

## “QUASI-FEDERALISM” IN INDONESIA: Regional Autonomy and Special Autonomy

Indonesia is a unitary republic rather than a federation, but in name only. After independence, Indonesia’s heated constitutional debates featured ethnic regions outside of Java (including Aceh and Kalimantan [Indonesian Borneo]) advocating for a federal system that would grant the provinces greater sovereignty and a greater role for their forms of traditional authority, while nationalists favored a central republic in order to depart from the Dutch colonial system, which governed the colony as independent regions. Nationalists also feared that regional sovereignty might lead to the disintegration of the country, given its heterogeneity across the widely dispersed archipelago. Ultimately, the nationalists carried the day and the 1945 Constitution declared Indonesia to be a unitary republic. However, following the fall of the autocratic regime of President Gen. Soeharto in 1998, constitutional reforms granting broad authority to local government have led to Indonesia operating in practice as a “quasi-federation” (Bertrand, 2007).

Regardless of the formal name, an asymmetrical system of authority among Indonesia’s provinces creates variation in the extent of their authority and share of natural resource revenues they receive. Most provinces operate under the post-Suharto system of *regional autonomy*, while *special autonomy* applies to only the provinces of Aceh, Papua and West Papua. Both regional and special authority hold significant promise for improving accountability, efficiency, sustainability and equity of resource management, but both have largely failed to live up to that promise due to the failure to put in place adequate safeguards and develop local capacity to meet their responsibilities.

Regional autonomy laws de-concentrated control over policy making and operations in public works, health, education and culture, agriculture, industry and trade, capital investment, environment, land administration, and cooperative and manpower affairs, and thereby relocated some two-thirds of Indonesia’s total civil service to regional governments. Regional autonomy legislation in Indonesia is often referred to as a “Big Bang” because it radically rearranged authority and responsibilities, yet was enacted swiftly—at-the-stroke-of-the-pen when the constitution was amended in 1999—without popular participation or preparation to build institutional capacity at the local level.

There were both internal and external catalysts for this sudden and wide-reaching rearrangement of authority and revenue streams. Internally, popular outcry against the Soeharto regime’s centralized, corrupt, and autocratic control was a central reason for the public protests<sup>1</sup> that eventually brought about the political transition. The new political class, therefore, was under strong popular pressure to quickly reform the highly centralized and predatory state bureaucracy that in the eyes of many of its people had become synonymous with kleptocracy, injustice and impunity, and the failure to meet (and even indifference to) the development-needs of its citizenry. **Decentralization** was seen as a way to **address inequity and injustice** concerns, as well as **making government more accountable and participatory**.

Externally, the Asian financial crisis and international donors also played an important role. Following Indonesia’s economic collapse and massive fiscal bailout during the 1997 financial crisis, **donors**, through their special position of authority under the IMF’s structural adjustment conditions, **pressured Indonesia to trim bloated bureaucracies and improve efficiency of service delivery**. Decentralization was seen by donors as a means of accomplishing these ends.

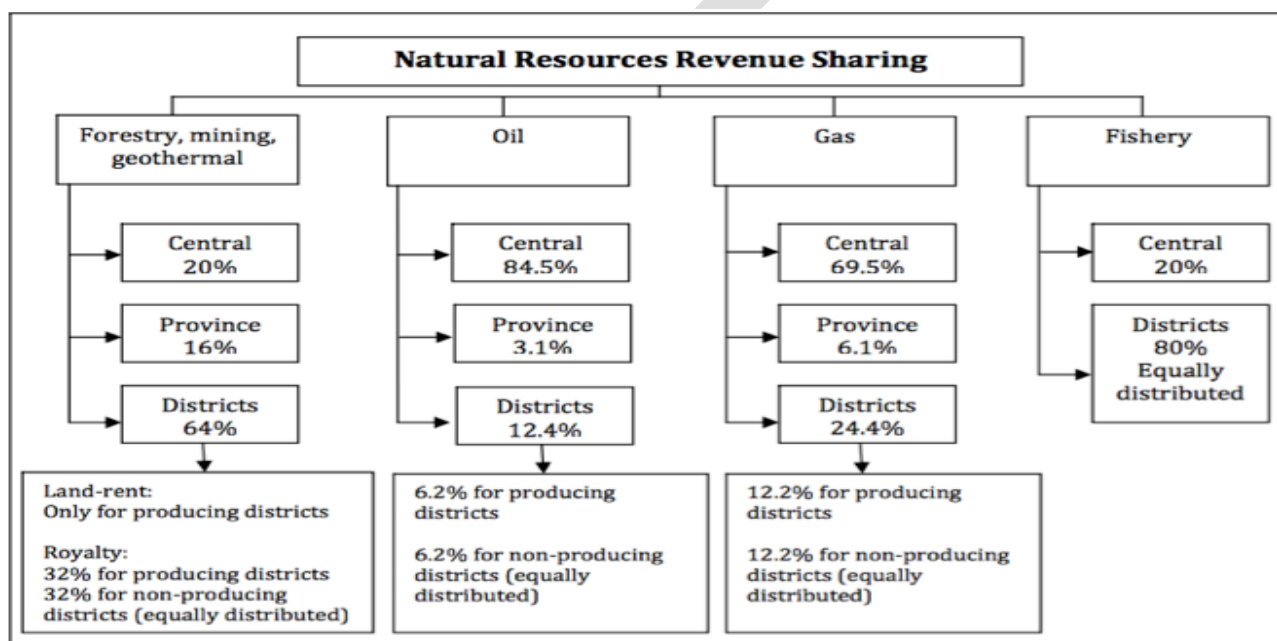
In addition to de-concentrating administrative lines of authority, regional autonomy laws provided a framework for redistributing revenues between national and subnational governments, and giving regional governments more authority over managing their own budgets and raising their own revenues (Although 60%

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<sup>1</sup> Popularly voiced as “anti-KKN” or anti-corruption, -cronyism, & -nepotism, in bahasa Indonesia.

of provincial revenue still comes from the central government's General Allocation Fund, known as DAU). Most significantly for resource-rich provinces, regional autonomy changed the distribution of natural resource revenues derived from extraction and other forms of resource production. Under the fiscal decentralization law, central government receives 84.5% of net oil revenues from a region, 69.5% of net gas revenues, and only 20% of forestry, fisheries, mining, and geothermal revenues. In addition, regional government would receive 45% of the lucrative reforestation fees collected from forestry concessionaires, a fund previously controlled unilaterally by the central government (Barr et al, 2006). In order to address horizontal inequities in locally generated revenues, including natural resource revenues, sub-national governments also receive transfers from the central government under the 'Balancing Fund' (Agustina et al, 2012).

## REVENUE SHARING UNDER REGIONAL AUTONOMY



Source: UU33/2004

## IMPACTS OF REGIONAL AUTONOMY RELATED TO RESOURCE MANAGEMENT

The impacts of Indonesia's regional autonomy have been mixed. Although partly attributable to the transition from a repressive military dictatorship to a more open political climate, **increased authority for local government and the direct election of officials has produced policies and officials much more receptive and responsive to local needs** than Soeharto's remote and impassive central bureaucracy, which seemed to function best in serving its own interests. However, regional autonomy has also in some ways **relocated corruption and mismanagement practices from Jakarta to the local level**. These failures are largely due to the speed with which the measures were enacted, **without popular participation and adequate deliberation, without preparation of the local governments to develop capacity** for carrying out the new functions, and **without putting in place safeguards** to prevent corruption and maintain equity and sound resource management.

Nowhere were the negative impacts more evident than in the natural resource sectors. Decentralization could have made resource management more suitable to local conditions, responsive to local community and market needs, changing environments, and respectful of local rights. However, without the aforementioned

safeguards and preparations, the promise of decentralization has been mainly limited to the few areas with exemplary local leadership (Larson and Soto, 2008).

Although decentralization relocated wide authority to local governments, notably, **authority over oil, gas, mining, and forestry concession allocations and policymaking were largely retained (or clawed back in later revisions to the laws)** by central ministries. This is, in part, **due to lack of clarity in the decentralization legislation, and subsequent contradictory (and strictly speaking, unconstitutional) sectoral laws** that have attempted to recentralized authority over lucrative resources. Although some local authority has been recentralized under amended laws and regulations, local officials often do not recognize this reduction in their authority and the central government appears unable or unwilling to enforce new laws and regulations. Further, in a 2014 case brought by district officials, Indonesia's Constitutional Court (known as MK) found that forestry and mining central ministry practices of unilaterally issuing concessions without participation of local government are unconstitutional (MK Ruling 45/2014). As a result, **the lines of authority for issuing concessions in mining and forestry remain contested and highly political**. Meanwhile, district heads continue to issue concessions unilaterally, and often unchallenged, resulting in widespread **overlapping claims**.

In forestry and mining, the Ministry initially retained authority over allocation of large concessions and designation of protected areas, but **granted local government authority to issue “small-scale” concessions**, nominally with the intention of facilitating community extraction operations. However, there was **no regulation on whether these small permits could be congruent**. This loophole resulted in an explosion of such permits granting rights to a single business entity to log or mine an area, many of which overlapped with other permits. The **deforestation rate in Indonesia doubled between 2002 and 2003** following the passage of the regional autonomy law (Margono et al, 2014). A 2013 analysis by the Ministry of Mines found that **less than half of the more than 11,000 concessions were “clean and clear”**—that is, they did not overlap with other mining concessions (Venugopol, 2014). This dramatically underestimates the problem, as the ministry study only assessed overlap with other mining concessions, and did not assess whether those concessions that were considered “clean and clear” in fact overlapped with concessions from *other* ministries, much less with territorial claims of local communities. The explosion of logging and mining licenses after decentralization was attributable in part to the **pressure to raise additional funds for new administrative duties**, but also to simple corruption, often to **fund the election campaigns for individuals vying for the now hotly-contested government positions** that control these resources (Barr et al, 2006).

This explosion of resource extraction permits caused not only a massive spike in deforestation (Burgess et al. 2011) and other negative environmental effects, but an **epidemic of land conflicts**. **Poor maps, rapid turnover of local officials, weak enforcement, and rampant corruption** meant that concession permits were often issued that overlapped with large concessions issued by the central government, protected areas, and territories claimed by local communities. Tenure and access to land and resources, already highly contested under the autocratic practices of the Soeharto regime, has become even more contentious as more players became involved and more extraction rights allocated. The increase in conflicts has also led to an increase in violence when these competing claims fail to be properly acknowledged and mediated. The form of violence has changed however from Soeharto-era strong-arm, military tactics to contain land claims to more diffuse militia groups and other forms of “private security”, who often employ violence and intimidation to suppress dissent (IPAC, 2014).

As mentioned above, however, decentralized authority and direct elections for local officials has in some places led to an increase in local accountability and democratization of resource management and enjoyment of benefits. An **increase in community-managed forests** has also accompanied the move to decentralize resource management (Warsi, 2014). In addition, **some notable local district heads have required concessionaires to pay compensation** to local communities and have **acted to mediate conflicts**

**successfully**, as well as passing **local regulations recognizing territorial rights of indigenous communities** (Harwell, 2014).

Despite this progress, the attentiveness to the interests of local communities and the interest in playing a good faith role in mediating disputes is **variable depending on the local officials and the presence of capable local CSOs, rather than national level leadership or policy** (Harwell, 2014). This **wide discretion at the district level, lack of corruption safeguards, and the flowering of “money politics” in elections of local officials and parliamentarians has led to a proliferation of local regulations related to resource allocation and management** (Burgess et al, 2012). These new regulations often serve as further opportunities for corruption, and further **complicate local licensing and operating procedures, all of which can dissuade investors** who might otherwise be “good actors”. Further, in the **absence of safeguards such as transparency, open participation, and accountability, local elites have also been able to capture the licensing process** and monopolize benefits from resource extraction. **Even in the area of community forests, local elites often dominate**, and there are **significant limitations for “community forestry”** in terms of what areas of forest communities may access, the type of rights they may enjoy, and the requirements they must meet (Harwell, 2014).

As one analysis finds, although decentralization has brought many improvements, the **struggles between different levels of government** dominate the process, largely related to lines of authority over revenues (whether licit or illicit) rather than over management of the natural resources themselves. As a result the resource base is diminishing with little attention to how to address this situation for sustainable and equitable outcomes (Barr et al, 2006).

In the rush to decentralization in Indonesia, the capacity of institutions to fulfill their new duties and the structures of good governance—transparency, participation, equity, efficiency, accountability—that serve as safeguards against corruption, injustice and mismanagement were not adequately put into place. Decentralization still holds great promise for improving the sound management of local resources, but to date it has largely been realized unevenly. Where strong local leadership has emerged, and especially where leadership has been willing to work with capable local CSOs, decentralization has seen the best results.

### **SPECIAL AUTONOMY AS A CONFLICT RESOLUTION STRATEGY IN ACEH AND PAPUA**

In place of the standard regional autonomy conditions, Indonesia has also adopted special revenue sharing arrangements for the Special Autonomy regions of Aceh, Papua, and West Papua. The central government introduced **this asymmetric revenue sharing model in response to armed separatist movements in resource rich provinces in an attempt to address grievances and resolve these conflicts**. Under these agreements, Special Autonomy regions receive a larger share of the oil and gas revenues generated within their jurisdiction than provinces under the regional autonomy arrangements: **Aceh will receive 70% of oil and gas revenues, but only for the first nine years, and Papua and West Papua will each receive 70% of these revenues for the first 25 years. After these periods, the Special Autonomy regions will receive 50% of natural resource revenues generated locally**, which is still larger than the 30.5% of gas and 14.5% of oil revenues that other regions receive under regional autonomy. **The amount of revenue shared fluctuates year to year as it is based on actual oil and gas revenue** and, therefore, varies with production and oil and gas prices. (Agustina et al, 2012).

Revenue sharing arrangements were offered as a strategy by the central government to quell separatist sentiments, and in the case of Aceh, in exchange for the condition that armed separatist movements abandon ambitions for independence. In Papua and West Papua, where there have never been formal negotiations between the central government and armed groups, the lack of local participation and the lack of lasting “political will” in central government have meant that no implementing regulations have ever been passed to implement the Special Autonomy laws (IPAC, 2013).

In Aceh, however, revenue sharing provisions (along with broadened authority for self-government including local elections and the formation of local parties) were central pillars of the success of the 2005 peace agreement that ended the armed conflict in that province between the Indonesian central state and Gerakan Aceh Merdeka, or The Independent Aceh Movement, GAM. It is noteworthy, that **the focus of the autonomy negotiations relative to natural resources was on how resource revenues would be shared rather than how resources would be managed.** The 2005 peace agreement and subsequent 2006 Law on Special Autonomy in Aceh are **vague on how decisions would be made about allocation of resource concession rights and authority over resource management policy and concession allocation** (see Annex 1). As a result, there has been protracted struggles between the central government and the provincial parliament (and local civil society) on these issues, with the **central government seemingly reluctant to enforce national law related to natural resources in Aceh for fear of re-igniting separatist sentiment.** As a result, many **elites in local government and their allies in business have acted with impunity in altering forest-use zones without public participation, including violating local indigenous community rights and abolishing protected areas** in order to open up new mining, logging and plantation concessions, and flaunting environmental protection requirements (ICG, 2007).

A further complication of the management of natural resources in Aceh under Special Autonomy has been the **failed ex-combatant reintegration program.** The program was intended to provide direct payments to ex-combatants to help **bridge them from dependence on military command structures and “war taxes”** exacted from the local population into employment or subsistence livelihoods. However, because it was feared that the Indonesian military would retaliate against the former rebel soldiers, should their identity be made public, the funds were paid to the commanders rather than directly to the troops themselves, with little transparency and no accountability for how the money was dispersed. Moreover, commanders were well placed to use their political networks to win high-paying employment with investors, donors, or in government. Discontent as high-level commanders began driving luxury cars while lower level fighters struggled economically, and in-fighting and violence among ex-combatants began to seriously threaten the peace (ICG, 2007).

As a result of the failure to adequately bridge low-killed former fighters into peacetime livelihoods, the **problem of unemployment persists,** along with their **involvement in illicit networks.** These black market sectors include the extraction and trade of timber, hard rock and minerals, drugs, and wildlife, often under the direction of former commanders who have connections with government and law enforcement. **Whether they directly benefit or because the political pressures are too high, there is little incentive for former commanders now in positions of power in Aceh to reign in this trade** that violates provincial and/or national laws (ICG, 2007).

Given these complications, it is perhaps unsurprising that **there has not been an improvement in development indicators or access to basic services** in Aceh since the onset of increased revenue sharing to the provincial government under Special Autonomy (Augustina et al, 2012). It is difficult to identify, however, to quantify the relationship between development outcomes and Special Autonomy in part because of the confounding effects from the widespread destruction of homes and infrastructure in coastal Aceh in the tsunami, as well as the massive influx of donor aid and activity in the years immediately following the tsunami and the peace agreement. Nevertheless, national household survey data reveals that the literacy rate and the number of households with access to electricity and improved drinking water sources were virtually unchanged since the aftermath of the tsunami, while the proportion of household heads with less than a primary school education and those without access to improved sanitation increased slightly (Augustina, 2012).

As some analysts have put it, because Aceh post-conflict **has not yet built institutions that are capable of ensuring participation, addressing local grievances, delivering services, enabling transparency and accountability, or controlling corruption,** the Special Autonomy to date has largely resulted in **replacing**

**inequity (and grievance) between the central and local government with inequity (and grievance) within the province** (Barron and Clark, 2006).

## Annex 1 – Treatment of natural resources in the Peace Agreements between the Republic of Indonesia (RI) and the Province of Aceh

### Provisional Understanding between RI and the Leadership of the Free Aceh Movement (signed in 2001)

#### SOCIO-ECONOMIC DEVELOPMENT ...

- Measures to ensure **equitable distribution of revenue and resources**;
- Development of human resources (including, *e.g.*, encouragement of companies investing in Aceh to **employ local workers** and, where skills are not available locally, **train local workers, particularly for the oil and gas industry**); ...
- The **environmental effects of development, and, in particular, reforestation, forest reserves**, penalties for pollution, and strict regulation of the disposal of industrial waste.

#### SECURITY ARRANGEMENTS ...

- **Security arrangements** for vital projects, including, for example, **the Exxon-Mobil complex**.

### Cessation of Hostilities Framework Agreement Between RI And the Free Aceh Movement (signed 2003)

No mention of Natural Resources.

### Memorandum of Understanding Between RI and the Free Aceh Movement (signed August 15 2005; 7 pages)

1.1.7 The institution of Wali Nanggroe with all its ceremonial attributes and entitlements will be established.

1.3.3 Aceh will have **jurisdiction over living natural resources** in the territorial sea surrounding Aceh.

1.3.4 Aceh is entitled to **retain seventy (70) per cent of the revenues** from all current and future hydrocarbon deposits and other natural resources in the territory of Aceh as well as in the territorial sea surrounding Aceh.

3.2.5 GoI will **allocate suitable farming land** as well as funds to the authorities of Aceh for the purpose of facilitating the reintegration to society of the former combatants and the compensation for political prisoners and affected civilians. The authorities of Aceh will use the land and funds as follows:

- a) **All former combatants** will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh.
- b) **All pardoned political prisoners** will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh.
- c) **All civilians who have suffered** a demonstrable loss due to the conflict will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh.

### Law of RI Number 11 of the Year 2006 Regarding Governing of Aceh (signed 2006; 96 pages)

Article 149. (1) Aceh Government and district/city Government is obliged to conduct integrated environment management by heeding the lay out, protecting biological natural resources, non biological natural resources, artificial resources, conservation of biological natural resources and their ecosystem, cultural preservation, and biological diversity by heeding the rights of indigenous community and as much as possible for the welfare of the citizens.

...

Article 150. (2) The Government, Aceh Government, district/city Government is not allowed to issue forest exploitation permit in the Leuser ecosystem

...

## CHAPTER XXII: ECONOMY

### Part Three: Management of Natural Resources Article 156.

- (1) Aceh Government and district/city Government manage natural resources in Aceh both inland and in Aceh territorial sea in accordance with their authorities.
- (2) The management as meant in clause (1) consists the planning, implementation, utilization and supervision over business activities which can be in the form of exploration, exploitation and cultivation.
- (3) Natural resources as meant in clause (1) covers mining sector which consist of the mining of mineral, charcoal, geothermal, forestry sector, agriculture, fishery and sea faring, which will be conducted by applying the principles of transparency and sustainable development.
- (4) In implementing the stipulation as meant in clause (1), clause (2) and clause (3), Aceh Government may:
  - a. Establish regional government owned enterprise; and
  - b. Conduct equity participation in the State Owned Enterprise;
- (5) Business activities as meant in clause (2) and clause (3) may be conducted by State Owned Enterprise, Region Owned Enterprise, Cooperatives, local, national and foreign private enterprise.
- (6) The implementation of the stipulation as meant in clause (4) and clause (5) is guided by the standard, norm and procedure regulated by the Government.
- (7) In conducting business activities as meant in clause (2) and clause (5), the conductor of such business activities involves local human resources and utilize other resources existing in Aceh.

Article 157. (1) Every businessman is responsible for reclamation and rehabilitation of the explored and exploited land.

(2) Prior to conducting business activities, the businessmen are obliged to provide available reclamation and rehabilitation guarantee fund which amount will be calculated at the time of negotiating the exploration and exploitation working contract.

Article 158. The Government and Aceh Government shall ensure the balanced health as the compensation for the exploitation of non renewable natural resources.

Article 159. (1) Every businessman shall prepare community development fund.

(2) The community development fund as meant in clause (1) is regulated based on an agreement between Aceh, district/city Governments and the businessmen which amount is at least 1% (one percent) of the total production price of the sale each year.

(3) The plan for the utilization of community development fund to finance the program which is collectively arranged by heeding of the necessity of the community around the business activities and the community in other area as well as involving the relevant businessmen are further regulated in Aceh Qanun.

(4) The financing of community development program with the community development fund as meant in clause (2) and clause (3) is self-managed by the relevant businessman.

### Part Four: The Management of Oil and Gas Natural Resources Article 160.

(1) The Government and Aceh Government manages together oil and gas natural resources located inland and in the territorial sea of Aceh.

(2) For the management as meant in clause (1), the Government and Aceh Government may appoint or form an implementing agency which will be decided together.

(3) Cooperation contract with other party to conduct exploration and exploitation in the framework of oil and gas management may be conducted if the entire content of the cooperation contract agreement is agreed by the Government and Aceh Government.

(4) Prior to conducting discussion with the Government regarding the cooperation contract as meant in clause (3), Aceh Government must obtain approval from DPRA.

(5) Further stipulation regarding the matters as meant in clause (1), clause (2), and clause (3) is regulated by Government Regulation.

Article 161. Cooperation agreement between the Government and other parties which exist at the time this law is promulgated may be extended after obtaining agreement between the Government and Aceh Government in accordance with the stipulation as meant in Article 160 clause (3).

**Part Five: Fishery and Sea Faring** Article 162.

- (1) Aceh Government and District/City Government are authorized to manage natural resources existed in Aceh territorial sea.
- (2) The authority to manage natural resources existed in the sea as meant in clause (1) consists of:
  - a. conservation and management of natural resources in the sea;
  - b. The administrative regulation and licensing for the catching and/or breeding of fish;
  - c. The regulation of lay out for territorial sea, coastal area and small islands;
  - d. The legal enforcement towards the regulations issued over territorial sea under its authority;
  - e. The maintenance of indigenous law of the sea and assist sea safety; and
  - f. The participation in the maintenance of the sovereignty of the Unitary State of the Republic of Indonesia.
- (3) Aceh Government and district/city Government have the authority to issue fish catching permit and other sea resources manufacturing licenses in the sea around Aceh in accordance with their authorities.
- (4) The management of natural resources in the sea territory as meant in clause (1), clause (2) and clause (3) is conducted by heeding of the principles of sustainable development and preservation of environment.

...

**Chapter XXIV FINANCE**

**Part II: Revenue Sources & Management**

...

Article 181. (1) b. Profit Sharing Fund will derive from hydrocarbon and other natural resources, i.e.:

- 1) Portion from forestry as much as 80% (eighty percent);
- 2) Portion from fishery as much as 80% (eighty percent);
- 3) Portion from general mining as much as 80% (eighty percent);
- 4) Portion from geothermal mining as much as 80% (eighty percent);
- 5) Portion from oil mining as much as 15% (fifteen percent); and
- 6) Portion of gas mining as much as 30% (thirty percent).

...

- (3) In addition to Profit Sharing Fund as meant in clause (1) letter b, Aceh Government receives additional oil and gas Profit Sharing Fund which is a portion of Aceh Government income, i.e.:
  - a. Portion from oil mining as much as 55% (fifty five percent); and
  - b. Portion from gas mining as much as 40% (forty percent).

Article 182. (1) Aceh Government is authorized to manage additional oil and gas Profit Sharing Fund as meant in Article 181 clause (3).

- (2) Fund as meant in clause (1) is revenue in APBA.
- (3) At least 30% (thirty percent) of the revenue as meant in clause (2) is allocated for financing education in Aceh.
- (4) At the most 70% (seventy percent) of the revenue as meant in clause (2) is allocated for financing development program mutually agreed between Aceh Government and district/city government.
- (5) Mutually agreed development program as meant in clause (3) and clause (4) is performed by Aceh Government.
- (6) Further stipulation regarding the procedure for fund allocation as meant in clause (3) and clause (4) is regulated in Aceh Qanun.
- (7) Aceh Government submits periodical report regarding the implementation of allocation and utilization over additional Profit Sharing Fund as meant in clause (1) to the Government.

...

**CHAPTER XXXIX: TRANSITIONAL PROVISIONS**

...

Article 262. In the case there is a license for forest exploitation in Leuser Ecosystem Zone in the territory of Aceh Province which has been issued, is declared as still valid and will be reviewed again and/or adjusted by this Law at the latest 6 (six) months as of the promulgation of this Law.

...

**ELUCIDATION OF REGARDING**

**THE GOVERNING OF ACEH**

**LAW OF THE REPUBLIC OF**

...

Cooperation in the management of natural resources in Aceh follows by a transparent and accountable management of financial sources in the framework of planning, implementing and supervising...