local governments, as No. 25/1999, was not provided until democratization movements started later.

B. Regional Autonomy and the Democratization Process

In 1998, President Habibie, the former Vice President under President Suharto, declared political reform to decentralize the governmental structure. The MPR decided basic principles on regional autonomy with MPR Decree No. XV/1988.[13] The Decree directed the Government[14] to adopt a decentralized governmental structure and regional autonomy. Article 2 of the Decree provides that the realization of regional autonomy must be based on democracy, with due consideration to regional diversity. Article 5 states that local governments have authority to manage national natural resources, and are responsible for conservation of the environment. Details are to be regulated by specific laws and regulations (Article 7).

Following this MPR Decree, the second Constitutional Amendment

included three articles on regional autonomy: Article 18, Article 18A, and Article 18B. Article 18 states that the Republic of Indonesia is divided into Provinces (*Provinsi*), and these Provinces are sub-divided into Regencies (*Kabupaten*) and Municipalities (*Kota*), each of which form a regional government to administer and manage their government affairs by themselves. Regional autonomy is administered respectively at Provinces, Regencies, and Municipalities. The regional governments are assured of carrying out "the widest possible autonomy" except in governmental affairs that laws shall determine as the affairs of the central Government. The Governors, Regents, Mayors, respectively the heads of Provinces, Regencies, and Municipalities are stipulated to be elected in a democratic manner. Respective regional government needs a regional assembly: DPD (*Dewan Perwakilan Daerah*) in Province, DPRD (*Dewan Perwakilan Rakyat Daerah*) in Regency, and DPRP (*Dewan Perwakilan Rakyat Daerah Provinsi*) in Municipality, whose members are elected through a general election.

Article 18A provides for the relationship in authority between the central Government and the local governments, and the relationship among local governments. The relationship between the central Government and the local governments in the areas of finance, public services, and utilization of natural resources and other resources, is expected to be regulated by laws. This Article also provides that the nation recognizes and respects the units of traditional society with their traditional rights, as long as they still exist and are in accordance with community development and the Unitary State Principle of the Republic of Indonesia.

Two major Acts on regional autonomy followed the second Constitutional Amendment are Act No. 22/1999 on regional administration, and Act No. 25/1999 on the fiscal balance between the central Government and local governments. The former Act mainly provides for the devolution of political powers from the central Government to local governments. Three basic concepts regarding the relationships between the central Government and local governments are explicitly defined. "Decentralization" (*desentralisasi*) is defined as the delegation of authority of administration, by the central Government, to an Autonomous Region in the framework of the Unitary State of the Republic of Indonesia (Article 1(e)). "Deconcentration" (*dekonsentrasi*) is defined as the delegation of authority, from the central Government to a governor, as the representative of the Government, and/or to the central apparatus of a Region. Government Regulation No. 39/2001 on the Implementation of Deconcentration provides some details on the delegation of authority, the implementation of authority, expenses and so on. "Co-administration" (*tugas pembantuan*) is the assignment to regions and

villages, by the central Government, and of villages by Regions, to implement a particular task, along with financing, facilities, and infrastructure, as well as human resources, with the obligation to report the implementation, and account for it, to the party giving the assignment. In this Act, "Regional Autonomy" is defined as the authority of an autonomous region to regulate and take care of the interest of the local community in accordance with its own initiative, based on the aspirations of the community, pursuant to law (Article 1(h)). Government Regulation No. 52/2001 on the Implementation of Co-administration provides some details on the method of co-administration, the refusal of co-administration, the implementation of co-administration, expenses, and so on.

Exclusion areas, in which regional authority cannot encompass authority that belongs to the central Government, are foreign policy, defense and security, the judiciary, monetary/fiscal policy, religious matters and "other areas" (Article 7(1)). "Other areas" includes policies on national planning and macro national development control, financial balance, state administration and state economic institutional systems, human resources development, and natural resources utilization, as well as strategic high technology, conservation, and national standardization (Article 7(2)). The "other areas" in this Article is inclusively and vaguely provided in its expression.

The authority of a Region in terms of environment is to manage national resources located in its area and to maintain environmental conservation in accordance with laws and regulations (Article 10). Regional authority in territorial waters includes:

(a) exploration, exploitation, and conservation and management of the wealth of the sea, to the extent of the said territorial waters;
(b) regulation of administrative interests;
(c) spatial layout regulation;
(d) law enforcement regarding the regulations that are issued by the region or whose authority is delegated by the Government; and
(e) support in upholding the security and sovereignty of the nation.

The authority of a Province encompasses inter-Regency and Municipality authority[15] in the governmental area, as well as authority that is not, or has yet to be implemented, by a Regency and a Municipality (Article 9). Further, the authority of Regency and Municipality encompasses all kinds of governmental authority other than that excluded in Article 7. Governance fields that must be performed by a Regency and a Municipality include public works, health, education and culture, agriculture, communications,

industry and trade, investment, environment, land affairs, cooperatives, and manpower (Article 11).

Details of the authority of the central Government, the Province, the Regency, and the Municipality are further complemented in Government Regulation No. 25/2000. Article 2 provides the details of "other areas" that belong to the authority of the central Government by categorizing them into 25 areas. In paragraph 18 of Article 2, five items are listed on the environmental sector:

(a) stipulation of a guideline for control over natural resources and the preservation of the functions of the environment;
(b) regulation of environmental management in the utilization of marine resources beyond the span of 12 miles;
(c) assessment of an analysis of environmental impacts for activities potentially exerting adverse impacts on the broad community or concerned with the defense and security, with the locations encompassing more than one provinces, and for activities located in areas disputed with other Provinces, in the sea territory with in the span of 12 miles and located in the broader crossing area of the country;
(d) determination of the standard of environmental quality and of the guideline for environmental pollution; and
(e) stipulation of a guideline for the conservation of natural resources.

Aside from Paragraph 18 of Article 2 as described above, there are also other areas of authority of the central Government that belong to environmental management among these 25 categories. For example, such sectors as agriculture, marine, mining and energy, forestry and plantation, industry and trade, health, and labor, are all related to environmental management.

Article 3 of Government Regulation No. 25/2000 provides for the authority of a Province as an autonomous region. Paragraph 16 of Article 3 takes up following items related to the authority of a Province concerning environmental sector:

(a) control over the environment going across Regency/Municipality;
(b) regulation of environmental management in the utilization of marine natural resources between 4 miles up to 12 miles;
(c) regulation of safeguarding and conservation of water resources across Regency/Municipality;
(d) assessment of an analysis on environmental impacts (AMDAL) for

activities which potentially exert negative impacts on the broad community across whose location encompassing more than one Regency/Municipality;

(e) control over the implementation of conservation across Regency/ Municipality; and

(f) stipulation of environmental quality standard on the basis of the national environmental quality standard.

Article 4 provides for the exercise of authority which is yet to be undertaken or which cannot be undertaken by a Regency/Municipality.

Another major Act No. 25/1999, on the fiscal balances between the central Government and the regions, provides main objectives to:

(a) utilize and improve local economy abilities;

(b) create a local financing system that is just, proportional, rational, transparent, participatory, accountable, and correct;

(c) realize fiscal balance system between the central Government and the Regions that shall reflect the authority of division of tasks and clear accountability between the central Government and local government; support execution for regional autonomy by organizing a regional government; lessen the discrepancy between the Regions in their abilities to finance their autonomy, and to provide assurance of regional financial sources that originate from related regional areas;

(d) become a reference for a region in the allocation of national revenues;

(e) affirm the regional Government financial accountability system; and

(f) become a main reference in regional financing.[16] Implementation of tasks for both decentralization and deconcentration is funded from the national budget (APBN) under this Act (Article 2).

Sources of regional revenue are: (a) Original Regional Revenues, (b) Balance Funds, (c) Regional Loans, and (d) Other Legal Revenues.

Original Regional Revenues consist of regional taxation revenues, regional retribution revenues, separate regional wealth exploitation revenues, and other legitimate basic regional revenues (Article 4). Both the General Allocation Fund and the Special Allocation Fund, as Balance Funds,[17] are allocated to regional autonomies from national budget (APBN: *Anggaran Pendapatan dan Belanja Negara*) (Articles 6-10). Regional Loans to finance part of their budget are allowed, with the approval of DPRD (Article 12). Regional Loans from foreign resources have to be approved both by DPRD

and central Government. To meet pressing requirements, Emergency Funds are granted from the APBN of the central Government (Article 16).

C. Problems Related to Regional Autonomy

Regioanal autonomy in Indonesia was started on January 1, 2001; however, it was confronted by many obstacles in its implementation process.[18] There are four major problems with the Act No. 22/1999 and the amended Constitution. First, the Act places the base of regional autonomy at the Provincial, Regency, and Municipal levels with the same gravity; however, the primary emphasis should be placed at the Provincial level. This means that the base of regional autonomy should be at the Provincial level and the Province needs to be strengthened in their authority and role of setting appropriate frame conditions and in supervising the autonomous governments.[19]

Second, the basic concept of regional autonomy and decentralization is not well synchronized among the amended Constitution, the laws of decentralization, and other related laws and regulations. For example, Act No. 22/1999 states that the Province, Regency, and Municipality become autonomous. The present 1945 Constitution, in its revised Articles 18, 18A and 18B by the second amendment, states that provincial government is autonomous like other regional Regency/Municipality government and is not an administrative government. However, there is a hierarchal relationship between the central Government and Province as stipulated in the Act No. 22/1999. Discrepancies in the interpretation of autonomy in laws, regulations and the related regional regulations over natural resources in regions often develop as a source of conflicts.

Third, people are not given the opportunity to directly participate in the decision-making process at the regional level (Province, Regency, and Municipality). In Indonesia, in the process of Constitutional amendments, the discussion of the sovereignty of the people is becoming heated. Changes of awareness that accelerate the people's participation are being found in the recent Constitutional amendments such as the introduction of direct presidential election system and the establishment of National Ombudsman Commission. Increase of the people's participation can also work as a supervisory function where the top-down mandatory system cannot work after the transfer of bureaucratic authority to regions.[20]

Finally, Acts related to regional autonomy do not take a step-by-step approach to decentralization, though there are so many constraints in realizing the regional autonomy all at once in Indonesia. They are, for examples, organizational and administrative inefficiencies and the lack of

human resources, financial sources, experiences and capacities on both sides at central and regional governments. The decentralization process should take account of the scope and the pace of the transfer of authority and the budget from central Government to regional Government. Presently, some rich provinces in natural resources are favored with the increased share of the budgetary distribution from the central Government if compared with other economically poorer Provinces.[21]

Under such an autonomous situation where the gravity of authority is placed equally in Province, Regency and Municipality, the coordinating role of Province in the decentralization process is lost, and the struggles for authority and the conflicts over natural resources between and among Province, Regency, and Municipality are happening throughout Indonesia. Further, without sufficient experiences and abilities to implement decentralization in the central Government and the regional governments, laws and regulations often become contradictory to each other. Sometimes, implementing regulations that follow an Act exceed the range of delegated authority and create contradictions. People's participation in the decision-making process at the grass roots level is ignored and, as a result, supervising system by the people does not function efficiently at the regional level. Demoralization such as KKN that has been common at the central Governmental level is now spreading to regions. Such a widespread KKN behavior covers public officials, regional elites, judges and lawyers, and parliamentary members at a regional level.[22]

However, a Pandora's box was already opened, and the way toward regional autonomy was declared, through the MPR Decree and the occasions of amendments to the constitution. What are the keys to implement regional autonomy in harmony with the sustainable environment in Indonesia? I would like make a few comments here.

There is a general trend of the decentralization in the world between the types of decentralization and the democratization process. Decentralization patterns between the central Government and the regional governments are roughly categorized into two patterns.[23] One is the decentralization/separation type of relationship (federalism); mostly found in common law-based countries, such as England, Commonwealth countries, and the U.S. Another pattern is the centralization/fusion type of decentralization (unitary) between the central Government and the local governments, most of which are found in continental law countries, such as France, Italy, Spain, Portuguese, Holland, Northern European countries, Latin American countries, and Japan. Common law group countries tend to regard authority of autonomy as an absolute right against the central Government, as well as the indigenous

right of the community. On the other hand, the continental law countries tend to regard regional autonomy as a means of transfer or devolution of central government's authority to regional governments. In other words, a centralized central government establishes regional governments as an apparatus for their governance. However, this cannot be generalized totally because various patterns of regional autonomy exist in each country. Indonesia, as being a continental law country, can be categorized into the second group. It can be said that the common law based countries, where most of them are based on federalism, are not necessarily more democratized than the continental law based countries.

However, what is taking place in Indonesia is the opposite. Authority of the Provincial governments is so weak and limited to coordinate inter-Regency/Municipality matters as already examined; however, Regency and Municipalities are fully assured of their autonomy. Province has no authority over lower governments. Further, special autonomies Acts on Ache and Papua Provinces, which took effect on January 1, 2002, provide these Provinces legal basis to have greater control over the region's economy, politics, security, and the cultural life of the people. The Papua Province can receive as much as 70 percent as the regional revenue sharing from the oil and gas sector, and, the freedom to set up a people's council, the freedom to have their own anthem and flag, and the implementation of Islamic law (only in Ache) are guaranteed. In other ordinary Provinces, only 15 percent from oil and 30 percent from natural gas can be received as the portion of revenue sharing.

Second, two opposing stances are conflicting in Indonesia regarding the present development of regional autonomy in Indonesia. One is an opposition stance that is against the implementation of the present Act No. 22/1999 on Regional Autonomy, which requests the revision of the Act. This is an opposition stance mostly supported by the central Government as well as the major political parties such as GOLKAR (*Golongan Karya*) and PKB (*Partai Kebangkitan Bangsa*). Hari Sabarno, Minister of Interior, warns that present Regional Autonomy Act might lead Indonesia up to federalism.[24] MPR Decree No. IV of 2000 requests revision of the regional autonomy related Acts, and MPR Decree No. VI of 2002 ordered the Government to study the situation of implementation of regional autonomy and to conduct the comprehensive evaluation of the regional autonomy related Acts. There is also a strong criticism against such a stance by Ryaas Rasyid, who played an important role in drafting the Act and strongly insisted on the implementation of the Act. He insists that the revision of the Act means the retracing of the past centralism.[25]

Third, the establishment of regional autonomy requires the regional governments to become more transparent and accountable in their decision making process and in the provision of administrative services to the people and society. These are important principles to materialize the democratization for the regional governments to become democratic and responsible. However, in Indonesia, as examined already, the socio-economic problems such as the expansion of KKN and the widening gaps between the rich and the poor (people and regions), and socio-cultural problems such as tribal issues, which are becoming more and more complicated in the process of decentralization, are still left unsolved.

III. Decentralization of Environmental Management

A. Environmental Problems in the Process of Decentralization

Since 1988, rampant damages and illegal resource exploitation have been seen nationwide. Major areas of illegally exploited natural resources are logging, land clearance for commercial plantation, mining, quarrying, coral picking and fishing. Licensed companies often violate regulations by "vigorously" operating their activities.[26] Corrupted civil service, security forces, and legislature members often assist such illegal extraction activities.

Environmental problems are becoming more and more complicated in the process of decentralization. Some believe that illegal resource extraction in Indonesia will become a much easier task if such politically and economically unstable conditions can continue. Environmental problems related to illegal natural resources extraction, the abuse of authority in issuing licenses, and the over-exploitation of natural resources, are connected to each other, which also relate to problems to the deep roots of official corruption and patronage politics.[27] If the Government does not take any immediate actions or regulatory measures against such illegal doings, the result would be depletion of the remaining natural resources.

Though, not only the illegal aspects of exploitation of natural resources, but also environmental problems that are legal but destroying much should not be overlooked. It sometimes is very difficult to tell whether certain activities are environmentally sound or not only because they are legal. Much pessimism is anticipated over such a ruinous situation and the irreparable damages.[28]

During the Suharto government (1966–1998), such apparent illegal exploitation of timber, minerals, and wildlife could be, to a considerable

extent, checked and controlled by the suspension of licenses to the state companies and colluding business groups, even though they were permeated by official corruption and favoritism. However, especially after the present Local Autonomy Act was introduced, the authority to issue licenses was transferred from central Government to the lower level regions. Article 3 of Government Regulation No. 25/2000, which is based on Act No. 22/1999 and Act No. 25/1999, provides a legal basis for the issuance of environment-related licenses from regional governments. The authorities to issue licenses include logging, forestry products, plantation and processing, fishing, including culturing and catching; mining and energy, including exploration and exploitation, and investment.

Here, the environmental laws and regulations should be examined at first, to locate the decentralization related legal issues to see if these problems are brought about by the insufficiencies in the related laws and regulations, or the problems caused by non-legal factors besides law.

B. Environmental Law in Indonesia

Environmental laws in Indonesia are structured systematic. The Act on Environmental Management of 1997 is the most basic environmental law, which is complemented by other environment related laws and regulations. Recent major environment-related laws and the national policy guidelines are as the following:

(a) National Guidelines of GBHN (*Garis-Garis Besar Haluan Negara*) and the National Development Plan of PROPENAS 1999/2004 (*Program Pembangunan Nasional*);
(b) 1945 Constitution as amended;
(c) MPR Decree No. 15/MPR/1998;
(d) Act No. 23/1997 on Environmental Management;
(e) Spatial Use Management Act No. 24/1992;
(f) Government Regulation No. 27/1999 on Analysis of Environmental Impact;
(g) Decree of the State Minister for the Environment No. 12/1994 on General Guidelines for Making Environmental Management Efforts and Environmental Monitoring Efforts; and
(h) Decree of the State Minister for the Environment No. 17/2001, on the Types of Planned Business/Activity that Must Perform Environmental Impact Analysis.

National Guidelines of GBHN 1999–2004 point out, in Chapter 4(H), the protection of natural resources and environment regarding regional autonomy. The central Government delegates its authority related to the management of natural resources and protection of the environment, to local governments, optionally and gradually. Further, the National Development Program of PROPENAS 1999–2004 provides concrete national programs to implement the National Guidelines.

Article 33(3) of the 1945 Constitution declares its basic policy on the management of natural resources in abstract expression: "Land and water and the natural resources contained therein shall be controlled by the State and shall be made use of for the people." Its official elucidation explains that this article lays down the basis of economic democracy and that the natural riches are the fundamentals for the people's prosperity. Therefore, they should be controlled by the State and be made use of the greatest possible prosperity of the people. As a result, the central Government is responsible for managing and protecting natural resources, and for seeing that natural resources are utilized to the maximum welfare of the people.

On the other hand, Article 5 of MPR Decree No. 15/MPR/1998 declares that local governments have authority in managing national natural resources, and responsibility for protecting the environment. The Article 5 delegates authority to regional governments on natural resources without any conditions.

The Basic Act on Environmental Management of 1997 introduces decentralization of authority on the environment, from the central Government to local governments, at an earlier stage than its national movement of regional autonomy in 1999. It provides that, to implement national policy on environmental management in an integrated and harmonized manner, the Government can delegate certain authority on environmental management to local government offices, and give a role to local government to assist central Government (Article 12). Further, the central Government can transfer part of its affairs to local government, to become part of its general affairs in the scheme of implementing environmental management (Article 13). Article 12 is based on the deconcentration principle regarding authority from the central Government to local government; however, Article 13 is based on the decentralization principle, according to its elucidation.[29] Supervisory authority can be delegated to local governments (Article 22).

In the new organizational structure[30] of the State Ministry for Environment, there is a department called Regional Environmental Management and Manpower Development, in charge of regional autonomy. The number of

Regional Environmental Impact Management Offices (BAPEDALDA) is 168 throughout Indonesia.[31] According to Article 18 of Presidential Decree No. 2/2002, the State Ministry for Environment is responsible for formulating policy guidelines on environmental management, as well as the standards in the issuance of licenses at a regional level.

C. Problems of Decentralization of Environmental Management

Government Regulation No. 25/2000 provides a detailed list of authorities of the central Government and local governments. The authorities of the central Government on the environment relate to four matters: guidelines for evaluating natural resources; regulation of marine resources management, covering within 12 nautical miles off the Indonesian coastline, and environmental impact assessment (Article 2(18)). The authorities of the Provincial Government on the environment relate to five matters: (a) inter-Regency/Municipality environmental evaluation, (b) regulation of marine resources management, covering from 4 to 12 nautical miles off the Indonesia coastline, (c) evaluation of environmental impact assessment, (d) inter-Regency/Municipality supervision of conservation, and (e) regulation of environmental standards (Article 3(16)).

However, natural resources, such as forestry and plantation, mining and energy, and marine resources, are regulated separately. Definitions of the provincial authorities and the authorities inter-Regency/Municipality matters are not provided with sufficient clarity.

As discussed already, the relationship of authority between a Province and other local governments, such as a Regency and a Municipality, is not clearly defined yet. It goes without saying that many of the regional governments are not satisfied with the allocated amount from central Government revenues. Regional governments, pressured by the needs to increase their regional revenues, cannot but increase its burden on the environment in the regions. As for the regional revenue sharing, regional governments (Province, Regency and Municipality) can receive 80 percent of its sharing in the natural resources sectors of forestry, mining, and fishing, however, as explained already, the oil and the natural gas are different in its revenue sharing (15% and 30%, respectively). Rather, regional governments are asking for delegation of more authorities from the central Governments to the regional governments. There seems to be no apparent effective measures to stop the pressure on the natural resources.[32] Many of the Indonesian Acts, as well as the MPR Decree, seriously recognize the need to suspend the foreseeable destruction of natural resources.

D. Environmental Management in Jakarta

1. Regional regulation on environmental management

Here, let us take up the Special Capital Province of Jakarta, as an example to see the development of regional regulation on the environment to cope with the national environmental legislation. The status of Jakarta is based on Act No. 34/1999, on the Government of the Special Capital Province of Jakarta. In such a big city as Jakarta, environmental problems are varied and complex. They range from general issues caused by poverty, population, environmental health, floods, consumer protection related to such issues as fake medicines; and "*Halal*," called Islamic genuine food, to urban pollution-related issues, such as air and water pollution issues, motorization-related issues, hazardous wastes issues, and so on. The nature protection issue, for example, relates to the marine protection of the Pulau Seribu Islands. The environmental awareness level is extraordinary high in Jakarta, compared with other areas in regions. Such an official report on environment quality as "*Neraca Kualitas Lingkungan Hidup Daerah (NKLD)*" has been published annually, to provide general environmental information on the conditions of population, socioeconomic conditions, and environmental conditions. Drafting of the Local Agenda Jakarta is also scheduled. In the organizational structure in Jakarta, such departments as City Ecology, and Environmental Management, exist within BAPEDALDA.

Major legal concern about the environment in Jakarta is directed to building control, spatial use of the land, operation of environmental impact assessment, the participatory process in environmental impact assessment, and marine resource protection. Major environment-related regulations/ decisions already made in the Special Capital Province of Jakarta, are the following:

1. Regional Regulation of the Special Capital Province of Jakarta No. 7/1991, on buildings within the territory of the Special Capital Province of Jakarta;
2. Regional Regulation of the Special Capital Province of Jakarta No. 6/1999, on the spatial layout of the Special Capital Province of Jakarta;
3. Regional Regulation of the Special Capital Province of Jakarta No. 3/2001, on the organizational structure and work mechanism of Regional Apparatuses and the Secretariat of the Legislative Council of the Special Capital Province of Jakarta;
4. Decision of the Governor of the Special Capital Province of Jakarta

No. 57/2001, on the formation of the Audit Commission of Analysis on Environmental Impact of the Special Capital Province of Jakarta;

5. Decision of the Governor of the Special Capital Province of Jakarta No. 76/2001, on operation guidelines for public participation and information transparency in making an analysis on environmental impact;
6. Decision of the Governor of the Special Capital Province of Jakarta No. 189/2002, on the types of planned business/activity that must be included in the Environmental Management Effort (Upaya Pengelolaan Lingkungan, UKL) and the Environmental Monitoring Effort (Upaya Pemantauan Limgkungan, UPL) in the Special Capital Province of Jakarta;
7. Decision of the Governor of the Special Capital Province of Jakarta No. 2863/2001, on the types of planned business/activity that must perform environmental impact analysis in the Special Capital Province of Jakarta;
8. Decision of the Governor of the Special Capital Province of Jakarta No. 99/2002, dated July 24, 2002, on mechanisms for implementing the Environmental Impact Analysis (Analis Mengenai Dampak Lingkungan, AMDAL) and UPL in Licensing in the Special Capital Province of Jakarta.

2. Environmental impact assessment and public participation

Decision of the Governor of the Special Capital Province of Jakarta No. 76/2001 provides for the Operational Guidelines of Public Participation and the Disclosure of Information in the EIA (Environmental Impact Assessment) Process. Environmental Impact Assessment is generally acknowledged as the most effective and powerful administrative measure to protect the environment throughout the world. International organizations and developed countries as well as developing countries attach great importance to this EIA system. The Rio Declaration on Environment and Development, which was adopted by the United Nations Conference on Environment and Development, declared in Principle1 the concept of Sustainable Development as following: Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature. It means that the considerations for the human beings in the process of environmental change are the most important, which have to be assessed in the process of EIA. However, the socio-cultural considerations that include human beings are the most difficult area to be studied in the process of EIA decision-making. In such a context as said above, this Decision is worth noting.

The plan of an activity/project must be publicized before conducting the arrangement of KA-ANDAL (*Kerangka Acuan Analisis Lingkungan Hidup*: Terms of Reference for ANDAL). The method of publication is to place the publication at the planned location of the activity/project, at the responsible office, and at the village office, by 30 days, at the latest, before arrangement of KA-ANDAL, with a survey map and the materials included in the appendix in this regulation. Further, an activity/project that causes influence at regional borders must be publicized with the plan of activity/project, using a notice board or printing mass media and/or electronic means. The expenses incurred for publicity shall be born by proprietors (Article 5).

Aims of the public participation are to: (a) confirm and secure transparency in the entire process of AMDAL, from a planned activity/project, (b) create a friendly and equal atmosphere among all the interested parties, (c) respect to all the parties, (d) obtain rights to information, and (e) obligate all the parties to offer information that must be known by other affected parties (Article 4).

An "Interested Community" in this Decision is a community that is affected by any type of decision in the process of AMDAL, among others, close living to the planned activity/project, and/or factors of economic influences, social-cultural factors, consideration for the environment, and/or norms of values and beliefs (Article 1). Basic principles in the community involvement and the information disclosure in the AMDAL process (Article 2) are: (a) equality of the involved party, (b) transparency in decision-making; solution of problems with justice and prudence, and (c) coordination, communication, and cooperation among the parties involved.

On the other hand, "an interested community" has the right to submit advice, opinions, and ideas on the planned activity/project plan, to the responsible governmental office and/or proprietors, either orally or in writing (Article 6). While the responsible governmental office (Article 7) is obliged to: (a) coordinate publicizing of the plan of activity/project, (b) document advice, opinions, and ideas of the interested community, (c) arrange information on the process and the decision on the evaluation of the KA-ANDAL, ANDAL, and RKL (*Rencana Pengeolaan Lingkungan*: Environmental Management Plan), and RPL *(Rencana Pemantauan Lingkungan*: Environmental Monitoring Plan), to the interested community, and (d) facilitate the conduct of interested communities to obtain information and to play a part in the AMDAL procedure. Further, the responsible proprietors submit the arrangement plan of AMDAL to the responsible government office, the regency head, and the village head of the location (Article 8). The proprietor can conduct consultations with the interested community in the arrangement of KA-ANDAL (Article 11).

An interested community has the right to submit advice, opinions, and ideas to the Evaluation Committee members of KA-ANDAL, as well as to the Evaluation Committee members of ANDAL, RKL, and RPL (Article 12). An Interested community can represent the community, and the criteria to represent the community are provided in Articles 13-15.

IV. Conclusion

Several laws related to the environment and regional autonomy have been examined. Indonesia is still halfway along in its decentralizing process and the tasks are broad-ranging as the country is politically and socio-economically unstable. As studied above, the effects of decentralization on natural resources are extraordinary destructive and not sustainable. It should not be understood that environmental destruction is a temporary phenomenon until democratization can be consolidated in Indonesia. Special attention should be paid to domestic and international factors that cause environmental issues in Indonesia. However, the decentralization process, once started, cannot be stopped, as decentralization is generally perceived as more democratic than centralization.

The conclusion here is that there will not be a definite way to solve environmental problems happening in Indonesia today. Excessive utilization of natural resources is closely connected with the poverty issue, as well as the development issue, in Indonesia. However, Indonesia has chosen, as its development strategy, "a resource-based economy," through sustainable use of natural resources. This means that the utilization of natural resources and the development of the nation have to be compromised at the level of sustainable development. Most important task is how to achieve good environmental governance in line with the sustainable development in Indonesia.

The two words, the decentralization and the regional autonomy, look similar, but quite different in nature. Decentralization is a process to develop democratization, and good governance is a result that will be realized by means of regional autonomy through transparent and accountable governance. Decentralization is a process to realize democratization through the devolution of authority from central Government to regional governments. Regional autonomy in terms of good governance needs the trust and the respect of the people to the government through people's participation. In other words, in order to realize regional autonomy in terms of good governance, there are other important elements that cannot be overlooked in the meaning of decentralization. They include the establishment of responsible political

structure, democratized budgeting, human resources, accountability and transparency of government actions, citizen's participation in the administrative decision making process, public services delivery at a regional level are those that should not be ignored in the process of decentralization.[33]

What is most needed presently in Indonesia in terms of realizing good governance in the decentralization process is not to address technical advices to push forward the Indonesia's decentralization program, but to wipe off the longtime accumulated regional distrust of the central Government. This is the biggest problem that lies in Indonesia. The central Government is not fully trusted by the regional governments, and the Governments are not much trusted by Indonesian people.

As a result, common people do not place much trust in the national legal system in Indonesia. Indonesia is a pluralistic society in nature, as expressed by a common phrase "unity in diversity" (*Bhineka Tunggal Ika*). However, one major reason why legal dualism still persistently prevails in Indonesia is because of the widespread distrust of the people in the national legal system. The non-formal legal aspects, which are based on the traditional cultural values, will not be swept away immediately, even in the rapid process of democratization and decentralization. Of course *Adat* laws in Indonesia are radically changing, however, they are still influential especially in the areas of management of natural resources at a regional level.

Finally, "policy mix" is regarded indispensable for achieving "good environmental governance" based on the perspectives of environmental law and policy. To support sustainable development, policy mix is considered most important. Not only legal measures but also non-legal measures such as policy formulation, planning method, application of economic tools, participation method, environmental emancipation tools such as media, and environmental education, should be mobilized, utilized and combined.

Non-regulatory measures need to be applied together with regulatory measures. For example, in order to regulate pollution prevention and illegal activities such as illegal logging and illegal quarrying, regulatory measures with sanctions would be most effective. However, environmental problems such as the increase of domestic wastes or the motorization issues are arising in urbanized areas in Indonesia, like any other big cities in the world, where the application of such top-down regulatory measures are not sufficient to solve environmental problems. Rather, mixed policies with other encouraging measures such as environmental education, support of environmental NGO are becoming important to achieve effective environmental management because they can directly accelerate people's participation and influence environmental awareness of the people.

Notes

1 Approximately 80 percent of the currency value of Rupiah was lost by early 1998.
2 1945 Constitution was amended in 1999, 2000, 2001 and 2002, respectively.
3 Special Autonomy Act of Ache Province No. 18, 2001, Special Autonomy Act of Papua No. 21, 2001.
4 The World Bank, *Managing Indonesia's Natural Resources: Transition Brings Challenges*, 2002, p. 1 at http://lnweb18.worldbank.org/eap/eap.nsf/Attachments/Indonesia (accessed: March 1, 2003).
5 *Ibid.*
6 Minster of Home Affairs and Autonomy Policy Surjadi Soedirdja stated, in October 2000, that around 30% of the Regencies cannot meet the central Government's standards to implement the autonomy legislation, and that the decentralization should be done more slowly and deliberately (Speech by Surjadi Soedirdja; Minister of Home Affairs and Autonomy Policy on the Principles of Regional Autonomy: toward a Democratic and Prosperous Indonesia, as quoted in *Reinventing Indonesia: the Challenge of Decentralization*, pp.2–3 (http://www.rand.org/publications/MR/MR1344/MR1344.ch5.pdf, accessed March 1, 2003).
7 See C. vanVollenhoven, Penemuan Hukum Adat, Djambatan, 1986; B. ter Haar, *Adat Law in Indonesia*, AMS Press, 1979.
8 The concept of dual economy was first discussed by Dutch economist J.H. Boeke. He insisted on the differentiation between the modern economies versus the traditional indigenous agrarian economy in colonial Netherlands Indies. See J.H. Boeke, *Dualistische Economie*, Leiden: S.C. van Doesburgh, 1930.
9 See Naoyuki Sakumoto, "Indonesia no kenpo seido" [in Japanese] (The Constitutional System in Indonesia), in Naoyuki Sakumoto (ed.), *Ajia shokoku no kenpo seido* [in Japanese] (Constitutional Systems in Asian Countries), Institute of Developing Economies, 1997.
10 Sukarno's speech: "Rediscovery of My Revolution," on August 17, 1959, explains why Indonesia needs to return to the 1945 Constitutional system.
11 Colin McAndrews, "An Overview," in Colin McAndrews (ed.), *Central Government and Local Development in Indonesia*, Oxford University Press, 1986, pp. 10–11.
12 Anne Booth, "Efforts to Decentralize Fiscal Policy: Problems of Taxable Capacity, Tax Effort and Revenue Sharing," in McAnderews, *op. cit.*, p. 78.
13 Enacted on November 13, 1998.
14 MPR Decree is ranked below 1945 Constitution in its legislative hierarchy (Article 2, MPR Decree No. 3/2000).
15 Examples of inter-Regency/Municipality are public works, communications, forestry, and estates. However, environmental control is regarded as the authority in certain administrative areas (Article 9, Elucidation of Act No. 22/1999).
16 Elucidation of the Act No. 25/1999 on the fiscal balances between the central Government and the regions.
17 The Balance Funds are a financing source that originates from the regions from Land and Building Tax, Customs on the Rights of Land and Buildings, and revenues from natural resources. The regional shares obtained from these revenues are basically from a region's production potential, such as the forestry sector, the general mining sector, and the marine sector. See also Sjafrizal, "Some Possible Impacts of Regional Autonomy: The West Sumatra Case," *The Indonesian*

Quarterly, Vol. XXX, No. 1, 2002, p. 85.

18 MPR Decree No. 4/2000 emphasizes the problems that exist in the implementation of regional autonomy.

19 GTZ Advisory Team recommends a multi-level autonomy system as it allows for more opportunities for the populations to exert claims and enforce accountability and ensure adaptations of policies and programs. It also says that having more than two levels of autonomy is not dangerous and problematic to national stability. See GTZ Advisory Team, *Support for Decentralization Measures: Projek Pendukung Pemantapan Penataan Desentralisasi*, 1997, at http://gtzsfdm.or.id (accessed December 1, 2001). The first three problems indicated here are basically dependent on the Kutut Suwondo's article in note 20.

20 Kutut Suwondo criticizes the stipulations (Article 93 up to 111) that regulate the Autonomous village and urban area aim at returning to homogeneity and conducting an intervention to the village in order to prevent the autonomous village (*Desa*) and urban area (*Kelurahan*) from attaining democratization ("Decentralization in Indonesia," *INFID Annual Lobby 2002*, p. 8 at http://www.infid.be/INFID%20Background%202002%20Decentralisation.pdf (accessed: March 1, 2003).

21 Revenue shares of the Balance Funds for the local governments (total share of the Province, Regencies, and Municipalities) from natural resources are as the following: forestry (80%), mining (80%), marine (80%), oil (15%), and natural gas (30%). The rest becomes the revenue shares of the central Government. Revenue shares of Special Autonomy Province Papua can receive revenue shares of forestry (80%), marine (80%), mining (80%), oil (70%), and natural gas (70%).

22 Names of the Provinces where governors were reportedly involved in corruption cases in the six months after September, 2002, are: Lampung, Southeast Sulawesi, North Sulawesi, South Kalimantan, and Riau. Governor Sutiyoso acknowledged that he has not been able to stop rampant corruption, collusion and nepotism (KKN) within the Jakarta city administration, and stated that "KKN has developed structurally and culturally, affecting all levels and echelons, from the central government to the regions," at a plenary session at the City Council building. *Jakarta Post*, August 1, 2002.

23 Shunichi Sato, *Chiho jichi yoron*, [in Japanese] (Regional Autonomy), Seibundo, 2002.

24 Eriko Uchida, *Revision of Indonesia's Autonomy and Decentralization Law*, at http://www.geocities.com/aroki.geo/0203/INA-decentralization.htm (accessed: March 1, 2003).

25 Ryaas Rasyid, the then Minister of State for Administrative Reforms, worked for the drafting; however, the then President Wahid, as well as Vice President Megawati, who is the current President, reportedly gave severe criticism, as the Act was not agreeable with the Indonesian unitary system and the troubled situation. Ryaas Rasyid resigned on January 2, 2001.

26 "Indonesia: Natural Resources and Law Enforcement," *ICG Asia Report* (International Crisis Group), No. 29, December 20, 2001, p. 1. In Padang, illegally cut logs, in tens of trucks, were shipped out at midnight with the assistance of police guards. An estimate, done by an official of the state Environmental Impact Agency (BAPEDAL), shows that a timber company is obliged, each year, to present 1,599 documents, and a host of other data, to 16 state agencies in Jakarta,

and another eight in the regions, for each of its concessions, and that the mass of regulations is thought to be used by officials to extract bribes (*ibid.* p. 8).

27 *Ibid.* p. 2.

28 There are many conflict cases over natural resources in the process of decentralization. Following are available: *INFID Annual Lobby*, 2002, p. 3, at http://www.infid.be/lobby2002.html (accessed December 1, 2002); *ICG Asia Report*, No. 29 on Indonesia, at http://www.crisisweb.org/projects/showreport.cfm?reportid=517 (accessed March 1, 2003); *Natural Resources and Law Enforcement* (December 2001); Indorayon's last gasp, *Inside Indonesia*, Jan-Mar, 2001, at http://www.insideindonesia.org/edit65/dte.htm (accessed March 1, 2003); Reformasi and Riau's Forests, *Inside Indonesia*, Jan-Mar, 2001, at http://www.insideindonesia.org/edit65/potter.htm (accessed March 1, 2003); Desentralisasi Pengelolahan Sumberdaya Hutan di Kabupaten Winosobo (Decentralization of Forest Resources in Winosobo) at http://www.arupa.or.id/papers/02.htm (accessed: December 1, 2002); Illegal sand mining runs along Cianjur, the Southern Coast, *Jakarta Post*, August 2, 2002; Shrimp farmers charged with destroying mangrove forests, *Jakarta Post*, August 12, 2002.

29 Elucidation of Articles 12 and 13, Act No. 23/1997.

30 The State Ministry for Environment was restructured in January 2002.

31 Information from BAPEDAL, at http://bapedal.go.id/profil/ (accessed: August 9, 2002).

32 Kutut Suwondo puts the decentralization and conflicts over natural resources in Indonesia as in the following: "The process of decentralization cannot provide equal authority and equal distribution of natural resources. What is happening is a struggle to obtain authority and control over natural resources for the interests of each region, Province, District/Municipality, and village. The situation gets worse when the demoralization in Indonesia becomes wide and effective" (*ibid*, p. 3).

33 Omar Azfar et al., *Decentralization, Governance and Public Services: The Impact of Institutional Arrangements: A Review of the Literature*, IRIS Center, University of Maryland, 1999.