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Dynamics of Development of Regional Government Law: Implications of the Implementation of Centralization and Decentralization in Indonesia

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Abstract

The purpose of this study is to collect and find authoritative legal material (having authority) regarding the issue of constitutional law and to find out what prescriptions (what is required) and how the implications of implementing centralization and decentralization on aspects of constitutional law in Indonesia. This study uses a normative juridical research approach, namely a statutory approach and an analytical approach. The results of the study found that the shift in the direction of the pendulum from centralization to decentralization or vice versa will continue to occur. Confusion or disharmony of laws and regulations caused by innate defects between the central government and regional governments, there tends to be no visible coordination and function of services so the condition of government affairs has implications for. on 3 (three) aspects, (a) constitutional law aspects, (b). agrarian / land law aspects, and (c). managerial aspects. Therefore, the government is expected to continue and continuously make efforts to find a balance between the centralization - decentralization pendulum in order to maintain the integrity of the Unitary State of the Republic of Indonesia. This becomes very important and becomes a critical issue in realizing the life of the nation and state in accordance with the constitution, the 1945 Constitution.

Keywords: centralization; decentralization; constitutional law; agrarian / land law; managerial; Indonesia; the 1945 Constitution.

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1. Introduction

The country of Indonesia, with its diverse social, cultural, economic, political and social conditions and geographical conditions that are at the crossroads of world traffic is connected to other nations and rich in natural resources such as flora, fauna, and mining materials [11. Geographical conditions consisting of thousands of islands, of course, is not an easy thing to manage and maintain the integrity of this country. The founding fathers were very aware of the challenges of establishing and developing the Indonesian state in accordance with the constitution or written state law, the Constitution of the Unitary State of the Republic of Indonesia is the 1945 Constitution in written form and a document that has undergone four changes: October 1999, August 2000, November 2001, and August 2002 [2]. Indonesia is a unitary state in the form of a republic, as regulated in Article 1 of the 1945 Constitution. The 1945 Constitution of the Republic of Indonesia (UUD 1945), Article 1 paragraph (1), which clearly stipulates that the State of Indonesia is a Unitary State in the form of a Republic, and Article 37 paragraph (5), especially regarding the form of the Unitary State of the Republic of Indonesia cannot be changed [3]. Article 18 paragraph (1), the Unitary State of the Republic of Indonesia is divided into provincial areas and provincial areas are divided into regencies and cities, which each province, district and city has a regional government, which is regulated by law. Then, Article 18 paragraph (2), Provincial, regency, and municipal governments regulate and manage their own government affairs according to the principles of autonomy and co-administration (see UUD 1945, Second Amendment) [4]. In the context of realizing the ideals of an independent, united, sovereign, just and prosperous Indonesian State based on the philosophy of the Indonesian state, Pancasila, namely: God Almighty (precepts I), just and civilized humanity (precepts II), the State protects the entire nation and spilled the blood of Indonesia based on unity (sila III), a State with people's sovereignty (principle IV), and the State realizing social justice (principle V), it is necessary to have a strong state system capable of knitting, maintaining and maintaining that diversity. The State Administration System of the Unitary State of the Republic of Indonesia experiences various dynamics, along with the development of Indonesian society and the development of government management[5]. This is a difficult task and challenge for state administrators to carry out the mandate of the constitution, which is faced with the condition, character and diversity of the Indonesian nation. Therefore, these challenges are increasingly complex, because the problem of implementing the concept of a unitary state tends to be difficult due to problems with demands for equitable distribution of community welfare in the regions related to the relationship between democracy, human rights and regional autonomy in Indonesia. According to [6], the problem of inequality in regional development is a historical problem faced by every country starting from the level of sub-districts, districts / cities, provinces, islands and even globally. According to [7]) that development problems in Indonesia related to the implementation of the government since the beginning of independence tended to be increasingly centralized due to the domination of the role of the central command in each development sector so that development was more centralized in Jakarta compared to other regions, especially regions. areas outside the island of Java. Then, the phenomenon of disharmony in the relationship between the Central Government and Regional Governments in general tends not to improve as a result of the inability of local government officials to interpret the substance of the laws and regulations implementing applicable laws. One of the interesting discourses that caught the public's attention after the issuance of Laws No. 32 and 33 of 2004 was regarding the restructuring of Central-Regional relations because of the implications of implementing laws

before the birth of Law No. 32 and 33 of 2004, namely Laws No. 22 and 25 of 1999, showing that The rampant conflict of central-regional relations in the context of implementing decentralization and regional autonomy policies that cover various aspects of regional governance, including authority, institutions, finance, apparatus resources, and so on [8]. In essence, between centralization and decentralization there is a series (continuum) not a contradictory relationship (dichotomy) because centralization and decentralization always move from one pendulum point to another pendulum and the administration of government is a combination of forces that are centripetal (centralized) and centrifugal forces. (decentralization) simultaneously [9]. According to [10], the ideals of people's sovereignty can also be realized in an atmosphere of centralism, and on the other hand, decentralization is the best way to realize people's sovereignty. With decentralization, it will expand opportunities for the people, both qualitatively and quantitatively, to take part in taking on the responsibility for the administration of government, rather than being limited to the administration at the central level. Then, the division of authority, duties and responsibilities between the Central and Regional Governments is usually regulated in various legal terms, especially statutory regulations and arrangements regarding this matter usually relate to the regional household system, namely the structure concerned by dividing authority, tasks and responsibility of government between the Central and the Regions [11]. According to [12], the existence of the basic functions that are determined at the time of the formation of an autonomous region, providing certainty regarding regional household affairs that are determined "material" according to considerations is important for the region as long as it has not been regulated and managed by the Central or level area further up. In this case, the notion of regional autonomy can be interpreted as the authority to self-regulate the interests of the community or the interests of making rules to manage their own regions [13]. Based on Law No. 32 of 2004, states that the Provincial Government has the authority to regulate and manage all governmental authorities on a cross-regency / municipal scale, and in his position as the Governor who is also the representative of the Government, has the authority to regulate and administer all government authorities in an effort to shorten the range of implementation control duties and functions of the Government[14]. According to [15], decentralization has a strategic function for the government process, and is a good alternative model because it is responsive, able to provide high quality services, and it is possible to strengthen the participation of the people in the government process. . In this context, when examined from the perspective of the transfer of authority or power, the difference between the federal and the unitary states is determined by the degree of decentralization. The difference between a Unitary State divided into Autonomous Regions (decentralized Unitary State) with a Federal State and also Confederate Countries is only in the degree or degree of decentralization so that it can be anologized by the pendulum movement. This means that the boundaries of regional government administration or the part between the form of the unitary state structure and the federal state are not very clear. This constitutional phenomenon is the cause of the emergence of the concept of a unitary state with federal arrangements or vice versa, a federal state with unitary arrangements in the context of the dynamic development of regional government laws in Indonesia. This has implications for the following 3 (three) aspects: (a) aspects of constitutional law (*Hukum Tata Negara* or HTN), regarding the form of centralized and decentralized relations between the central government and regional governments in the Unitary State of the Republic of Indonesia; (b). aspects of agrarian law / land, with regard to policies and authorities of the central government with regions related to land; and (c). managerial aspects, related to the role of the central government which is managerial authority transformed into a leadership role in government which consists of various regional

governments.

Based on various background descriptions of the problem, several problems can be determined as follows:

a. What are the implications of the implementation of centralization and decentralization on the aspects of constitutional law in Indonesia?
b. What are the implications of the implementation of centralization and decentralization on the aspects of agrarian / land law?
c. What are the implications of the implementation of centralization and decentralization on the managerial aspects of central government and regional government?

1.1. Statement of the problem

The division of power or authority between the Central Government and Regional Governments in the context of decentralization has implications for aspects of constitutional law, aspects of agrarian law / land, and managerial aspects of the central government and regional governments due to the division of government authority. The division of powers, duties and responsibilities between the Central Government and Regional Governments must be regulated in various legal aspects, especially statutory regulations, namely in relation to the arrangement of ways of dividing authority, duties and responsibilities of government between the Central and Regional Governments.

1.2. General Objective

The objectives of this study are as follows:

a. Collecting authoritative legal materials (having authority) on constitutional law issues related to the implementation of centralization and decentralization in Indonesia.
b. Find authoritative legal materials (have authority) regarding constitutional law issues related to the implementation of centralization and decentralization in Indonesia
c. Knowing what prescription is (what is required) and how the implications of implementing centralization and decentralization for aspects of constitutional law in Indonesia

2. Methodology

This study uses a normative juridical research approach, namely a statutory approach and an analytical approach. The statutory approach is used to examine legal issues related to the dynamics of the development of local government laws in Indonesia. The analytical approach is used to analyze the juridical concept of the division of power or authority between the Central Government and Local Governments in the context of decentralization which has implications for aspects of constitutional law, aspects of agrarian law / land, and managerial aspects of central government and regional governments due to the division of government authority Secondary data namely data obtained from the literature through literature that is related to the research theme. The source of the data that the researchers obtained in this research is by using library research and field studies.

The data collection techniques used in the study came from various literatures in the form of library studies, and the data collected were compiled by means of descriptive analysis, from theory and observation results so that concrete and scientifically clear truths could be found.

3. Discussion and Results

3.1. Implications of the Implementation of Centralization and Decentralization on the Aspects of Constitutional Law

According to Wheeler (1911) in [16] that all countries have a legal basis, generally consisting of founding documents, such as the constitution, and laws passed by the national legislature. and other level lawmaking authority. These laws function in a hierarchy, which determines how they rank in authority and how the authority and scope of each level comes from the constitution and the hierarchical structure varies from country to country, depending on the form of government which is the key to determining the purpose of each law. within the legal and regulatory framework and ultimately enforce its authority and validity. The purpose of the constitution is to determine the inherent characteristics and sovereignty of a country, and describe the rights and responsibilities of its citizens and ideally, the constitution guarantees the basic rights of the people, defines the government, legislative, executive and judicial systems (and their separation), as well as their respective obligations and duties -Each element of government [16]. The Indonesian state as an organization of a state is prepared based on constitutional law (Staatsrecht) as a form of positive law that defines the relationship between various institutions in a country, namely the executive, legislative and judiciary [17]. In terms of implementing a democratic system, Indonesia has undergone a change in the democratic system from Liberal Democracy to Pancasila Democracy. Pancasila is the foundation of democracy in the administration of the state in Indonesia, which offers ideal and true democracy, involving the people directly in its implementation system [18]. Pancasila democracy also comes from the values and personality of the nation itself which is inherent in the identity of the Indonesian nation [19]. According to [20], democratic activity is not just an instrumental item and democracy also has intrinsic benefits for the rural poor. A democratic state in all of its modern conceptualizations, has been linked to human rights [21], and human rights can be interpreted as rights that each individual has because of being a human that has been universally recognized in all communities and is considered important for maintaining life and social order (see Article 56 of the Charter of the United Nations 1945 and the 1948 Universal Declaration of Human Rights in Arat, 1999: 122-121 [22]). According to [21], the liberal notion of democracy treats civil liberties and political rights as essential for democratic governance in which government and non-state actors can lay the foundation for stronger forms of fair and democratic development [20]. Meanwhile, the socialist version views social and economic rights as necessary for any political system that is considered "very democratic" [21]. The national goal of forming a government is to protect the entire nation and all the blood of Indonesia, promote public welfare, educate the nation's life, and participate in implementing world order. The independence that has been achieved must be maintained and filled with just and democratic development and implemented gradually and continuously through policies taken by the government in the context of realizing national ideals and goals by implementing decentralization and regional autonomy according to [14] ,. The objective of implementing decentralization is to provide better public services and create a more democratic public decision-making process. As a process, the implementation

of decentralization in Indonesia is dynamic and has been in place since 2001 [14]. Then, the history of regional government laws in Indonesia in its development has undergone several changes since the proclamation of the Independence of the Republic of Indonesia on August 17, 1945 until now, as follows:

Table 1: Overview of the Development of Regional Government Legislation in Indonesia

No	Rules	Reviews of Regional Government Legislation in Indonesia
1	Law Number 1 of 1945 concerning the Position of the Regional Indonesian National Committee	Adhering to the principle of formal autonomy, officially reviving the autonomous regional government that was eliminated during the occupation of the Japanese Army, and this law adheres to the dualism of governance in the regions, positioning the regional head as an organ of the autonomous region as well as a central tool in the region because it was not elected by the Regional National Committee (*Komite Nasional Daerah* or KND) but appointed by the central government. The simplicity and dualism of this Law has prompted the central government to make a new law, Law Number 22 Year 1948 concerning Regional Government.
2	Law Number 22 Year 1948 concerning Regional Government	Law No. 22 of 1948 was compiled based on the constitution of the Republic of I article 18. Initially this law regulated the main points of regional governance in the remaining Indonesian territory, namely: (A). The Sumatra region includes: Aceh, western part of North Sumatra, West Sumatra, Riau, Jambi, northern and western parts of South Sumatra, Bengkulu, and Lampung .; (B). The Java region includes: Banten, eastern part of Central Java, Yogyakarta, and western part of East Java (Mataraman area). After the formation of the Republic III on August 15, 1950, this Law applied to the entire area of Sumatra, all of Java and all of Kalimantan. Whereas in areas in the former territory of the State of East Indonesia (*Negara Indonesia Timur* or NIT), namely the Sulawesi region, the Nusa Tenggara region, and the Maluku region, the NIT Law no. 44 of 1950. Basic Law No. 22 of 1948 concerning Regional Government. This law is the first law that regulates the structure and position of regional government in Indonesia. In general, Indonesia has two types of autonomous regions, namely ordinary autonomous regions and special autonomous regions called special regions. Special autonomous regions that are given the nomenclature "Special Region" are areas of the kingdom / sultanate with the position of *zelfbesturende landschappen* / kooti / autonomous regions that existed before Indonesia's independence and are still controlled by the governmental dynasty. Each of these autonomous regions has three different levels and nomenclature, namely: Autonomous Region Level, Ordinary Autonomous Region Nomenclature, Special Autonomous Region Nomenclature; Level I Province Special Region at Provincial Level; Level II District / Big City, Special Region at Regency Level; and Level III Village, State, Clan, or other names / Small Town, Special Region at the Village Level. The law stipulates that local government uses the nomenclature "Local Government". Provincial Heads are appointed by the President from the candidates submitted by the Provincial Regional Representatives Council (*Dewan Perwakilan Rakyat Daerah* or DPRD); Heads of Regency / Large Cities are appointed by the Minister of Home Affairs from the candidates proposed by the Regency / City DPRD; The Head of a Village, State, Marga or other name / Small City is appointed by the Head of the Provincial Region from the candidates submitted by the DPRD of the Village, Country, Clan or other names / Small Towns; The regional head may be dismissed by the official who appointed it on the recommendation of the DPRD concerned; and the Head of a Special Region was appointed by the President from the descendants of the ruling family in that area before the Republic of Indonesia with certain conditions. For special regions, the President may appoint a Deputy Head of a Special Region with the same conditions as the Head of a Special Region. The Deputy Head of the Special Region is a Regional Representative Council of Republic of Indonesia (*Dewan Perwakilan Daerah Republik Indonesia* or DPD) member.
3	Law Number 1 of	What is considered as Regional Government in this law is the DPRD and the

	1957 concerning the Principles of Regional Government	DPD (Article 5). Furthermore, the authority of DPRD is stated in Article 31 paragraphs (1), 35, and 36 of this law, including: (a). To regulate and manage all household affairs in the region, except for those that are assigned by this law to other authorities; (b). Can defend the interests of the region and its inhabitants before the Government and the People's Representative Council; (c). For the benefit of the region or for the sake of such work, regulations called regional regulations can be made. Then, the authority of the Regional Government Council is stated in Articles 44, 45 and 49 of this law, including: (a). Carry out the decisions of the Regional People's Representative Council, (b). Establishing the implementing regulations from Regional Regulations; (c). Represent his area inside and outside the court. In matters deemed necessary, the Regional Government Council may appoint a proxy to replace him.
4	Presidential Decree Number 6 of 1959 concerning Regional Government and Daily Government Bodies; and Presidential Decree No. 5/1960 concerning the Mutual Cooperation Regional People's Representative Council (DPRD-GR) and the Regional Secretary	The development of the state administration after the Presidential Decree of the Republic of Indonesia dated July 5, 1959 which stated the re-enactment of the 1945 Constitution, then this law was drafted to implement Article 18 of the 1945 Constitution by referring to the Political Manifesto of the Republic of Indonesia as the Outlines of the State Direction which was delivered by the President on 17 August 1959 and has been strengthened by the Provisional People's Consultative Assembly (*Majelis Permusyawaratan Rakyat Sementara* or MPRS) Decree No. 1 / MPRS / 1960 along with all its implementation guidelines. In accordance with the Decree of the MPRS Number: II / MPRS / 1960 and Presidential Decree Number: 514 of 1961, this law covers all progressive points (elements) of Law No. 22 of 1948, Law no. 1 of 1957, Presidential Decree No. 6 of 1959 (enhanced), Presidential Decree No. 2 of 1960 and Presidential Decree No. 5 of 1960 (enhanced) in conjunction with Presidential Decree No. 7 Tahn 1965 with the aims and objectives based on the idea of Guided Democracy within the framework of the Unitary State of the Republic of Indonesia.
5	Law Number 18 of 1965 concerning the Principles of Regional Government	Local Government consists of the Head of the Region and the Regional Representative Council (Article 5). The authority of the Regional Government is stated in Article 39 paragraph (1) and 40 paragraph (1), including: (a). Entitled and obliged to regulate and manage the regional household, (b). Government affairs, either partially or completely, which have been separated from the hands of the Central Government. The Regional Head in this law carries out 2 (two) functions, namely as an instrument of the Central Government and as an instrument of the Regional Government. As a tool of the Central Government, the Regional Head is authorized (a). Holds the leadership of the political policy in the area, with due observance of the powers available to the officials concerned based on the prevailing laws and regulations; (b). Coordinating between Central Government agencies in the regions, between these agencies and the Regional Government; (c). Supervising the running of Regional Government; (d). Carrying out other duties assigned to him by the Central Government. As a tool of the Regional Government, the Regional Head leads the exercise of the executive power of the Regional Government both in the area of regional household affairs and in the field of assistance.
6	Law Number 5 of 1974 concerning the Principles of Regional Government	In the context of regional autonomy Article 7 of this law states that: "Regions have the right, authority and obligation to regulate and manage their own households in accordance with the prevailing laws and regulations". What is meant by Regional Government in this law is the Head of the Region and the Regional People's Representative Council. The authority of the regional head is stated in Article 22 paragraph (1), 23 and 38, including: (a). Leading the administration of Regional Government; (b). Representing the area inside and outside the court, if deemed necessary, can appoint a proxy or more to represent him; (c). Establish Regional Regulations with the approval of the Regional People's Representative Council. The authority of the Regional People's Representative Council is regulated in Article 29 of this law, including: (a). Regarding the Budget; (b). Asking questions for each member; (c). Requesting Information, (d). Making changes, (e). Submit a statement of opinion, (f). Prakarsa, (g). Investigation.

7	Law No. 22 of 1999 concerning the Principles of Regional Government	The authority of Regional Government in Article 7 of this law includes authority in all areas of government, except for authority in the fields of foreign policy, defense and security, justice, monetary and fiscal, religion, as well as other areas of authority which include: (a) policies on national planning and control of national development at a macro level; (b). financial balance funds; (c). State administration system and state economic institutions, (d). guidance and empowerment of human resources and (e). utilization of strategic natural resources and high technology, conservation and national standardization. Then, the authority of Regional Government h is other than those excluded in Article 7 above, and which becomes the regional authority regulated in Article 10 of this law, namely managing the national resources available in its territory and being responsible for maintaining environmental sustainability in accordance with statutory regulations. . In the sea area includes: exploration, spatial planning, law enforcement against regulations issued by the regions or those delegated by the government, and assistance to enforce security and state sovereignty. Meanwhile, what is meant by Regional Government in this law is the Regional Head and other regional apparatus (Article 14 paragraph (2)). Meanwhile, the authority of the regional head stated in Article 44 paragraph (1) and Article 69, among others, is stated as follows: (a). to lead the implementation of regional government based on the policies established with DPRD; (b). stipulating regional regulations with the approval of DPRD in the context of implementing regional autonomy.
8	Law Number 32 of 2004 concerning the Principles of Regional Government	Regional governments carry out government affairs which fall under their authority, except for governmental affairs which are determined by this law to be government affairs, which include: foreign policy, defense, security, justice, monetary and national fiscal and religion (Article 10 paragraph (1) and (3)). Regional government affairs are divided into mandatory and optional affairs. Compulsory Affairs are very basic matters relating to the rights and basic services of citizens. Meanwhile, Optional Affairs are affairs that actually exist in the area and have the potential to improve the welfare of the community in accordance with the conditions, peculiarities and superior potential of the region. This law, includes: (a). exploration, exploitation, conservation and management of marine resources; (b). administrative arrangements; (c). spatial arrangement; (d). law enforcement of regulations issued by the regions or those delegated by the government; (e) participate in maintaining security; and (f). participate in the defense of state sovereignty. Then, to carry out its authority in the context of implementing autonomy, regions have rights as regulated in Article 21, among others, namely: (a). organize and manage their own government affairs; (b). elect regional leaders; (c). managing regional apparatus; (d). managing regional wealth; (e). collect local taxes and levies; (f). obtain profit sharing from the management of natural resources and other resources located in the region; (g). get other legitimate sources of income; and (h). obtain other rights as regulated in statutory regulations. As regulated in this law, what is meant by regional government is the governor, regent or mayor and regional apparatuses as elements of regional government administration (Article 1 point 3). Further in Article 24 paragraph (2), it is stated that: A regional head for a province is called a governor, for a regency is called a regent and for a city is called a mayor.
9	Law Number 23 of 2014 concerning the Principles of Regional Government	Central and Regional Government Relations Relations between the Central Government and the Regions can be traced from the third and fourth paragraphs of the Preamble to the 1945 Constitution of the Republic of Indonesia. The third paragraph contains the statement of the independence of the Indonesian nation. Meanwhile, the fourth paragraph contains a statement that after declaring independence, the first to be formed is the Government of the Indonesian State, namely the National Government which is responsible for regulating and managing the Indonesian nation. It is further stated that the duty of the Government of the State of Indonesia is to protect the entire nation and spill Indonesia's blood, promote public welfare and educate the nation's life and participate in maintaining world order based on independence, eternal peace and social justice. 1945 states that the State of Indonesia is a unitary state in the

		form of a republic. The logical consequence of being a unitary State is the formation of the Government of the State of Indonesia as the national government for the first time and then the national government which then forms the Region according to the provisions of the legislation. Then Article 18 paragraph (2) and paragraph (5) of the 1945 Constitution of the Republic of Indonesia states that the Regional Government has the authority to regulate and administer Government Affairs by itself according to the Principles of Autonomy and Co-Administration and is granted the widest possible autonomy directed to accelerate its realization. community welfare through improved services, empowerment, and community participation. In a unitary state, the sovereignty is only in the state government or the national government and there is no sovereignty in the regions. Regions carry out Regional Autonomy which comes from the authority of the President who holds governmental power.
10	Law Number 9 of 2015 concerning Amendments to Law Number 32 of 2004 concerning the Principles of Regional Government	Amending Law 23/2014 on Regional Government. According to Law 23/2014 on Regional Government Article 63, the regional head as referred to in Article 59 paragraph (1) is assisted by the deputy regional head. is called the deputy regent, and for city areas it is called deputy mayor. Law Number 9 of 2015 concerning Amendments to Law Number 32 of 2004. Then, Law 23 of 2014 concerning Regional Government Article 65 regulates as follows:: Regional heads have the task of: leading the implementation of Government Affairs which becomes the authority of the Regions based on provisions of laws and regulations and policies that are jointly stipulated by the DPRD; ; maintain public order and order; compile and submit draft Regional Regulations (*Peraturan Daerah* or Perda) concerning Long-Term Regional Development Plans (*Rencana Pembangunan Jangka Panjang Daerah* or RPJPD) and draft Regional Regulations concerning Regional Medium-Term Development Plans (*Rencana Pembangunan Jangka Menengah Daerah* or RPJMD) to DPRD to be discussed with DPRD, and formulate and stipulate Work Plans Local Government (*Rencana Kerja Pemerintah Daerah* or RKPD); compile and submit a draft Perda on the Regional Revenue and Expenditure Budget (*Anggaran Pendapatan dan Belanja Daerah* or APBD), a draft Perda on amendments to the APBD, and a draft Perda on accountability for the implementation of the APBD to the DPRD to be discussed together; represent the region inside and outside the court, and can appoint a legal representative to represent it in accordance with the provisions of laws and regulations; carry out other duties in accordance with the provisions of laws and regulations. In carrying out the tasks referred to in paragraph (1) the regional head has the authority to: propose a draft Perda; establish a regional regulation that has been approved by the DPRD; establish a regional head regulation (Perkada) and a regional head decision; take certain actions in urgent situations that are urgently needed by the region and / or the community; exercise other authorities in accordance with the provisions of laws and regulations. Further provisions regarding the implementation of the duties and powers of the regional head by the deputy regional head and the implementation of the daily duties of the regional head by the regional secretary as referred to in paragraphs (4) to (6) are regulated in a government regulation.

- **Source**: Secondary data, 2020 (processed)

Based on table 1 above, it can be interpreted that changes or changes that occur in each regional government law are followed by changes in the portion of decentralization [23] the authority given to the regions. The shift in the transfer and / or delegation of authority between the central government to different regional governments at each change of regional government laws can be compared to a pendulum movement that continues to swing between the poles of centralization and decentralization of the administration of regional governments. This has implications for the constitutional law (*Hukum Tata Negara* or HTN) in Indonesia, which causes the boundaries of regional or state governance between the form of the unitary state and the federal state to become

increasingly unclear. This constitutional phenomenon is the cause of the emergence of the concept of a unitary state with federal arrangements or vice versa, a federal state with unitary arrangements in the context of the dynamic development of regional government laws in Indonesia. The shift in the direction of the pendulum from centralization to decentralization or vice versa will continue to occur, adjusting to the political situation and conditions that occurred at that time so that it is not impossible that one day Indonesia will have regional government laws characterized by centralization. Finally, regional autonomy is only a means and / or means to achieve goals for regional development. With regional autonomy, it is hoped that there will be a paradigm shift from centralization to decentralization based on the principles of democracy, the aspirations of regional communities, the diversity of regional potentials and capabilities as well as regional communities as objects and subjects of regional autonomy and development. Thus, the dynamics of the development of regional government laws are aimed at finding a balance between the centralization - decentralization pendulum to maintain the integrity of the Unitary State of the Republic of Indonesia.

3.2. Implications of the Implementation of Centralization and Decentralization on Aspects of Agrarian Law / Land

Since the issuance of the Basic Agrarian Law Number 5 of 1960 concerning Basic Basic Agrarian Regulations (*Undang –Undang Pokok Agraria* or the 1960 UUPA), the terminology of Agrarian has expanded its meaning, the meaning of agrarian includes earth, water and natural resources contained therein as well as space. Agraria is not only agricultural land, however, it includes various sectors in natural resource management [24]. According to [25], the term agrarian is synonymous with land, so that it can be distinguished that agrarian in a broad sense includes earth, water, and space including the natural wealth contained in it, while the narrow definition includes land only. Then, referring to history shows that agrarian institutions exist as a form of regulation of dualism of land law in Indonesia before the enactment of the 1960 UUPA, where the regulations are based on customary law and western law [26]. Agrarian institutions often experience ups and downs following politics and policies [27]. Initially the agrarian institution was a cadastral institution called the Cadastral Dient which was intended to carry out cadastral administration, namely a list showing details of land ownership for tax purposes [28]. Land registration activities are still the main activity of agrarian / land institutions, and land registration is a process carried out by the government to register interests legally related to land and agrarian-land institutions synonymous with land administration activities [24]. The institutional arrangement for agrarian / spatial land management in Indonesia has also undergone several changes following development needs and political dynamics as described in table 2 as follows:

Table 2: Dynamics of Development of Agrarian Institutional Forms / Land in Indonesia

Year	Agrarian / Land Institutional Forms in Indonesia
1964	The form of agrarian institution was called the Ministry of Agrarian Affairs which later became the Ministry of Agrarian Compartment which oversees the Minister of Agriculture, Minister of Plantation, Minister of Forestry, Minister of Agrarian Affairs, Minister of Village Community Development, and Minister of People's Irrigation.
1965	One year later, the Regulation of the Minister of Agrarian Affairs Number 1 of 1964 (*Peraturan Menteri Agraria* or Permenag No 1/1964) was refined through Permenag No 1/1965 concerning the Duties of the Ministry of Agrarian Affairs and the addition of the Directorate of Transmigration and Forestry to the Ministry of Agrarian Affairs. This year, the agrarian-land institution was reduced back to the level of the directorate general, although its scope increased with transmigration, namely the Directorate General of Agrarian Affairs and Transmigration, under the Ministry of Home Affairs. In less than a year, transmigration affairs were pulled back to the Department of Veterans, Transmigration and Cooperatives, so he became Director General of Agrarian Affairs under the Ministry of Home Affairs.
1982	Based on the Decree of the Minister of Home Affairs Number 72 of 1982, the composition of the Agrarian Office at the provincial and district / municipal levels becomes the Provincial Agrarian Directorate and Regency / Municipal Agrarian Office.
1988	In line with the increase in agrarian problems, the Directorate General of Agrarian Affairs of the Ministry of Home Affairs was upgraded to a Non-Departmental Government Agency (*Lembaga Pemerintah Non Departemen* or LPND) National Land Agency (*Badan Pertanahan Nasional* or BPN) through Presidential Decree Number 26 of 1988. The existence of this regulation makes BPN no longer responsible to the Minister of Home Affairs but directly to the President and the scope of work is getting wider. Through the Decree of the Head of BPN 1/1989 concerning the Organization and Work Procedure of Regional BPN Offices in Provinces and Land Offices in Regencies / Municipalities, the BPN Regional Offices at the provincial level and Kantah at the regency / municipal level are vertical agencies and are accountable to the Head of BPN.
1988 - 1990	During the period 1988-1990s there were no fundamental changes related to institutions, but the room for movement was narrower to make agrarian changes in the organization of the National Land Agency (BPN).
1993 - 2006	In the 1993-2006 period, agrarian-land institutions underwent structural changes several times, especially with the issuance of regulations related to the implementation of regional autonomy in the land sector. In 1993, the agrarian institution changed into the State Minister for Agrarian Affairs / National Land Agency. The Office of the Minister of Agrarian Affairs which handles matters of a coordinating nature and BPN which handles matters of an operational nature. During the administration of President Susilo Bambang Yudoyono, agrarian institutions underwent a change to become a state institution parallel to the ministry with the name of the National Land Agency with the main agenda of implementing land registration to ensure legal certainty. The BPN institution is a non-departmental government institution that is under and responsible to the president and led by the head with the task of carrying out governmental duties in the land sector nationally, regionally and sectorally in accordance with the provisions of the legislation. With this task, the authority of the institution has become wider.

2014	The formation of the Working Cabinet, which is summarized in Presidential Regulation Number 165 of 2014 concerning Structuring of the Work Cabinet's Duties and Functions, Article 7 states that the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency has the duty to lead and coordinate; the implementation of tasks and functions in the spatial planning sector which is carried out by the Ministry of Public Works; and the administration of government affairs in the land sector carried out by the National Land Agency (BPN). This shows that this ministry is mandated to carry out government affairs in the field of land and spatial planning. With regard to agrarian institutions, the scope of agrarian activities is an integral part that cannot be separated, including: (1) land tenure and ownership arrangements; (2) arrangement of land use and allotment; (3) determination of land rights; and (4) land registration. The institutional arrangement of the Ministry of Agrarian Affairs and Spatial Planning / BPN is an institutional arrangement for BPN coupled with an integrated Agrarian and Spatial Planning institutional arrangement within one ministry. For this reason, this institution requires implementing elements / organs in the structure at least with respect to the following matters; regulation of agrarian resources and natural resources; spatial arrangement without differentiating forest and non-forest areas but based on the carrying capacity and carrying capacity of the environment including directions for spatial use and utilization; implementing activities in the agrarian-land scope; single map provider in the framework of One Map Policy and executor of land and space conflict resolution.
2020	With the promulgation and enactment of Law Number 11 of 2020 concerning Job Creation on November 2, 2020, the management rights that do not deviate from the right to control from the State, the formation of land banks and do not deviate from agrarian reform, this Law aims to: (1), Guarantee the objectives and interests formulated in the 1945 Constitution Article 33 along with its amendments; (2) Supporting sustainable regional development; 3) Controlling regional development efficiently and effectively; and (4). Control land tenure fairly and fairly in carrying out development and function as a land keeper, land warrantee, land purchaser and development, land valuer, land distributor, and land management. This is useful for controlling the balance between the need for land for development and supply, controlling the land market mechanism that ensures efficiency and price rationality, efficient and equitable land value guarantees, integrating strategic policies, implementation and evaluation related to land.

Source: Secondary data, 2020 (processed)

Based on table 2 above, it can be explained that the form of agrarian institutions develops very dynamically in line with the increasing agricultural problems in Indonesia. With the integration of Agrarian and Spatial Planning (*Agraria dan Tata Ruang* or ATR) / National Land Agency (BPN) institutions which are integrated in one ministry, it is hoped that it will be able to improve the performance of the institution so that it can focus more on agrarian and spatial planning so as to facilitate control and resolution of land problems and at the same time can accelerate National development. The Republic of Indonesia as a Unitary State adheres to the principle of decentralization in governance providing opportunities and flexibility to carry out regional autonomy. In a unitary state, the highest power lies with the central government, although certain responsibilities can be delegated to government institutions or to local governments. In this context, the central government makes rules or policies related to agrarian and spatial planning (ATR) which are then implemented nationally. Unified systems can be highly centralized (centralized) or they can be decentralized, where local governments are given a sufficiently wide range of autonomy. For example, in a federal state it has the characteristics that there is a division of power between the central government and local governments, and each has autonomy in several fields and has the authority to make laws and rules and responsibilities related to ATR laws. divided between the central government and local governments. Meanwhile, the power in the regional system, where the central government and lower levels are then distributed through the constitution or legislation. In this system, local governments have the power to make laws, but laws are set by the central government. According to article 1

number 7 Law Number 32 of 2004 concerning Regional Government {29], what is meant by decentralization is the transfer of government authority by the Government to autonomous regions to regulate and manage government affairs in the system of the Unitary State of the Republic of Indonesia. As stipulated in Article 10 of Law no. 32 of 2004 concerning Regional Government in the field of Agrarian Affairs, including being handed over to the Regency / City to take care of land / agrarian matters. According to the Basic Agrarian Law of 1960 concerning Basic Agrarian Principles Article 1, agraria includes the earth, water and space including the natural resources contained therein [30]. In Article 2 paragraph (1) UUPA 1960 it is stated that on the basis of the provisions in Article 33 paragraph (3) of the 1945 Constitution that the land, water and space, including the natural resources contained therein, at the highest level is controlled by the State as an organization of all powers. people. What is meant by the right to control of the State according to Article 2 paragraph (2) the 1960 UUPA is the authority to: (a). Regulate and administer the designation, use, supply and maintenance of the earth, water and space; (b). Determine and regulate the legal relationships between people and earth, water and space; (c). Determine and regulate legal relationships between people and legal actions concerning earth, water and space. After Chapter I of the Basics and Basic Provisions, Chapter II of the 1960 UUPA only regulates the relationship between Indonesian citizens and land. Thus, it can be said that the dominant substance of the 1960 UUPA is land law, operationally the institution established by the government to implement UUPA1960 from the central government level to the lowest level of government in the Regency/City. In this context, the constitution has mandated that all natural resource management in Indonesia is submitted to the State. Then, the implication of this constitution emphasizes that the government has an obligation to manage existing natural resources, both the government at the center and the government in the regions. With regard to this formula there is an official explanation of the meaning of "controlled by the state", however, one thing has been agreed that being controlled by the state is not the same as being owned by the State. The definition of "controlled by the state" is defined as covering the meaning of control by the state in a broad sense derived from and derived from the conception of the sovereignty of the Indonesian people over all sources of wealth "the earth, water and natural resources contained therein", including the definition of public ownership by the collectivity of the people. on the sources of wealth referred to. The people collectively constructed by the 1945 Constitution mandates the state to establish policies (beleid) and management actions (bestuursdaad), regulation (regelendaad), management (beheersdaad), and supervision (toezichthoudensdaad) for the greatest purpose of the people's welfare [31]. This agreement was related to or a form of reaction from the system or concept of "domin" used during the Dutch East Indies colonial period. The concept or better known as the “domineering principle” implies the meaning of ownership. The state is the owner of the land, therefore it has all the powers to carry out acts of ownership (*eigensdaad*) [32]. Meanwhile, Article 2 Paragraph (2) in the 1960 UUPA defines the meaning of "the right to control the state" as the authority to: a) regulate and carry out changes, use, supply and maintenance of the said earth, water and space; b) determine and regulate the legal relationships between people and earth, water and space; c) determine and regulate legal relationships regarding earth, water and space. In this connection, according to Harsono (1997) [33]. that in agrarian legislation there is a general statement (*Algemene Domein Verklaring*) and a special domein statement (*Speciale Domein Verklaring*) that the state does not act as a ruler, but as a civil owner. The dynamics of the development of regional government laws in Indonesia have implications for agrarian / land law aspects, with regard to policies and authorities of the central government with regions related to land. The phenomenon of changing the pattern of government

administration related to decentralization is regulated in Article 11 of Law Number 22 Year 1999 which states that "land is the authority of district / city governments". Then, in its development there was a fundamental change, this can be seen in Article 13 and Article 14 of Law Number 23 of 2004 concerning Regional Government which states that both the provincial and district / city governments only have authority in the field of land services as mandatory affairs. The authority to regulate the land sector from the government which is delegated to the Regency / City Autonomous Region is the authority to regulate the implementation of land law as stated in the Basic Agrarian Law as outlined in PP No. 38 of 2007 includes 9 (nine) Sub. Sector, 8 (eight) Sub-Sectors are regional autonomy affairs, and 1 (one) Sub-Sector assistance tasks. According to [34], local government regulations and land regulations can be said to be confusing or disharmonized due to: (a). The existence of "congenital defects" Law Number 32 Year 2004 concerning Regional Government does not explain where the difference in land services between the Provincial and Regency/City governments lies. Likewise PP. 38 of 2007 concerning the division of central government affairs, the expressions between provinces have not yet been described, the dominance of coordination and districts / cities carrying out real service functions so that the current condition of land affairs is the package (law) with the expression of decentralization but its content is centralization; (b). There is a difference with Article 11 of Law Number 22 Year 1999 concerning Regional Government which clearly states: land affairs are under the authority of the district / city government. However, Law Number 32 of 2004 concerning Regional Government states that both provincial and district / city governments are given the authority to provide land services, whereas the Law should provide an explanation of the differences in land services in provincial governments and land services in district /city governments. Therefore, in order to minimize conflicts and to resolve agrarian conflicts, it is necessary to have laws and regulations in the agrarian sector aimed at synchronizing policies between sectors related to control, ownership, use and management of natural resources. In this case, the Government under the leadership of President Joko Widodo has enacted and enforced Law Number 11 of 2020 concerning Job Creation [35] or more popularly known as the omnibus law Cipta Kerja. however, the characteristics of this law tend to centralize power [36]. Especially in the agrarian sector, the omnibus law Cipta Kerja is expected to provide protection and fulfillment of people's rights over agrarian resources as well as for companies and investors through land banks in the agrarian sector, guaranteed protection and fulfillment of rights as guaranteed by the constitution, the Constitution. 1945 Article 33 paragraph (3). Although the authority in the agrarian / land sector in the omnibus law Job Creation is in the national (central) government, it is hoped that the main principles that must be adhered to in the implementation of agrarian policy in the current context of Indonesia should be decentralized, namely the spirit of providing the widest possible autonomy to the regions.

3.3. Implications of the Implementation of Centralization and Decentralization on Managerial Aspects

According to openstax.org/books/principles-managerial-accounting [37], setting strategic goals in any organization is important because of all aspects of business, and it is the responsibility of the organization's management to set strategic goals to ensure that all business activities help meet those objectives through communication and provides a plan that guides the work of people in the organization as well as creating a management control system through the implementation of centralization and decentralization Centralization is a business structure in which one individual makes important decisions (such as allocation of resources) and provides the main strategic direction for the company. Whereas decentralization is a business structure in which

decision making is made at various levels of the organization, and usually, a decentralized business is divided into smaller segments or groups to facilitate measurement of the performance of companies and individuals in each sub-group. Advantages of a centralized organization (centralized) is clarity in decision making, efficient implementation of policies and initiatives as well as control over the strategic direction of the organization while on the other hand it has weaknesses, including limited opportunities for regions to provide feedback and a higher risk of inflexibility. Then, the advantages of organizations that adhere to a decentralized system are decisions can be made quickly, time to respond to take advantage of opportunities that fit the organizational strategy while on the other hand it has weaknesses, coordination problems, increased administrative costs, mismatches in operations, and is often self-centered. itself (its own domain), and significant dependency [37]. According to The Food and Agriculture Organization [38], decentralization is about governance, and the word government has two meanings and has the following objectives: a. The definition of government has two meanings: First ,. governance is referred to as 'the complex of institutions and organizations that govern people's lives'. This includes rules (formal and customary law, internal organizational regulations, moral obligations, contractual obligations, etc.) and social aggregations (families, churches, cities, professional associations, political parties, banks, commercial enterprises, cooperatives, courts of law, governments, parliament); and Second, governance refers to 'the act of regulating', that is, the way institutions are established (eg how laws are proposed and enforced) and the way organizations behave, manage their affairs, and govern people. Both meanings are covered by the term 'good governance'. Increasing awareness of the importance of good governance was a key feature of the 1990s. It refers to systems that are suitable for achieving societal goals such as stability, growth, equity, equity, efficiency, and the practices of those who run the organization in such a way as to achieve these goals. The aim of governance is to achieve good governance requires analysis and reform of institutions that underpin a country's political, cultural and bureaucratic framework through the implementation of decentralization which is the focal point of new approaches to better service delivery that include decentralized public administration. Decentralization of public administration is changing the assignment of responsibilities and resources between various levels and agencies of government and is closely linked to the process of political democratization. When the government is democratically elected by the people, people hope that the relationship between the people in power and their voters will strengthen so that it will be able to increase the accountability of politicians through transparency in terms of decision making and increasing the quantity and quality of public services. This decentralization paradigm can be summarized in the form of a flow chart as shown in Figure 1 as follows

In the context of the government management system in Indonesia, centralization was widely used by the government before regional autonomy, and the centralization system has a weakness wherein a policy and local government decisions are decided by people in the central government so that the time to decide something is longer. At this time, Indonesia adheres to a regional autonomy system in the implementation of its government, but in implementing autonomy, the regions are still controlled by the central government in accordance with the law. At the last stage, the highest power remains in the hands of the central government because Indonesia is a unitary state with a decentralized system [13].

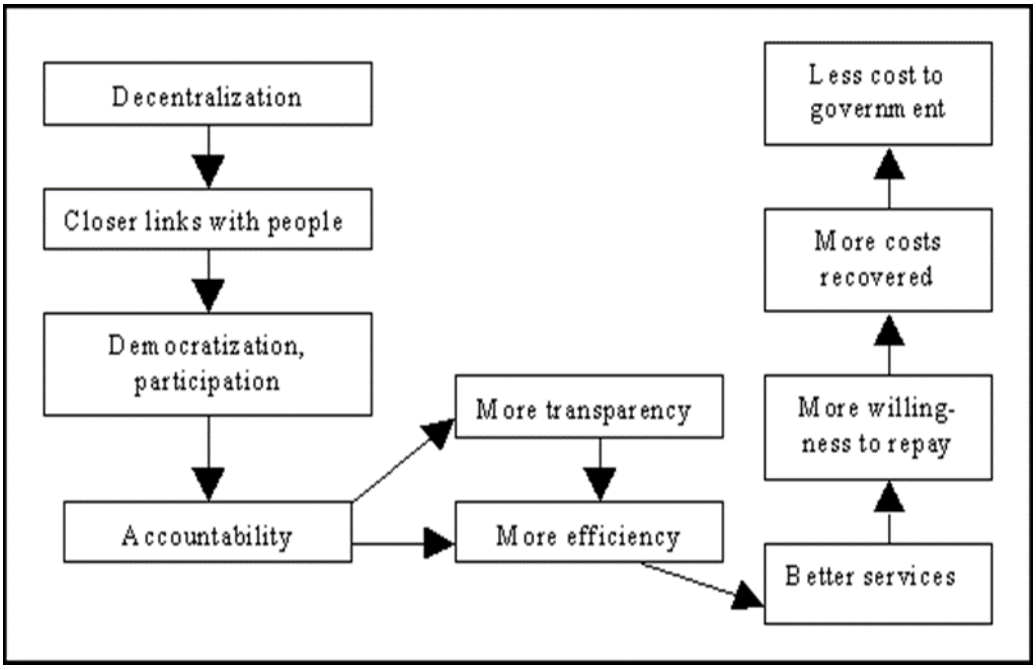

Figure 1: The Paradigm of Decentralization

Source: http://www.fao.org/3/Y2006E/y2006e05.htm

According to [39], regarding the best possible decentralization system, the right division of regional levels. Power relations as well as financial relations between the regions and the central government, the form and structure of regional governments and all other aspects concerning the implementation of the ideals of decentralization as referred to in Article 18 of the 1945 Constitution, these will be regulated in the Law. According to [40] that there are 3 (three) types of Central-Regional Relations as follows:

Table 3: The 3 (three) types of Central-Regional Relations

	Principle	**Nature of Granting Authority**	**Differences of Authority in the Government**		
			Center	**Province**	**Regency / City**
1	Decentralization	Assignment	a. Supervision b. Control c. General Accountability	a. Coordination b. Supervision	a. Policy b. Planning c. Implementation d. Financing (except employee salaries)
2	Deconcentration	Abundance	a. Policy b. Planning c. Financing d. Supervision	Coordination	a. Support b. Completing
3	Assistance (*medebewind*)	Participation	a. Policy b. Planning c. Implementation d. Financing e. Supervision	Coordination	(Helping) Implementation

Source: Ateng Syafruddin dalam Moh. Mahfud,1998:94

Based on Figure 2 it can be interpreted that the appropriate and appropriate political and governmental management model to be implemented in Indonesia in the current era when viewed from a managerial aspect is a decentralized system of choice. This is because the handover of authority to regional governments by the central government with control in the form of supervision, control, general accountability and direct supervision from the people contains the principles of good governance implemented such as the accountability of politicians through transparency in terms of decision making to increase quantity. and the quality of public services. In this case, the main agenda in the politics of regional government in Indonesia is how local governments can serve the interests of their people, and not precisely, in the name of reform and regional autonomy, strengthening exploitation, oppression and conquest of the people by new political elites. In this context, it is very appropriate to argue Hobbes (2006) in [41] which states that humans live in a society before a country, live in nature, and in nature humans have the main natural rights, namely the right to self-defense guided by the human mind to understand that legal authority must be guaranteed through social agreements in order to obtain individual authority and power that forms community agreements. Thus the concept of rule of law related to the implementation of a centralized and decentralized government system in the managerial aspect is based on good governance, regarding people and their ways of carrying out their respective roles and responsibilities to achieve organizational results which includes 7 (seven) main principles consisting of: (a). Leadership, (b). Ethics & Integrity; (c) Stewardship, (d) Accountability & Transparency, (e). Effectiveness, (f). Roles and Responsibilities, and (g). Participation [42]. Good governance is very important and becomes a strategic agenda to be implemented and it is necessary to pay attention to our attention in examining the dynamics of the development of regional government laws in order to find a balance between the centralization-decentralization pendulum to maintain the integrity of the Unitary State of Indonesia [43].

4. Conclusions & Recommendations

Based on the results of the research, it can be found that the shift in the direction of the pendulum from centralization to decentralization or vice versa will continue to occur, adjusting to the political situation and conditions that occur, and regional autonomy is only a tool and / or means to achieve goals for regional development from centralized to decentralized. based on the principles of democracy, the aspirations of the local community, the various potentials and capacities of the regions as well as regional communities as objects and subjects of regional autonomy and development. With regard to regulations and laws in the field of land affairs and government management, it can be said that there is still confusion or disharmony caused by innate defects with respect to laws and regulations between the central government and regional governments. For example, the division of affairs of the central government and regional government tends to have no visible expressions related to coordination and real service functions so that the conditions of government affairs have implications for this. on 3 (three) aspects as follows: (a) aspects of constitutional law, (b). agrarian / land law aspects, and (c). managerial aspects. Thus, it is hoped that the government can continue and sustainably make efforts to find a balance between the centralization - decentralization pendulum in order to maintain the integrity of the Unitary State of the Republic of Indonesia. This has become very important and has become a critical issue in embodying the life of the nation and state in accordance with the constitution, the 1945 Constitution.

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