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**Indonesia: Risks Abound, A Case for
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DRAFT

INDONESIA: RISKS ABOUND, A CASE FOR DECENTRALIZATION

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Jakarta, Indonesia

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CAN DECENTRALIZATION HELP REBUILD INDONESIA?

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Let me say straightforward right from the beginning, that the importance of the decentralization process would be assumed as an unavoidable necessity. It has become one among the few solution or way out of Indonesian national problem, if not the only alternative left. Hence, the interrogative form of this conference's theme "can decentralization help rebuild Indonesia" should be turned into a positive statement: problems of rebuilding Indonesia solved through decentralization. The problem next is the question of how will the decentralization itself be implemented, what is to be done, the requirements to be fulfilled and what kind of obstacles can make it unsuccessful.

National problem, regional solution

I will try to formulate what seems to have become a kind of belief as follows: through decentralization various national problems will be solved in the regional level by using local means to cope with local challenges. Of course this will immediately incite

criticism, since factual observation in the regions that recently enjoy autonomy, shows very poor evidence of management ability to solve problems. What can be seen in many of the decentralized regions is a hopeless mess, which almost brought them to the brink of a dangerous chaotic condition (the examples of which has been discussed elsewhere in previous sessions of the conference). If so, this belief about the necessity of decentralization actually lacks credible ground, and quite remote from any objectivity.

But on the other hand it has been proven also for quite a long time (not limited to the recent transitional period) that the national problem could never be solved by a national effort, or by a centralized method. Whatever reasons are behind it, but many people seem to have the obstinacy to think in a pattern of having to solve every national problem centrally or from the center, and to solve it comprehensively nation wide. So for the problem of corruption – which indeed is a national problem – should be sought a national way out. Its eradication is to be in a national scale, and the responsibility should rest on the national government. The same is with the case of reform in judicial sector and law enforcement in general. The problem of bureaucratic inefficiency, the need to improve administrative infra structure, and everything else, are also to be handled by and from Jakarta. All failed or fell short, repeatedly. Is it not reason enough forcing us to abandon the centralized method and opt for an alternative? And what other alternative is there if not decentralization?

To wrap it up: the fact that decentralization does not prove itself yet to be a solution does not cancel another preceding fact that centralism has failed, and bound to fail again if persisted.

If we continue with this imagination, then what was construed as a regional level or local solution of the national problem would bring different conditions in the several regions because of dissimilar level of success between them. Eventually, there might be a region, which has relatively less corrupt administration, a better and reliable police force, or a good public control on its judiciary, for instance. Likewise in other fields of 'national problems', probably one region will have a higher growth of its infrastructure development, another will have a more rational investment policy and tax administration, or a better banking system and workable credit scheme for SMEs, or a better educational system etc. Competitively, each national problem is then solved in terms of manageable regional portions.

But the question remains, what will make all this possible?

Declared, but unprepared

One thing that should not be overlooked is that the present decentralization campaign is started more as a declaration – an affirmation of intent – rather than a well planned and well prepared, orderly train of events. It has more spirit than managerial content. Without any intention to underplay the preparation of regional autonomy law, which has already started quite some time ago, and the principle of autonomy already written in previously existing laws, we can still safely say that this time the drive toward decentralization is an inseparable part of the post Soeharto reform movement (*reformasi*), or at least is spurred by it. This note is added merely to emphasize the spontaneous character of the declaration to decentralize, as an instantaneous political decision,

impatient to wait much longer. Consequently the requirements to a smooth devolvement to the regions cannot be met sufficiently. This is obvious.

But it is not just about stating the obvious, because the implication of it has to be taken as well: that it would be misplaced to judge the decentralization as doomed only because at the moment the requirements has not been completely met. The reason it is not fulfilled is not caused by the lack of understanding of what is required, but simply because there was not enough time to do it. There is a very thin line of distinction here, but can be quite meaningful. Because it will decide whether there is enough basis to expect that improvement can still be made while being implemented, or there is none.

We will briefly look at the present condition, and at the same time make an evaluation whether there is still enough time and resources to do the improvement needed. Our focus of attention basically will concern the aspect of political readiness, and covering also some legal aspect, namely constitutional aspect, relevant to the general preparedness for the establishment of regional autonomy. (This is not to say that those were the only important aspect of decentralization that needs attention. The perspective of economy and finance are admittedly vital, but those subjects are already covered in other instances in this conference.)

Different political ideas

In the beginning 'decentralization' is an idea, made into a political decision. It is very clear, that besides as a process, attention should be given equally to its aspect as an idea. Because in the level of idea itself a tension is already present, caused by the existence of different interests, which in its turn will influence the quality and direction of

its process into being. The idea called decentralization will then be given different interpretations, dependent to the interest each harbors. The differences that sometimes are expressed in the form of rivalry can also end in a conflict of rights. The resolution of the conflict can take place either in national or local politics. One example can be given, that as an idea alone, some can perceive decentralization as quite risky, a potential threat to national integrity.

Although the concept of decentralization has been made into a political decision, has already become an accomplished fact, legislated into an act, it is nevertheless now carried out half-heartedly, treated very conservatively, which practically amounts to a slowdown in its implementation.

A sort of political map on who stands for what in the decentralization issue needs to be drawn here. It will help to estimate the expected resultant of the interaction between contending influences, whether the balance is still for decentralization, and in what quality will it be produced.

As we all know, in the wake of the transition from the authoritarian order of Soeharto, the accepted consensus of the reform agenda consists among others: freedom and openness, democratization, rule of law and human rights, anti corruption and collusion, demilitarization and liquidation of the dual role function, regional autonomy (decentralization), the rehabilitation of economy and restructurization in financial sector – listed here not necessarily in an order of priority. All items of change have somewhat been implemented, albeit in different intensity and degree of satisfaction. Including also the subject of decentralization, manifested in the enforcement of the laws of regional

government and on national-regional budgetary relation, with the respectively ensuing government regulations. Additional powers were devolved to the regional authorities, and some new provinces and regencies were created in consecution. And problems start to emerge at this point. (To avoid further complexity, we deliberately exclude the special cases of Aceh and Papua from our scope of analysis here, although we must admit that it is not entirely irrelevant.)

Nobody will argue now, if it is said that the momentum of reform has already diminished considerably. Several factors can be listed as its cause. Generally speaking, the push factor of the progressive elements – the reformers, the students – is fading out, its role becomes flatly insignificant. In its place comes what we can call as a drag factor, immobilizing change. On the other hand, no substitute in the form of pull factor is seen yet to succeed the disappearing force of the push factor. Logically, it is fair to expect that the newly elected national leadership should take over the role of leading the movement, using its official position to complete the just started reform agenda. Up till to the present government, there is no clear indication that the expectation is satisfied, or at least moving toward that direction.

In the devolution of the power once held by the central government, it is obvious that the interest of the regions as the receiving side must be greater than the center that must hand it over. However, in the process, the central government is still calling the shots. It determines the extent of what is to be transferred, how and when. Therefore it is important to know, if the central government has a role as a pull factor in the decentralization issue and reform in general. The central government meant in this case namely would be the president, but includes also other political forces like the political

parties and the parliament, the military, and the bureaucracy. Do they contribute to the pull factor or the drag factor in the decentralization issue, needs to be clarified.

Stability, effectiveness, confidence

It is not necessarily a contradiction if the role of the center is considered important in the devolvement process. In theory, it could either positively become a pull factor – conducting decentralization as part of the reform agenda – or negatively avoids to become an obstacle or a drag factor. In practice, however, the role the central government played now is not conducive and not very supportive to the process of decentralization. How can we explain this fact?

First, we have to remind ourselves, as a rule, a government that will be capable to lead a decentralization program must fulfill the requirement of stability, effectiveness, and of course before everything else, is presupposed to have the right motivation and priority to decentralize. It is not difficult to recognize that stability is not an asset that this government possessed (neither Abdurrahman Wahid's before). The presidential system which constitutionally provides a fixed executive term apparently does not render an objective guarantee of stability. Because in practice the existing system resembles more to a quasi-presidential system, or better still to a semi-parliamentary system: the five year fixed term clause of the president can be overruled by the power of the MPR (*Majelis Permusyawaratan Rakyat* or People's Consultative Assembly) – an extended parliamentary body – to unseat the president at anytime by employing a rather circumventive procedure to cast a vote of no confidence.

The precariousness of the system is to be aggravated if the president does not win the majority of votes in the parliamentary election – although President Megawati’s party won a plurality in the last general election – which forces the president to compromise in forming a coalition government. This instability, as it is more felt in the subjective perception of the president concerned, will affect the degree of self-confidence needed especially to lead a risky project of great change like the decentralization. To decentralize is then no more seen as an obligation in line with democratization. The lack of self-confidence, as a result of the instability perception, gives rise to a fear of the threat to the nation’s integrity in implementing decentralization.

On the other hand, the self-confidence can only be reached if there is enough certainty in holding power. So it can be concluded, that to bring about decentralization, what needs to be changed are: to have a government comfortably backed by a majority, a genuine fixed executive term, a calculable system of transfer of power, a clear and reliable rules of the game in politics. In other words, it requires a new constitutional structure of government, a new system of presidential election, a review of the position of the MPR. And all of these will have to wait for a better opportunity after the next general election, perhaps.

To be sure, a coalition government is usually more difficult to handle, but actually it is not impossible to survive and become effective, if only the political management is right. The other determining factor is the leadership capability of the president herself. What we have now is a deficiency in both counts: a coalition far from solid, and a quality of leadership not too impressive. The result of which is an ineffective government. It is

starkly demonstrated in slow and frequent delays of decision making, unassertive and often ambiguous policy, and the same sluggishness affects the implementation part.

Weak motivation

Besides ridden with the instability and ineffectiveness problem, the government's own attitude toward decentralization in particular is not too proactive in transferring power to the regions, but usually the other way around. There are two reasons behind this. First is the result of reaction against what is called 'the autonomy that went overboard' which is to be rectified by an ongoing effort to revise the law on regional governance (Law No.22/1999). The revision is now dubbed as a 'recentralization' attempt initiated by the government. Secondly, but far more important, is the allegation that President Megawati does not belong to the category of those who fall in love with decentralization, but instead is quite anxious about it. Her obsession for a unitary state – partly caused by an uncomfortability with regional movements, perhaps an emotional legacy of her father, President Soekarno – and her profound anxiety toward the possibility of Indonesia falling apart, plus her nonchalance to the unjust center-regional relationship, all add up to make her not a really motivated champion of regional autonomy.

In short, the government under Megawati is not a pull factor for decentralization. Its record in other items of the reform agenda – suspicious to press freedom, reluctance to support human rights tribunal, refusal to continue demilitarization etc – is not encouraging either. Therefore, although we cannot prove that principally this government dams the flow of the decentralization stream, but the fact that it cannot be relied upon,

then a better decentralization process must wait for an aid from a more stable, effective government with an earnest motivation to devolve power to the regions. Again, this should wait for the result of the next general election, which hopefully will open up new possibilities.

Distorted representation

Not much can be expected from the political parties either, who are in a state of confusion in establishing their platform, clearly caused by their immature level of development. Lacking homogeneity inside the party and no standardized decision-making procedure add up to unpredictable behaviour of party representatives in the parliament. In relevance to decentralization, what also contributes to the unclear and unpredictability of the representatives, are the representational system not based on electoral districts – a direct association and accountability to the constituents – and the system of nominating candidates by the headquarter of the party.

Almost one hundred percent of the political parties were founded in Jakarta. The law on political party does not allow establishment of regional political party yet. Regional aspirations are only sporadically channeled through the legislative process in the DPR. President Megawati's PDI-Perjuangan, for example, still attached the identity of a nationalist ideology. The implication is a reluctance to promote decentralization, fearing that it will threaten the concept of Indonesia's unitary state.

It may well be concluded that political parties have not been playing a positive role in promoting the development of decentralization in its early stage, and that political

parties and their representatives in parliament are, on the average, a drag factor in the process of decentralization.

The single constituency electoral system not yet adopted in Indonesia, is further complicated by the fact that a regional representative body does not exist in the Indonesian legislative system. The Third Amendment of the Indonesian constitution (2001) determined that there would be such an institution, *Dewan Perwakilan Daerah* (Council of Regions Representatives), at a glance almost similar to a first chamber or Senate in the US, for example. Not only to this day it has not been formed, but also the powers to make law assigned to it by the constitution are quite unclear. Nowhere is it expressly stated that this council's approval is needed to pass acts or regulations, concurrent to that of the parliament's (equivalent to the relative function of the Senate and House of Representatives in the US). What is stipulated is only this council's right to participate in discussing the legislation of laws related to regional autonomy and to monitor their enforcement. But these articles do not stipulate therein what power vested in the council itself.

This situation was worsened when the PDI-Perjuangan, once again on the same pretext of defending the unitary state and rejecting federalism, proposed to revoke the already declared effective constitutional amendment on establishing the *Dewan Perwakilan Daerah*, apparently seeing it as a threat based on the same 'nationalist' concern that this republic is liable to shatter into fragments at any moment. Such things are no small matter in evaluating the impeding factors in the progress of decentralization. It is not necessarily true that without a two-chamber legislature, decentralization would

be unthinkable. But to object about everything and anything decentralized, would ring a loud cry that signals the political spirit of the time.

Insufficient Constitutional Amendments

Another important and relevant constitutional amendment concerns the formation of the Constitutional Court, also determined in the Third Amendment. This court would resolve conflicts of laws, namely to decide the constitutionality of acts and regulations. The existence of such a court is expected to maintain the balance between regional and national policies, and to preserve consistency and legal certainty. The Constitutional Court still requires regulations needed to start implementation and is estimated to operate not earlier than two years time.

Ideally, this momentum of constitutional amendment should also produce every necessary constitutional provision on the subject of autonomy, central-regional government relations and its distribution of power. All these provisions, of course, must be defined only after careful consideration of every regional aspiration. The presently amended constitution does indeed contain a few added extras compared to the previous constitution, but is still far from adequate to set a clear standard.

One example of ambiguity is the mechanism in electing a regional head. The constitutional amendment only states that it 'will be democratically elected'. Note that the way the head of a region is elected, which ideally should employ a direct-vote system, is crucial in determining the character of independence of a region on one hand, and the accountability of an elected official on the other. Why the legislators chose not to elaborate beyond the vaguely phrased 'democratically elected', we have no idea and is

left unexplained. The tension and cost such a direct election would bring about cannot be truthfully denied, but it is unavoidable. The result, however, a political leadership with clear support and accountability, would be worth far more than the cost it took to produce.

The regulation of regional autonomy in the form of an act (such as in Law No. 22/1999 and No.25/1999) is indeed necessary. But the absence of a fundamental tenet in the constitution renders these acts and regulations not solidly founded, and when faced with problems in its enforcement, the immediate response to it is to change the provisions of the law itself. Presently, the government-proposed revision of Law No. 22/1999 is facing harsh reactions from regional authorities that accuse it as hasty and suspect that the revision is an attempt to take back the already transferred power.

Regardless of the reasons each party have, it remains that a remedy by way of revising a law can only bring new and possibly greater problems so long as there exists no constitutional rule to serve as a yardstick. Usually the central government has the upper hand in matters of legislation, because the regional government has relatively limited access to the legislature. On the other spectrum, regional discontent might try to get its way by means of defiance or by mobilizing the local forces. Moreover, as I have suggested, it will be quite a while before a case can be brought to the Constitutional Court, and even then there would still be a lack of the necessary constitutional provisions to base their legal interpretations upon.

We have come to find ourselves running in an infinite circle with no beginning or end. This is truly the present reality of decentralization, which can hopefully paint a picture of what needs to be improved and changed. Things could actually be worse off

when we note that –after saying that constitutional reform is a must to promote regional autonomy, although for some time this will remain hypothetical in nature – whatever process of amendment is taking place now has generated quite a commotion which could fatefully end in total political gridlock. It is nearly impossible to imagine what crisis could arise from this, although many remain optimistic and try to convince that such a state of stagnation would never occur.

Police and military centralism

If we continue to go down the list of drag factors in decentralization that must be dealt with, next is the incomplete devolution of law enforcement power, especially the police force, and can be added the office of the public prosecutor. The police force to this day remains centralized and there seems to appear no prospect within the police force itself to shift from the current concept of a national police system. The idea of placing the police force under the regional government, either the governor or the regent, was plainly rejected (President Habibie once in 1999 proposed this idea and was openly rebutted by the police corps). This resolve to remain independent from the executive administration is not limited in refusing to be under the regional government, it is also a wish to become free from the central government as well.

Two important matters to underline from what we observe in the police case is that the spirit of centralization is greatly ever-present in the bureaucracy and thus there remains a disparity in the stages of devolution at the various branches of bureaucracy: while many fields of governmental work are already in the hands of regional authorities,

matters of law and order remain reliant on the jurisdiction of the national organization hierarchy. This kind of discrepancy needs to be addressed in the first possible instance.

Another influential factor that essentially – although not always directly – gives life to centralism is the role of the military. Obviously the military is by design a centralistic organization, under one command. It would seem impossible for the military itself to conjure any idea to devolve the authority of defense to the regions. But military dominance in more than half of Indonesian history unquestionably shapes the character of centralism in the nation's bureaucracy. Therefore, there exists no meaningful effort in decentralizing without settling first this particular matter, through a complete demilitarization in all fields of Indonesian politics and bureaucracy. The role of the military in politics must unhesitatingly be reduced, and eventually thoroughly eliminated. If this fails to occur, the spirit of centralism will still be very much vibrant. Note the resounding concern about the imminent disintegration of *negara kesatuan* (unitary state) Indonesia that no doubt was largely inspired by a military mindset. Although wariness of some sort of explosive centrifugal movement is not unreasonable, it must not be treated primarily with the extreme measure of centralism and monolithism of the military kind.

Tolerating a temporary chaos

As I have discussed in the beginning, there are two ways from which to view the obstacles impeding decentralization. One pinpoints the factors that obstruct and impede, while another emphasizes the need for correction and regulation to cope with the looming disorder. For the latter, the expected change is reassessment of the existing

implementation, applying reinforcements –in the formal/ regulatory aspects and institutions alike- to prevent things from getting worse. Many, with quite some factual basis, who observe through the decentralization ‘overdriven to chaos’ spectacle, still feel the need to check the process of devolution. The foreign investors, for example, are puzzled by the myriad of new rules issued in the regions, leading to uncertainty and without any assurance of protection whatsoever from the central government.

But the question remains, must change and development absolutely be conducted centrally or shall it be delegated to each region in the spirit of consistent decentralization? There is no easy answer because it is dilemmatic. Each choice must arise from the courage to take a risk, since it is only based on a sort of faith or ideology.

Those who believe in the unconditionality of decentralization will accept chaos and commotion – an unavoidable necessary evil – as a temporary circumstance. Because, so the belief goes, every region will reach a certain point where it must revamp itself and create its own popular control system, because ultimately it is a matter of its own interest and survival. Chaos as a product of overboard enthusiasm in the regions is not viewed in this paper as an absolute immovable constraint. It is deemed as an unavoidable price that must be paid for the unpreparedness that we have in our hands. Decentralization in fact began with a spirited declaration shouted out by the *reformasi* movement, without the benefit of enough time for planning and preparation.

What we are facing now holds similarities to the early days of independence, where there was also a tug-of-war between two standpoints: is it justifiable to immediately declare independence unarmed with administrative capability and ultimately running the risk of chaos, or would the viable choice be to wait for an adequate

preparation and then gradually gain independence after the required capacity to organize and manage resources have all been safely fulfilled? How do we decide upon such a vital choice? However hard it is to make a choice, it is even harder to retract a freedom once it is granted.

Paradox of the center

What, we ask, must we conclude? What we have yet to see is political leadership, at both the national level and in some regional level, if not in every one of them. When one regional leader succeed to disentangle himself and makes his way through the gridlock, he will contribute as an exemplary model to encourage and inspire others. The delicate point, then, lies in calculating how much time we have before the signs of confusion eventually avalanches into point of no return devastation.

Judging from the present array of choices, it would be impossible to hang our hopes on the present national leadership. Besides being known to be ineffective and undermotivated, it is currently faced with multi-tasking predicaments that are, in comparison with the known capacity and strength, too many and too burdensome. Even so, it is undeniable, that a paradox arises from the obstacles and impediments facing us here, that decentralization will only come more within reach only as the strength and selfconfidence of the national leadership grows: the steadier and more stable the central government becomes, the smoother decentralization progresses. Provided, naturally, it possesses the right motivation to democratize.

This paradox, however, will have to wait patiently for the next turn of choosing a different leadership, if we are lucky. Meanwhile, what can be done is to slow the process

of downslide towards a state of confusion, by dilligently doing more political negotiation and persuasion to all stakeholders of regional autonomy.

Jakarta, April 26, 2002
