TOWARD A POLITICS OF INCLUSION: PROSPECTS AND PROBLEMS OF CIVIC PARTICIPATION IN INDONESIA’S GOVERNMENT DECENTRALIZATION

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Abstract:
This article assesses the shortcomings and possibilities of deepening civic participation in Indonesia’s government decentralization. Applying an expositive-critical-reconstructive approach and using Habermas’s theory of law and democracy, this study addresses the main question: “What democratic principles must be adhered to by Indonesian citizens to achieve the purpose of government decentralization?” This article argues that government decentralization in Indonesia has brought democracy closer to the people; however, it did not necessarily result in the active participation of citizens in local government affairs and in crafting local regulations. This deficit requires the local governments to institutionalize the ideal lawmaking procedures and inherit democratic ethos. The local people must be educated and capacitated to maximize the benefits of government decentralization, while civil society groups step in to practice democratic principles in civic participation and lawmaker.

Keywords:
government decentralization • politics of inclusion • deliberative problems • dysfunctional civil society
Introduction

The term decentralization, generally, refers to the transfer of power and resources from the central government and its agencies to the regional governments. It involves a complex restructuring of government administration. It “entails new fiscal and financial relationships, political responsibilities, policy-making attitude, involvement by citizens and civil society organizations, and accountability mechanisms.”1 The move towards decentralization is expected to result in “better government and deeper democracy as public officials are held more directly accountable for their actions and as citizens become more engaged in local affairs.”2

The government decentralization in Indonesia is enshrined in Article 18 of the 1945 NRI Constitution – the 1945 Constitution of the State of the Republic of Indonesia (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945). It contains at least seven features: the division of regions (Section 1), the authority of regional governments (Section 2), the election of the local representative members (Section 3), the election of regional heads (Section 4), the full implementation of regional autonomy (Section 5), the enactment of regional regulations and other regulations (Section 6), and the structures and procedures for the administration of regional governments (Section 7). These provisions were officially implemented on January 1, 2001.

According to Zuhro, such implementation, to some extent, has brought democracy closer to the people. Particularly, it increased the participation of citizens, including civil society organizations and the mass media, in local governments’ local politics and affairs.3 Nonetheless, local people often give up their rights and freedom to the local officials to decide their needs and interests. The rightful participation of the people in local politics and governance through public hearings and local meetings is also often disregarded by some local government officials and political elites. The latter dominates the deliberation process and makes the final decision on the draft of regional development plans and programs.

This article focuses on the problems and prospects of civic participation in Indonesian local government affairs and in crafting regional regulations. It addresses the main question: “What democratic principles must be
adhered to by Indonesian citizens to achieve the purpose of government decentralization?” The theoretical framework used is Jürgen Habermas’s theory of law and democracy, as expounded in his monumental treatise *Between Facts and Norms*.

Some researchers have employed Habermas’s theory to evaluate the decentralization programs in their respective countries: Ranilo Balaguer Hermida used Habermas’s theory of law and democracy to evaluate the Philippines government’s decentralization, while Martin K. Akotey used Habermas’s communication theory to evaluate Ghana’s local government system. In Indonesia, Wimmy Haliim as well as Lisa Farihah and Della Sri Wahyuni have employed Habermas’s theory of law and democracy to assess the lawmaking process in the country, but they do not specifically discuss government decentralization. This article will use Habermas’s theory to evaluate the effectiveness of the government decentralization program in Indonesia.

Applying an expositive-critical approach, the presentation of this article is organized into four sections. The first section applies to the expositive approach. It provides clear information about Habermas’s theory through an inquiry into some sources available from books, journals, periodicals, and the internet. The second section constitutes the critical approach of this article. It analyses how the theory’s normative principles are applied in Indonesia to assess how the practices fare in so far as the principles are concerned. It highlights the discrepancies between the provisions of the Indonesian constitution, the practice of civic engagement in local government affairs, and the lawmaking of local regulations. The last section answers the main question, summarises the findings of this article, and offers solutions on how citizens and civil society groups can actively participate in Indonesia’s efforts toward government decentralization.

**Habermasian Theory of Law and Democracy**

In *Between Facts and Norms*, Habermas elaborates on the twin parts of his project, namely his contributions to a discourse theory of law and democracy and the prospect of discourse theory for modern complex societies. His main argument is that “the rule of law cannot be had or
Maintained without radical democracy.” Modern law can no longer rely on its legitimacy on tradition and other external sources like authority. Rather, “[t]he democratic process bears the entire burden of legitimation.” This indicates a connection between law and democracy. Modern law must attain its legitimacy through the democratic lawmaking process engaged in by the citizens as free and equal members of a legal community.

The project of legitimating the law is hindered by modern complexity. Habermas identifies within modern law an internal tension between facticity and validity. On the one hand, the law as a system of norms that requires compliance by the citizens must be enforced and its violation penalized. On the other hand, the legitimacy and rational acceptability of the law must be attained through a discursive procedure and a democratic process that involves the participation of free and equal citizens.

In the case of modern democratic states, the legitimacy of the lawmaking process cannot always be automatically presumed. One of the features of modern democracies is that they are representative. Adopting the system of representative democracy has become a matter of expediency and necessity, given the status of modern societies. The task of lawmaking is assigned to an official assembly called the parliament or the legislature. There is nothing wrong with the system itself. The irony, however, lies in the situation that the law is enacted by members of the legislative body tasked to represent their constituents, yet the needs and interests of the latter are often neglected or excluded in the making of the laws. Such is the external tension between social facts and the legal process.

Notwithstanding the characterization of modern politics, Habermas believes that “one cannot adequately describe the operation of a constitutionally organized political system, even at an empirical level, without referring to the validity dimension of law and the legitimating force of the democratic genesis of law.” The law is legitimate only when it is the outcome of a democratic lawmaking process engaged in by the citizens as free and equal members of a legal community. In the same vein, he maintains that because the hallmark of democracy is the consent of the governed, then for modern democracy to be legitimate, the autonomy of the citizens cannot be bypassed or ignored. It is, thus, the function of modern law to secure that autonomy and make it functional through statutes and programs that both guarantee and promote the political
participation of the citizenry. As explained by Hermida, “The rule of law is legitimate when it is anchored in a radical democracy; democracy is legitimate when the autonomy of the citizenry is secured through the medium of law.”

One essential requirement to actualize the formal conditions for legitimate lawmaking is the adoption of the discourse principle, which states: “Just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses.” Adopting this principle means that any justification of a norm shall be arrived at through the collaboration of all those affected by the norm. The process involves the practice of communicative action, which respects the rights of all to participate equally and their freedom to decide the outcome of the discourse. It is only when the use of communicative liberties is ensured that the citizens exercise the basic right to political participation in the enactment of the law. The discourse principle must be vested, accordingly, with the legal shape of a democratic principle.

Habermas responds to the social reality of modern law by incorporating into his theory deliberative politics or deliberative democracy. This politics takes the form of intersubjective communication, and its success depends “on the institutionalization of the corresponding procedures and conditions of communication, as well as on the interplay of institutionalized deliberative processes with informally developed public opinions.” He insists that democratic processes are not limited to electoral exercises and the representational compositions of legislative bodies. There are also discourses outside the formal governmental exercises and bodies which form part of the democratic process since they are “meant to guarantee that influence and communicative power are transformed through legislation into administrative power.”

Given the above considerations, Habermas incorporates into his theory of democracy the institutionalization of coordination and cooperation between the central and the periphery axes. The central axis consists of the three equal branches of the government: the administration, the legislature, and the judiciary. Within these formal bodies, binding decisions for the whole society are decided upon. Only the central axis, therefore, has the official authority to issue policies and programs and the power to implement them. The peripheral axis refers to the various association and
organizations in the informal public sphere “that, before parliaments and through the courts, give voice to social problems, make broad demands, articulate public interests or needs, and thus attempt to influence the political process more from the normative points of view.” Popular sovereignty in modern society is achieved if it entails intersubjective communication between the central and the peripheral axes. For this reason, the procedures that facilitate the entry of inputs from the public sphere into the formal lawmaking process must be instituted.

Habermas defines the public sphere as “a communication structure rooted in the lifeworld through the associational network of civil society” that functions as “a sounding board for problems that must be processed by the political system because they cannot be solved elsewhere.” The relationship between the public sphere and the political system is, thus, clearly situated within his center-periphery model of the circulation of power in modern society and the proceduralist paradigm of democracy that he advances.

The public sphere is supported by civil society groups which Habermas refers to as “non-governmental and noneconomic connections and voluntary associations that anchor the communication structures of the public sphere in the social component of the lifeworld.” Since it comprises “more or less spontaneously emergent associations, organizations, and movements,” civil society is not as firmly established and highly influential as the mass media and the significant interest groups that also populate the public sphere. Nevertheless, it is accordingly “attuned to how societal problems resonate in the private life spheres” and, as such, can “distill and transmit such reactions in the amplified form to the public sphere.” Civil society groups form “the organizational backbone of the general public of citizens who struggle to have their social interests and experiences adequately understood and to significantly influence the institutionalized procedure of decision making.”

The importance of the participation of civil society groups in enacting laws and formulating administrative programs and policies of the political system is a big step toward expanding the democratic potential of modern society. Since they are closely linked with the private sphere, their initiatives, and proposals can presumably be taken as coming directly
from the citizens themselves. Their intervention is, therefore, a concrete instance of popular sovereignty. This is the view that Habermas upholds as he writes: “[T]he interplay of a public sphere based in civil society with the opinion and will-formation institutionalized in parliamentary bodies and courts offers a good starting point for translating the concept of deliberative politics into sociological terms.”

The democratic procedure of legitimate lawmaking is necessary to ensure that there are institutionalized procedures for reinterpreting the system of rights and updating the system to accommodate the demands of the current situation. Even more imperative is that these procedures should be democratic to ensure the legitimacy of the newly enacted laws. Modern law can succeed in fulfilling its function to integrate the whole of society only when it is an authentic embodiment of collectively binding decisions. It is, therefore, crucial that modern law reflects the will of the free and equal citizens who constitute the legal society.

The Prospects and Problems of Civic Participation

Indonesia has adopted the decentralization program since the early period of its independence in 1945. Law No. 1 of 1945 on Regulations on the Position of National Committee of the Region, Article 2, tasked the people’s representative body in every region to regulate the regional households. This did not last long because President Soekarno considered decentralization a threat to national unity. He instituted a policy of centralization, which President Soeharto also adopted. During the regimes of the first two presidents of Indonesia, the central government in Jakarta made decisions for and controlled the entire nation’s resources. The regions were considered mere clients of the state, with no rights and autonomy to manage and administer their local communities.

When President Soeharto stepped down from power, the demand for decentralization intensified. Angel Rabasa and Peter Chalk explained that one reason behind the demand is the belief by people outside Java that “power was not distributed fairly.” They also noted that the central government has somehow acceded to the demand “because it has no choice, but also in the expectation that decentralization would lessen the provinces’ distrust of Jakarta and defuse separatist sentiment.”
In 1999, President B.J. Habibie addressed the demand of the people for decentralization by reforming Indonesia’s regional autonomy program. He formed a group of experts, which came to be known as Team 7. Although the team was initially tasked with reforming the electoral system, it was subsequently charged with “writing a comprehensive reform of the country’s unitary system that would devolve power to its regions.” After a few months, the team submitted a draft bill on regional autonomy to President Habibie, which he approved and then presented to the House of Representatives of the Republic of Indonesia.

In May 1999, the DPR passed the bill into two laws: Law 22 on regional autonomy and Law 25 on intergovernmental fiscal relations. These laws came into force soon after and became the legal basis for implementing decentralization and regional autonomy throughout Indonesia. On August 18, 2020, the two laws were included in the list of proposed amendments. They now form part of Chapter VI – The Regional Governments, Article 18, Section 1 to Section 7 of the 1945 NRI Constitution.

Civic Participation in the Regional Government

One of the main aims of government decentralization in Indonesia is to provide more opportunities for civic participation. Decentralization cannot fully succeed without civic participation; conversely, civic participation is bolstered by decentralization. The two always go hand in hand such that the World Bank describes their relationship as symbiotic: “On the one hand, successful decentralization requires some degree of local participation [...] On the other hand, the decentralization process can enhance the opportunities for participation by placing more power and resources at a closer, more familiar, more easily influenced level of government.”

In Indonesia, the national government has instituted a participatory mechanism that gives more opportunity for the local community, including civil society organizations, to engage in the affairs of their local government, specifically, in the area of development planning and budgeting. This has been the case for almost two decades since the start of the decentralization program.
The venue for civic participation is set up through a consultation forum among stakeholders called the Deliberation of Development Planning (Musyawarah Perencanaan Pembangunan, or Musrenbang). This new model for national development planning replaced the old system, which, according to Rifa et al., was “heavily bureaucratic and not participatory.”

It is instituted at all the regional government’s administrative levels, ranging from the village, subdistrict, regency, and town to the provincial and national levels.

Law No. 23 of 2014 on Regional Government, Article 261, Section 3 explains that the Musrenbang is a decision-making process involving various stakeholders who are directly or indirectly affected by the regional development program. The stakeholders include government officials, community leaders, entrepreneurs, the women’s sector, and representatives of vulnerable groups. The Musrenbang begins at the village level and moves through the sub-district, municipal, and provincial until it reaches the national level (Section 5). It is a process that is supposedly participative and responsive to the needs and aspirations of the localities and accountable to them (Article 262, Section 1). The Musrenbang, therefore, has generated much optimism among ordinary citizens as they expected that it would uphold their sovereignty and make governance more democratic through their direct participation. Furthermore, it ensures more cooperation and coordination between the local and central governments.

However, some problems have cropped up, which limited the successful operation of the Musrenbang. One of these is the generally very low and unrepresentative involvement of the citizens at both the village and district levels. One reason given is the lack of understanding on the part of the local communities regarding their role in the process. They have been accustomed to a paternalistic culture and would rather entrust the decision-making to their leaders. Such attitude of indifference and resignation only emboldened the incumbent local officials to dominate the Musrenbang. They control the topic of the discussions and give little opportunity for the citizen representatives to participate in the deliberation. Thus, what happens is not real consultation but a kind of information campaign where the programs and activities previously decided and prepared by the regional officials are presented to the local
communities. The stakeholders who are invited to join the Musrenbang are not participants but serve merely as the audiences for the presentations. Their presence is meant only “to ensure a formal degree of openness rather than a forum for deliberation and discussion.”

As noted above, concerning implementing some of the amendments to the constitution, there is no lack of legislation regarding civic participation in the local government units. Wicaksono Sarosa et al. points out that “the legal framework for participatory planning and budgeting at various levels, national or local, seems to have been more than adequately developed.” What is wanted, however, is “the lack of clarity in the eyes of the local actors about all of these laws and regulations, and the difficulty in comprehending the complexity,” which, accordingly, “can easily lead to confusion, ignorance or, worse, inaction.”

Civic Participation in the Enactment of Perda

Another venue of civic participation in the local government is the passing of regional regulations (Peraturan Daerah, or Perda). Article 18, Section 6 of the 1945 NRI Constitution stipulates that the regional governments of provinces, regencies, and towns “have the right to enact regional regulations and other regulations to implement autonomy and the duty of assistance.” This provision is implemented in Law No. 23 of 2014 on Regional Government, Article 236, Section 2, which specifies that Perda is to be “formulated by the local representatives with the joint agreement of the regional heads.”

According to Habermas, one of the essential requirements to actualize the formal conditions for the lawmaking process is the adoption of the discourse principle. The principle explains that action norms are valid as long as all possible affected persons have the agreement in rational discourse. Adopting this principle in discourse also means that any justification of a norm shall be arrived at through the collaboration of all affected. The process involves the practice of communication, which respects the rights of all participants and their freedom in making the outcome. The lawmaking process should be conducted in a free, fair, and just manner.
In Indonesia, the formal conditions for the lawmaking of Perda are manifested through the Regional Legislation Program (Program Legislasi Daerah, Prolegda). Law No. 12 of 2011 on the Formation of Laws and Regulations, Article 1, Section 10 stipulates that “Prolegda is an instrument for planning a program for the formation of provincial or regency/city regulations which are arranged in a planned, integrated, and systematic manner.” The Prolegda process must include civic participation in all stages of lawmaking. Article 96 of the same law explains that citizens have the right to provide inputs both orally and in writing to form the law (Section 1). The inputs are gathered during public hearings, work visits, seminars, and workshops (Section 2). The citizens include individuals and groups interested in the draft law’s substance, including government officials, community leaders, entrepreneurs, the women sector, and representatives of vulnerable groups (Section 3). Through this lawmaking process, the local government and the citizens engage in communicative action and rational discourse about the local communities’ aspirations, needs, and interests.

Habermas assigns a crucial role to civil society groups in the democratization process as they represent the citizenry more directly. One of the conditions for the development of civil society groups is the guarantee for exercising certain political freedoms – the freedom of assembly, association, and speech – which, according to Habermas, “define the scope for various types of associations and societies.”

The 1945 NRI Constitutional and other legal issuances of the Indonesian government have lessened the barriers that enabled the citizens to exercise their political freedoms and rights and encouraged the formation of various civil society groups at national and local levels. This is the role and function of the constitution and the laws in a democratic society: their value rests on their capacity to empower “citizens with rights that enable the political system – its structures and procedures – to remain as functionally democratic as possible.”

Government decentralization has created opportunities for civil society organizations and the mass media to operate at the provincial, district, and village levels. Civil society groups responded to the policies that made their work at the grassroots level possible and engaged with the
government in the decision-making about the needs and interests of the local communities. Thus, the venues of civil participation in the passing of Perda can be claimed to be in line with what Habermas proposes in his theory of law and democracy since it ensures that the rights of all to participate equally and their freedom to decide the outcome of the discourse is upheld. Moreover, it is necessary for the legitimacy of the laws that the citizens are directly involved in the particular process that leads to the enactment of laws.

There are many obstacles, however, that stand in the way of their rightful participation. On the part of the citizens themselves, Indonesian citizens would rather leave the decision-making to the government officials they trust and recognize to be more knowledgeable in these matters. They are also unfamiliar with regional regulations or find these too technical and complex to understand. On the part of the local officials, it appears that they are not serious about getting the people to participate, so when they organize some kind of consultation, it is more to comply with the regulations. They reduce the meaning of consultation to a formal meeting where the Perda is presented for information dissemination purposes only. There is hardly any critical dialogue with the local people. Moreover, on the part of the representatives to the regional legislature, they rarely visit their bailiwicks to obtain inputs from their constituents which could be incorporated into the Perda.

The participation of the citizens in the formulation of laws is an essential requirement of the democratic process. Indeed, the final decision on the specific laws to be passed and ratified ultimately belongs to the legislative and executive departments. This is what Habermas meant when he wrote that for the laws to be binding upon all citizens, they must be issued by the central axis, which refers to the formal machinery of the government. He asserts, moreover, that “binding decisions, to be legitimate, must be steered by communication flows that start at the periphery.”

Habermas believes that the government needs cognitive inputs from sources outside itself. One of the best sources of said inputs is civil society groups who have the ability “to bring up issues relevant to the entire society, to define ways of approaching problems, to propose possible solutions, to supply new information, to interpret values differently, to mobilize good reasons and criticize bad ones.” They can suggest revisions to existing
policies that are no longer responsive to current issues and needs or enact new laws to address them. They can also “prevent the undermining of democracy or its relegation to technocracy” counter with their inputs the “tendency of technocrats and experts to monopolize the source of knowledge,” which forms the basis for the lawmaking process.

In the case of Indonesia, compliance with the legal provisions mandating the participation of civil society groups and the citizens at large in the lawmaking process is highly dependent on the political will of the people occupying the central axis of the government. This has proved to be arbitrary and contingent upon the people in power. Even when civil society groups are invited to attend the legislative consultations, their participation is often accorded only token recognition.

Political engagement by civil society groups is also limited in several ways. There have been initiatives by some Indonesian civil society groups to form a coalition among themselves; however, their efforts were only welcomed by some of the groups. The latter’s hesitation might be traced to their adverse experience during the Soeharto regime when the coalition was co-opted and instrumentalized as a political vehicle to strengthen the power of Soeharto. As a result, the cooperation among civil society groups, especially in the smaller cities and provinces, “is extremely low or something occasional.”

The Indonesian government requires civil society groups to practice transparency and accountability. They must submit an annual report which includes a financial statement containing the foreign donations and other sources of funding together with their activities and expenses. Some groups with foreign funding comply with the legal requirement, but others fail to do so and are less transparent about their funding sources. There are civil society groups in Indonesia that were involved in anomalies. Among these were “NGOs that sold subsidized rice destined for the poor, NGOs established just to gain access to development projects, NGOs established by political party activists to mobilize funds and support to gain political power, as well as NGOs acting as debt collectors or specializing in mobilizing mobs for hire.” These errant groups engender distrust among the citizens and invite suspicion from the government. They also tarnish the reputation of civil society groups in general.
Conclusion: Towards a Politics of Inclusion

The decentralization program in Indonesia has brought democracy closer to the people in regions but did not necessarily provide equal and active participation of citizens in the affairs of the local government and local politics. This happened because of the lack of political commitment from the local political leaders, citizens, and civil society organizations to democratic principles and values.

Alagappa provides a critical note concerning the politics of inclusion and the citizens’ active participation and representation. It entails the democratic efforts of the citizens to establish solidarity and to achieve communicatively subjective understanding through “the connection between the formation of opinion and the institutionalization of political aspiration, and the informal formation of opinion in the culturally mobilized public sphere.” As argued by Alagappa, these features are essential to a democratic government “which eventually will strengthen the liberties and rights of citizens and groups.”

Local elites’ lack of political commitment to actualize the democratic principles in the lawmaking process inaugurates changes in the paradigm. Habermas explains it as follows: “In the proceduralist paradigm, the vacancies left by private-market participants and the client of welfare bureaucracies are filled by enfranchised citizens who participate in political discourses to address violated interests and, by articulating new needs, to collaborate in shaping standards for treating like cases alike and different cases differently.” This paradigm requires the institutionalization of a “democratic process, which is supposed to generate legitimacy through a procedure of opinion and will formation that grants publicity and transparency of the deliberative process, inclusion and equal opportunity for participation, and a justified presumption for reasonable outcomes [...]” Applying this paradigm helps the government and local citizens to engage in deliberation and attain mutual consensus, which is not based on the power of leadership or majority vote but on the process of communicative action and the power of a better argument.

In line with the previous arguments, local government officials and political elites need to develop an ethos in democratic debate. Bernstein explains this ethos as follows: “For democratic debate, ideally, requires
a *willingness* to listen to and *evaluate* the opinions of one’s opponents, respecting the view of minorities, advancing arguments in good faith to support one’s convictions, and having the *courage* to change one’s mind when confronted evidence or better arguments.” Without this ethos, “democracy is always in danger of becoming a mere shame – a set of mere ‘formal’ procedures without any substantial ethical content – without much democratic content.”57

The forums, such as the Musrenbang and the Prolegda, should not be seen as strategic and instrumental to fulfilling the obligation to the legal rules and regulations or attaining the government’s interests. Rather, they are the *reflective forums*58 through which the local government and communities reflect, debate, and make decisions about the people’s rights, freedom, and prosperity. The forums must always be conducted in a public and transparent, communicative, inclusive, and consultative manner, and designed to ensure the genuine participation of the citizens. The final decisions taken in the forums shall be based on communication and rational argumentation among stakeholders and local officials, not merely on the majority votes or the leaders’ decisions.

On the part of citizens, the people in the local government units and far-flung areas need to be informed of their political rights and encouraged to be dynamic and concerned about their personal and social welfare. They have to be trained in the discourse process, the technical procedures of consultation, and the mechanism of feedback-giving. They must be enlightened that they may be able to take advantage of and comply with the rights and duties of citizenship.59 They must be relieved from the “political poverty”: the incapability of participating effectively in the democratic process.60 Therefore, they may have a certain level of “adequate functioning” that is capable of a “full and effective use of political opportunity and liberties in deliberation, such as when citizens make their concerns known and initiate a public debate about them.”61

The lack of political elites inspires Habermas to call on the role of civil society groups. However, they need to step in and exercise democratic principles such as transparency, publicity, solidarity, rationality, and accountability. They need to form coalitions to muster greater power
and influence when dealing with government institutions and state agencies. The larger and more established groups and non-governmental organizations at the national and regional levels can take the lead in initiating development and capacity-building programs and establishing the funding system through an investment to help their counterparts at the municipal and district levels.

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