

**Regulatory Competition and Decision Space of Decentralization  
Implementation  
in Indonesia: Study of Local Regulation in 2007-2009**

**Achmad Nurmandi**

**Government Affairs and Administration Department  
Universitas Muhammadiyah Yogyakarta**

**[nurmandi\\_achmad@ymail.com](mailto:nurmandi_achmad@ymail.com)**

**[nurmandi\\_achmad@umy.ac.id](mailto:nurmandi_achmad@umy.ac.id)**

**Telp:0812218403**

*This paper is aimed to investigate and analyze 250 cancelled local law review and its legal opinion as issued by the Home Affairs Ministry and Finance Ministry 2007-2009. The study found that there was regulatory competition not only between local law and law or government regulation, but also between local law and central government agencies. This competition was taken place on objects that have to be regulated and licensing authority. Decree of local law quash suit by the Ministry of Home Affairs is becoming legal standing debate. Decree of ministry as a central authoritative regulator extensively regulates the locally local government activity at the local area. The study also found that decision space of local government in decentralization is narrower than central government one. Theoretical contribution of the study revealed that different ranges of choice within and between tipology of deconcentration, decentralization or devolution.*

Keyword: Regulatory competition, local law, legal review, decentralization, decision space.

## **Introduction**

The policy of decentralization, which is well-known as Big Bang Approach, was implemented in Indonesia during the era of President Megawati based on Law No. 22/ 1999 by giving broad autonomy to local governments in all government administrative sectors except for security and defense, foreign policy,

monetary and fiscal matters, justice, and religious affairs to the regions. In September 2004, the law was replaced by the passage of Laws 32 and 33/2004 on Regional Government regulated the stressing points on the regional autonomy. The main objectives of regional autonomy are to promote better delivery of government services and to raise the level of local government accountability for the sake of social welfare and national competitiveness. For many reasons, the laws have not been worked out.

A study conducted by UNDP in 2008 concluded that the practices of decentralization in Indonesia were as follows: (a) The regional autonomy performances of new regions were at low level, especially in the aspects of economic growth. These regions centered the economic growth at the original area which implies to the economic gap with the others; (b) The economic growth in the new autonomy regions were more stable than the old ones; (c) New autonomy regions have not been able to decrease the poverty rate; and (d) New autonomy regions has low fiscal competency.

Some empirical studies on the performance of governance in some districts show that the private parties or the executives of private companies perceive decentralization have significantly bad impacts on license and employment regulation. A half of the respondents consider that decentralization bring policy ambiguity and corruption, and regional regulations produce monopolies and oligopolies in the local economy. In 2010, the Ministry of Home Affairs announced to cancel more than 1,000 regional regulations (Kompas, July 19, 2010). From an economic perspective, the cancellation of local regulation that

reaches thousands will cause big losses, if we calculate the costs incurred to discuss the draft of regulations. Meanwhile, the academic debates from the perspective of constitutional law and public administration law on this issue have concluded that the Department of the Interior has no legal authority to do so. Based on Law Number 32 Year 2004 on Regional Autonomy, local regulation arrangement must meet the following requirements: a) It must be approved and signed by the Head of Regional and Regional Council, and b) It must be consistent with the higher law by Act No. 10 of 2004 on the legal hierarchy.

Data from the Ministry of Home Affairs in 2002-2009 showed that there were 930 regional regulations (23.45%) shall be cancelled and 156 Regional Regulations (3.93%) should be revised from the 3966 regional regulation investigated by the Department of the Ministry of Home Affairs. A list of local laws that were cancelled can be seen in the following figure:

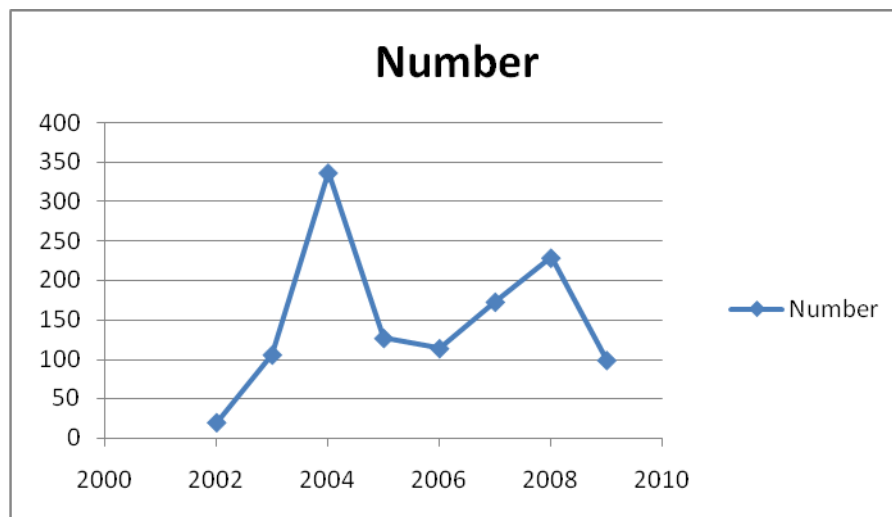


Fig 1. Cancellation of Regional Regulation (2002-2009)

Source: Ministry of Home Affairs, 2009

Another study conducted by the Regional Autonomy Watch (KPPOD) in 2002 at 340 local regulations that were cancelled by the Ministry of Home Affairs found that 42% Local Regulation was revoked because the substantive issues; 10% of them were cancelled because of the problem in principle and 17% were eliminated because of some technical problems. Some of the cancelled local regulations regulated regional taxes and levies.

Table 1. Local Regulation Cancelled by the Ministry of Home Affairs

No	Cancellation Factors	Regional Taxes		Retribution		Others		Total	
		n	%	n	%	N	%	N	%
1	No problem	19	37	72	31	12	21	103	31
2	Technical problem	9	18	47	20	2	4	58	17
3	Substantive problem	19	37	88	38	37	66	144	42
4	Principal problem	4	8	26	11	5	9	35	10
		51	100	233	100	56	100	340	100

Source: Regional Autonomy Watch (KPPOD), The Cancellation of Regional Regulation Analysis, 2002, Jakarta.

The analysis of some reasons in cancelling the regional regulations was based upon three criteria: legal issues, substance issues and basic problems, each of which is described as follows:

#### 1. Legal Matters

- a. Legal Relevance (What is the relevance of local regulation in substance).
- b. Up to date legal reference (whether the reference used is the rule of law is still valid).
- c. Completeness of the formal reference

## 2. Contents

- a. Termination or incoherence between the objectives and content of local laws
- b. The Clarity of its object
- c. The Clarity of its subject
- d. The Clarity of procedures and bureaucracy
- e. The Compliance between the philosophical concept and principal (taxes and charges)

## 3. Basic Problems

- a. The potential triggers for conflicts on the principle of territorial integrity of the national economy (potentially causing traffic barriers to a better distribution of goods or services, tariffs and non tariff contrary to the principle of internal free trade).
- b. The potential causes of the unfair competition (monopoly, oligopoly, partnerships should be, etc.).
- c. The negative impact on the economy (leading to high economic financing, Double Taxation, a heavy burden on society or businessmen).
- d. The potential ability to prevent or reduce public access (contrary to the principles of justice and violation of public interest).
- e. The form of government abuse.

The elimination of the regional regulations currently by the Ministry of Home Affairs has been important issues in central-local government relations. On the one hand, regional autonomy has encouraged the autonomous regions to make their own policy in the form of local regulations. But from the other side, the central government tends to protect their authority. Based on the number of

regulations that are cancelled by the central government, it seems clear that nearly all legislation related to local taxes cancelled, retribution and authoritative power. It is interesting to see legislation on the regulation of which the most widely used to cancel the local regulations and the ministry is most dominant in deciding the cancellation of local regulations?

## **Theoretical Review**

### **Decentralization and Decision Space**

On the basis of decentralization policy, each local government has the authority to regulate itself in accordance with the needs and respond to the demands of the community it serves. This policy becomes an authoritative area of local government in the local political process. Brinkenhoff and Mc Nulty applied opportunity analysis of the decision space (decision space-opportunity analysis) to map the contours of discretion for decision-making and action (in Cheema and Ronndinelli, 2007). The decision space analysis allows us to assess the implementation of the decentralization of management to choose almost an option for local governments. The greater the space options in decision-making, the higher the level of decentralization. Decision space analysis framework is shown in the following table.

Table 2. Model of Decentralization Decision-Opportunity Space Matrix

Decentralization Dimension	Local Government space	Civil society space
Legal, policy or regulatory framework		
Political		
Resources: fiscal, financial		
Administrative capacity		

Source: Brinkerhoff, et al, "Decentralization and Participatory Local Governance: A Decision Space Analysis and Application to Peru", in Cheema, G. Shabbir and Rondinelli, Dennis. A., *Decentralizing Governance: Emerging Concepts and Practices*, Brooking, InstituionPress, Washington, 2007.

This analysis is derived from principal-agent approach: the central government as the principal setting policies, standards, norms, and procedures as well as parameters and local governments as agents who have their own preference between activity and the existing budget authority and respond to stakeholders and constituent which have priority different than the principals at the national level. In this context, the central government seeks to achieve its goals through the mechanism of incentives and sanctions to drive agent behavior by encouraging efficiency and innovation (Bossert and Beauvais, 2002). The level and intensity of the decision space is measured in a map with a scale-less, pretty and spacious (maps of its range-narrow, moderate and broad).

A control over local regulations and its mechanism is an incentive and sanction imposed by the central government to direct the behavior of local governments in making regulations. But in another perspective, the central government is not single or has a lot of actors acting as principals. These principals are the ministries and non-state institutions and ministries that have an interest in the definition to manage resources at the local level. One of the important resources are financial resources that are often a target shared between agents and principals as the object of regulation. The principal conditions of this diverse, then the cancellation process of local regulations shall be construed in accordance with the interests of their respective principals.

## Regulatory Competition

In civil law perspective, the cancellation of local regulation can be analyzed from regulatory competition (Simon Deakin, 2006). Regulatory competition can be defined as a process of mastering the law of the elected body and not-selected through competition among decentralized regions, the entity of rules making, which exist in the state or other political units such as regions or areas. A number of beneficial effects are expected from this process. As far as this competition regulation could avoid the imposition of rules with a 'monopoly', centralized policy, by promoting diversity, the experimentation in the search for laws could be more effective. This theory was first proposed by Tiebout in the 1950s, in his paper entitled "a pure theory of public expenditure.". In this model, local governments compete to attract residents by offering packages as gifts for the procurement of services as a form of differences in tax rates. As Tiebout explains that:

*Local government play a relatively passive part in this maskert-type mechanism, presenting a variety of revenue and expenditure pattern that are "more or less set". The dynamic element in the public sector marketplace is that individual, or, in Tiebout's terminology, 'the consumer-voter'. The central mechanism for revealing public services preferences is relocation: " the act of moving or failing to move...replaces the usual market test of willingness to buy a good and reveals the consumer-voter 's demand for public goods. By settling in a particular locality, 'the consumer-voter may be viewed as picking that community which best satisfies his preference pattern for public goods. People decide on the taxes they want to pay the type and level of services they want to receive by 'shopping around' among the various localities in a given metropolitan area before purchasing by moving to the one that best fits their needs*

Actually, Tiebout assumptions as mentioned above are not relevant enough to the situation in Indonesia. Local Regulations issued by the Local



Government have been intended to improve the original income of Local Government. The legislatures at local government level, as lower administrative units, viewed from the perspective of competition at the central administrative units attempted to regulate "something", is due to rent-seeking behavior. However, competition between administrative units can also be viewed from the perspective of reflective harmonization, which has two aspects: (A) to protect the autonomy and diversity of local regulatory systems, and (b) to direct or to distribute the adaptation process of bottom-up problem solving spontaneously.

Deakin explains how to eliminate the competition among government agencies on the basis of norms that establish a balance between the mechanisms of 'particular' and 'general', between, actors of regional autonomy and effectiveness of mechanisms for learning based on experience and observation (Deakin, 2006). According to Deakin, although there is a competition among units of government, but there is also the harmonization of the different levels of government in solving problems of specific mechanisms that operate at sub-federal level, and of general mechanisms that operate throughout the federal units as a whole occurs. There are two principles of justice and the harmonization of legislative intervention: first, to protect the autonomy and diversity of systems of national or regional legislation, and second, to direct the adaptation process of the optimal channel, such as the 'race to the bottom' (Deakin, 2006).

### **Regional Regulation Cancellation: An Analysis**

From a view of politics and public policy perspective, local regulation is seen as a regional policy in the consequences of devolution. Devolution is the

transfer of political authority from central government to local government to manage and solve their own problems. However, in managing their own authority, autonomous regions have the power policy that is often not available in the law on autonomy. Politics is more considered in the interests of institutions at the central government in setting goals. For example, the existence of oil and gas resources or the ports will cause a conflict of interest between local and central government agencies (i.e. Department of Energy and Mineral Resources or the Department of Transportation).

*Disputes between the central government agency, in this case Pelabuhan Indonesia (IPCs) I-IV, and local governments to manage these ports are still ongoing. Because the port management issues still in dispute, there is support from the community, both IPC and local governments. For example, the Chamber of Commerce and Industry supports the Region of East Java 57 district / city government, which plans to involve themselves directly in the management of ports. In the meantime, in between importers and exporters deplored government plans to seize 57 international port management which has been managed by IPC (Tempo, 8/24/2004).*

The regulatory conflicts between the Central and Local Government are indicated by Sadu Wasistiono (2004) in Transportation Department as an authority conflict among regions that have economic potential, seaports and airports, since the Regional Government so far does not take the benefit of the location of the port or airport. And if there are problems related to the ports and airports, local governments often have to deal with the Government Regulation No.69 Year 2001 on the common port and Government Regulation No. 70 of 2001 concerning Regional Airport that while considered incompatible with the spirit of decentralization. Then some local governments declared "Aberdeen Declaration" and filed (judicial review) to the Supreme Court. On the other hand, the Central Government in this case the Ministry of Transportation is still adrift in the second PP. If the appeal is not resolved soon, then who will suffer are the people as consumers.

MPR Decree No. III/MPR/2000 and the provisions of Article 7 of Law no. 10 of 2004 regulating the hierarchy of laws and regulations are as follows:

1. The 1945 Constitution
2. Decree of People's Consultative Assembly
3. Law or Government Regulation in Lieu of law
4. Government Regulation
5. Presidential Regulation and Institutional Regulation of State or other Government agencies that may be considered as parallel to the President, Head of Regulation Department Audit Agency, Bank Indonesia Regulation, Regulation of the Election Commission, Supreme Court Rules, Rules of the Constitutional Court, the Judicial Commission Regulation, the Regulation of Government Agencies.
6. Ministerial Decree
7. Regional Regulation of Province
8. Governor Regulation
9. Regional Regulation of Regency
10. Regent Regulations or Mayoral Regulations
11. Local Regulation of Village

By using the related articles in the manufacture of Regional Regulation, Article 136 through Article 147 of Law No.32/2004, regions have the authority to establish *regeling* (setting). In addition, constitutive, Local Rules and other regulations have a constitutional basis to implement autonomy in Article 18 paragraph (6) of the Constitution of the Republic of Indonesia, which states that local governments have the authority to establish regulations for local and other regulations to implement autonomy and duty assistance. Maria Farida Indrati (2010), a jurist and Constitutional Court judge, said that the review of local regulation is not done by the High Court, as referred to be in

Article 145 paragraph (2) of Law Number 32 Year 2004 on Regional Government, where the testing authority and the cancellation of local regulation on the President-not the Ministry of Interior, because contrary to public interest and / or the highest hierarchy in the law.

But if local government is not satisfied with the cancellation of this rule, then local government can appeal to the Supreme Court, as contained in the provisions of Article 145 paragraph (5) Law No.32 of 2004. Follow-up of the cancellation of local regulations on the basis of Article 145 paragraph (3), Law No. 32 of 2004 was the issuance of Presidential Regulation within 60 (sixty) days from the receipt of such regulations by local governments. Then, in accordance with the provisions of paragraph (4) no later than 7 (seven) days after the decision, must dismiss the implementation of the Regional Head of Local Policy. If the district / province / city cannot accept the decision of cancellation for reasons that can be justified by the Law, Regional Head can appeal to the Supreme Court (Article 145 paragraph (5) Act 32 of 2004).

In order to explore the factors that affect the cancellation regulations made by the Ministry of the Interior, the authors took samples from all the regulations that are canceled from 2007 until 2009. Of 1000 regulations that were canceled by the Ministry of the Interior as provided in the website, the researchers took a sample of 250 local regulations, each of which amounted to 75 regulations in 2007, 75 perda padatahun 2008 and 100 regional regulations in 2009. The next step is to examine the legal grounds used in the Regulation / Decree of the Minister to cancel a regulation.

**Table 2. Eliminated Regional Regulation in 2007-2009**

No	Regulation	2007	%	2008	%	2009	%	N	%
1	Levy	61	81.33	50	66.67	71	71	182	72.8
2	Tax	-	-	23	30.67	13	13	36	14.4
3	Others	14	18.67	2	2.67	16	16	32	12.8
		75	100	75		100		250	100

Source: Data Analysis

The number of cancelled Local Regulation by the Ministry of Home Affairs which is taken as the sample is 250 samples with 75 samples come from local regulation in 2007, 75 samples from 2008, and 100 samples from 2009. Overall, 182 (72.8%) for Local Regulation of retribution, followed by the Regional Regulation on Regional Taxes as 36 (14.4%) and 32 (12.8%) to other regional regulation such as parent cooperatives procedure, licensing, taxation of forest product collection, road repairs, and others. From a total of 75 samples of local regulation was abolished in 2007, found that 61 samples (81.33%) of Local Regulation on levies, while 14 samples (18.67%) from District Rule on Local Regulation on other things. Meanwhile in 2008, from a total of 75 regional regulation is abolished by the Ministry of Home Affairs were taken as samples, 50 samples (66.67%) in retribution, and 23 samples (30.67%) are in local taxes.

Furthermore, in the year 2009 from a total of 100 samples to cancel the Regional Regulation, 71 samples (71%) are the local regulations on levies, 13 samples (13%) were in local taxes, and 16 samples (16%) are in other local regulations. This conclusion is important for us to describe on the basis of these

data that regulation of retribution is the most widely local regulations revoked by the Ministry of Home Affairs, and later followed by legislation on local taxes. Legislation if that is always used by the Ministry of Home Affairs in the overturn any local laws? Law and Government Regulation, inter alia, Law No. 18 Year 1997 *j.o* Government Regulation No. 66 of 2001 on regional levies in the highest mode or the most widely used as a reason for the cancellation laws and regulations followed by Act No. 33 of 2004 on Fiscal Balance Financial between Central and Local Government.

**Table 3. Legal Reasons for Cancelling Local Regulation in 2007**

No.	Regional Regulation	Contradictory to	Modus
1	Levy	Law Number 18 of 1997 on Regional Taxes and Levies	61
		Government Regulation no. 66 of 2001 on Regional Policy	25
		Law 33 of 2004 on Fiscal Balance between the Central Government and the Regional Governments	23
		Law Number 25 of 1992 on Cooperative	9
		Government Regulation No. 25/2000 regarding the Authority and Functions of the Central Government and the Provinces as Autonomous Regions	12
		Government Regulation No. 4 of 1994 on Terms and Procedures of Ratification of the Deed and Amendment of Articles of Association of Cooperatives	8
		Government Regulation No. 15 / 1998 on the Termination of Foreign Business Activities in the Trade Sector	4
		Government Regulation No. 36/1977 on the Termination of Foreign Business Activities in the Trade Sector	3
		Regulation of The Minister of Industry and Trade No. 590/MPP/Kep/10/1999 on Issuance of Industrial Business License, Expansion Permit,	7

		and Industrial Registry Number	
		Regulation of The Minister of Industry and Trade No. 09/M-Dag/Per/3/2005 about the Provisions and Procedures for the Issuance of Business Permit Industry	4
2	Ratification		3
3	Ratification		2

The cancellation of Regional Regulations on levy is not only contrary to the Acts above, but also with the Minister, the super ordinate law, the Act No. 18 of 1997 on the Tax and User Fee, Government Regulation No. 66/2001 of Law No. 33 of 2004 on the Central-Local Financial Relations and 09/M-Dag/Per/3 No / 2005 . There are eleven (11) regulations being cancelled because they are contrary to the rules of trade and industry minister. From content analysis of local regulations above, there is an indication that competition between levels of government to regulate the same object, namely the Central Government Ministry - in this case the Ministry of Commerce, tried to set the particular object before it is set by the district / city.

**Table 4. Legal Reasons for Cancelling Local Regulation in 2008**

No.	Regional Regulation	Contradictory to	Modus
1	Levy	Law Number 34 of 2000 on Regional Tax and Levies	13
		Law Number 18 of 2000 on Regional Tax and Regional Retribution	10
		Law Number 3 of 1982 on Company Compulsory Registration	5
		Law Number 33 of 2004 on Fiscal Balance between the Central Government and the Regional Governments	4
		Government Regulation No. 25 of 2000 regarding the Authority and Functions of the Central Government and the Provinces as Autonomous	10

		Regions	
		Government Regulation No. 66 of 2001 on Regional Levies	7
		Regulation of The Minister of Industry and Trade No. 590/MPP/Kep/10/1999 on Issuance of Industrial Business License, Expansion Permit, and Industrial Registry Number	7
		Regulation of Minister of Trade No. 36/M-DAG/PER/9/2007 on Trading Business Permit Issuance	7
2	Tax	Law Number 34 of 2000 on Regional Tax and User Charges	4
		Law Number 18 of 2000 on Regional Tax and Regional Retribution	3
		Law No.18 of 2000 on the Second Amendment to Law Number 8 Year 1983 regarding Value Added Tax and Goods and Services Tax Luxury Goods Turnover Article	2
		Government Regulation No. 65 of 2001 on Regional Tax	20
3	Permit	Law Number 34 of 2000 on Regional Tax and Levies	2
		Law Number 22 of 2001 on Oil and Natural Gas	2
		Law Number 20 of 1997 concerning Non-tax State Revenues	2

The reason for the cancellation of Local Regulation in 2008 focused on regulations concerning taxes and levies on Law Number 18 of 2000 and amendments to Law No. 34 Year 2000 on Taxes and Levies. From the 75 studied-local regulation, there are 23 regional regulations which were cancelled on regional taxes and levies. What is interesting that the rules found in this study that there are fourteen (14) was cancelled because of local regulation is not in accordance with the Decree of the Minister, particularly the Minister of Trade and Industry, particularly regarding the provision of Business License of Industry and Trade. Regulations that are aborted due to arrange SIUP expenditure requirements, which have been stipulated in ministerial regulations.



**Table 5. Legal Reasons For Cancelling Local Regulation in 2009**

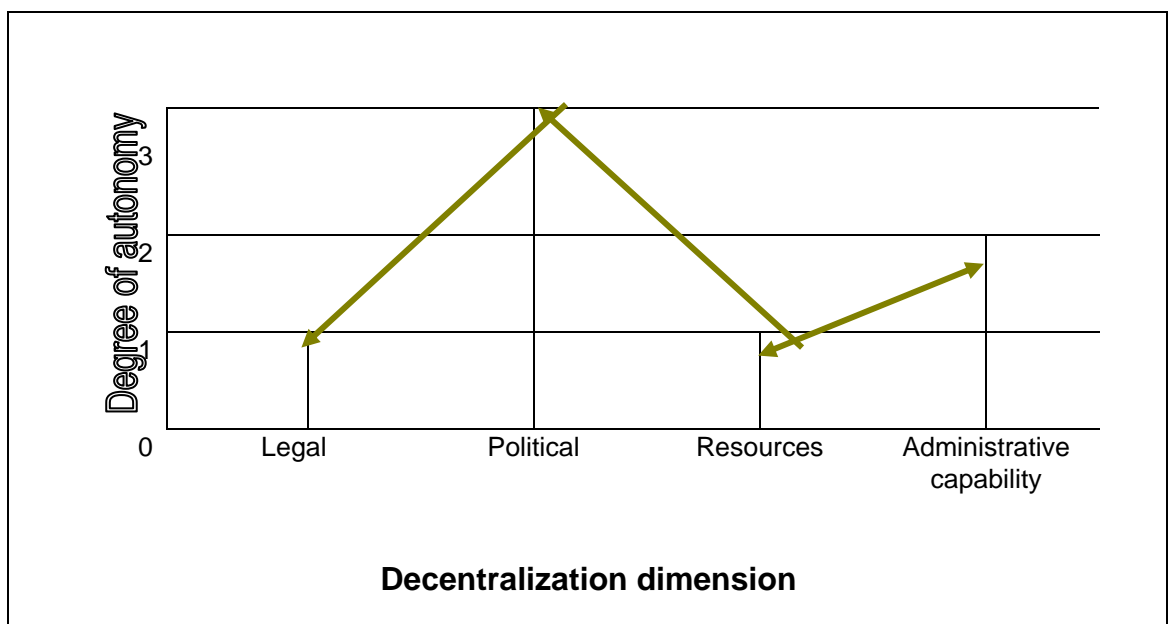
No.	Regional Regulation	Contradictory to	Modus
1	Levy	<p>Law Number 18 of 1997 on Regional Taxes and Levies</p> <p>Law Number 34 of 2000 on Regional Tax and Regional Retribution</p> <p>Law Number 25 of 1992 on Cooperative</p> <p>Government Regulation no. 66 of 2001 on Regional Levies</p> <p>Government Regulation No. 3 of 2008 Concerning Amendment to Government Regulation No. 6 of 2007 on Forest Management and Arrangement</p> <p>Government Regulation No. 41 of 2003 on Transportation</p> <p>Government Regulation No. 4 of 1994 on Terms and Procedures of Ratification of the Deed and Amendment of Articles of Association of Cooperatives</p> <p>Government Regulation No. 44 of 1993 on Drivers and Vehicles</p> <p>Regulation of The Transportation Minister No. 35 of 2003 on Organization of People Transportation on Road by Public Vehicle</p> <p>Regulation of The Minister of Agriculture No. 404/Kpts/OT.210/6/2007 on Licensing and Registration Guidelines for Farm</p> <p>Regulation of The Minister of Agriculture No. 859/Kpts/TP.250/11/1998 on Corporate Coaching Manual Rice Milling and Grinding Mills</p> <p>Regulation of the Ministry of Forestry No. P.33/MENHUT-II/2007 on the Second Amendment of Forestry Regulations Service No. P.51/MENHUT 11/2006 on Use of Original Certificates (SKAU) for the Transport of Forest Products Originating from a Legitimate Public Forests, to Control the Transport of Illegal Timber in Public Forests, which are Published under the Authority of Village Heads</p>	<p>5</p> <p>11</p> <p>6</p> <p>15</p> <p>7</p> <p>5</p> <p>3</p> <p>3</p> <p>7</p> <p>2</p> <p>3</p> <p>6</p>
2	Tax	Law Number 18 of 2000 on Regional Tax and Regional Retribution Supplement to Law Number	1

		34 of 2000 on Regional Tax and Levies	
		Government Regulation No. 8 of 1983 on Value Added Tax and Goods and Services Tax Luxury Goods Turnover Section, Supplement to	3
		Government Regulation no. 144 of 2000 on the type of Goods and Services that do not have a Value Added Tax.	7
		Government Regulation 5 of 2001 on Regional Regulation	4
3	Permit	Law Number 34 of 2000 on Regional Tax and Regional Retribution	3

Legislation most widely used to cancel the regulations in 2009 was the Government Regulation No.66 of 2001 on regional levies, followed by the Law No. 34/2000 on Regional Taxes and Levies, Government Regulation no. 8 year 2008 Forest Management, Law no. 25 of 1992 on Cooperatives and the Minister of Transportation Decree No. 35 of 2003. The pattern of cancellation in 2009 showed similarities to the pattern in 2007 and in 2008, but with a changing trend. The similarities of the patterns are concerning local tax levies and the area that became an important object of the review. Meanwhile, changes in regulations that reversed trend is not only associated with fees and local taxes, but also related to resource management in areas such as forests and licensing and cooperative.

Based on the above data, it can be concluded that the central government regulations concerning taxes and levies are *lex specialis* and detail. It is important to note that regulate behavior (regulatory behavior) units of central government on financial matters more complete and rigid than the regulations that govern other things, so that setting the same thing in the regulations already on the reason for cancellation. Detailed laws and government regulations regarding levies and taxes limited the space for local governments to regulate the same matters. Regulation

of the Ministry of Interior of the Regional Financial Management Guidelines No. 54/2005 is one example. But instead of applying the standards and norms in non financial policy, regulate the behavior of the ministry tends to slow and less care, resulting in a legal vacuum in this aspect, such as improving administrative capacity. In this situation, local regulations do not have a large decision space (decision space). In other words, each ministry set a rigid primarily related to licensing and control of resources in the area. From the mapping of legislation used to overturn any local laws, it appears that the Ministry of Industry and Trade, Ministry of Forestry, Ministry of Finance and the Ministry of Energy and Mines coordinated in the Ministry of Home Affairs have become the important principals at Central Government level is in cancelling regulations,



**Fig. 2. Local Government Decision Space**

*Note: 1: Narrow  
2: Moderate  
3: Broad*

This analysis enriches the study to a simple typology of deconcentration, decentralization, devolution, because the distinction gives us more detail on the pendulum and choice within and between each type. On the legal dimension and the resources, decision space is more limited than the political dimension. Political dimension has a broader decision space since the authority of political parties and local communities to choose local leaders and no intervention by the Government.

### **Conclusion**

From this research we can conclude that:

- a. The most cancelled local regulations are the regulations of retribution followed by local regulations regarding local taxes, and local regulations on licensing and control of local resources.
- b. Legislation of the most widely used to overturn any local laws are laws and regulations concerning taxes and levies.
- c. Ministries that became dominant in the cancellation of the principal regulations are the Ministry of Interior, Ministry of Finance, Ministry of Industry and Trade, Ministry of Communications and Ministry of Forestry.
- d. The dominant role of the ministries was caused by the narrowness of the level of regional decentralization in financial management, regulation and licensing resources. In objects such as economic potential of forests, ports, oil and energy seems there is a competition among local governments setting and the ministries within the same object set.
- e. Theoretically, it can also be concluded that in the decentralization of a centralized government affairs occur therein. This means that delivery of some business from government to local governments is not completely

done, but have variations in their implementation. Decentralization has the variations therein in accordance with the dynamics of interaction between principal and agent relationship and the dynamics of the environment. At the time of the external dynamics of capital-owners such as pressure-requires large principal authority on the potential economic resources in the region, the level of decentralization in the sectors in question will decrease.

### **Recommendation**

From the results of this study can be recommended that the political approach to analyze the cancellation of local regulations by the central government. The fact that there are many regulations that were cancelled by ministerial regulations reflected that the local governments as a political unit that should have autonomous authority are on the weaker party. In practical terms, the cancellation regulations cause inefficiency of state finances and the future expected good communication between the central area inside the making of local regulations. Theoretically, the variation can be recommended continued research setting behaviour of principals and agents in various matters, such as education, health, forestry, labor, industry and others in accordance with formal authority areas that have been submitted to the area.

\*) This paper is a major revision of the paper has been ever delivered in the Symposium on Regional National Autonomy One Decade, Universitas Brawijaya Law School, Malang 1 to 2 December 2010.

## References

Bossert, Thomas J and Joel C Beauvais. 2002. "Decentralization of health systems in Ghana, Zambia, Uganda and the Philippines: a comparative analysis of decision space", *Health Policy and Planning*: 17 (1): 14-31, Oxford: Oxford University Press.

Cheema, G. Shabbir and Rondinelli, Dennis. A. 200, *Decentralizing Governance: Emerging Concepts and Practices*, Washington: Brookings Institution Press.

Deakin, Simon, March, 2006. *Legal Diversity and Regulatory Competition: Which Model for Europe?*, Working Paper, Centre for Business Research, Cambridge: University of Cambridge

KPPOD, 2002. Analisis Peraturan Daerah, Jakarta.

Forum Hukum Tata Negara, www. HTN.com , downloaded on September, 30, 2010

*www. hukumonline.com* downloaded on September, 30, 2010.

Wasistiono, Sadhu, 2008. Kebijakan Pembangunan Daerah melalui Kemitraan: Masalah Kepelabuhan Kebandar-udaraan, Kilang Minyak dan Pertanahan, Prosiding Roundtable Discussion YIPD/ CLGI – Kebijakan Pembangunan Melalui Kemitraan *Yayasan Inovasi*.

*Tempo*, 8/24/2004