

**Research Article**

# Fiscal Decentralization in Indonesia: Does Discretionary Policy on Tax Facilities Remain Urgent?

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**Abstract.**

The Regional Governments in Indonesia provide tax facilities as regulated in each region's Head of the Region Regulations as a form of implementing fiscal decentralization. This study examined 56 Head of the Region Regulations in Indonesia on land and building tax facilities. This legal research examined the concept of tax facilities as a reflection of fiscal decentralization. In addition, it reviewed the application of discretionary power and assessed differences in Head of the Region Regulations on regional tax facilities. The result of the research demonstrated differences in the material substances of the Head of the Region Regulations on tax facilities. Those differences reflected the discretionary power that came from the Regional Tax Law. This discretion must be maintained because Heads of the Region need flexibility in managing the potential of their regions as the embodiment of regional autonomy.

**Keywords:** Discretionary Power, Fiscal Decentralization, Regional Government, Tax Facility

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## 1. Introduction

The regional autonomy policy has a logical consequence of fiscal decentralization to finance the administration of government and regional development in the form of distribution on tax authority between the central and regional governments.[1][2] The local taxing power is regulated coherently in several laws and regulations such as Law Number 23 of 2014 on Regional Government and Law Number 28 of 2009 on Local Taxes and Regional Charges as amended by Law Number 1 of 2022 on Financial Relations of the Central Government and Regional Governments.[3]


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One of the fiscal authorities in the field of taxation is held by regional governments is to regulate and provide tax facilities.[4][5] In Article 95 paragraph (4) letter a and Article 107 paragraph (3) of Law Number 28 of 2009 as amended by Law Number 1 of 2022, Regional Regulations on Taxes can also regulate provisions regarding the granting of reductions, reliefs, and exemptions in certain cases on the tax debt and/or sanctions thereof. Furthermore, Article 107 paragraph (3) of Law Number 28 of 2009 stipulates that technical provisions regarding procedures for reducing or eliminating administrative sanctions and reducing or canceling tax assessments as a form of regional taxation facilities are regulated by a Head of the Region Regulations. In addition, the implementation of the authority of the regional government to regulate and provide tax facilities such as tax relief, reduction and/or exemption of tax debts, and administrative sanctions in the Regional Tax Law remain unclear.[6]

Researchers found the potential for non-uniformity in the implementation of tax facility policies such as reducing or eliminating administrative sanctions and reducing or canceling tax assessments by regional governments as a form of discretion over unclear and incomplete regulation.[7] Therefore, the research was conducted to see the implementation of regional government authority in drafting Head of the Region Regulations regarding local tax facilities. In this case, the researcher limits the scope of harmonization of Head of the Region Regulations in the context of formulating policies on Land and Building Tax facilities.[8] In addition, it also examines the possibility of changing the discretionary policy model on tax facilities in the regions into a uniform policy with measurable indicators from the central government.

## 2. Methods

This legal research employs the conceptual and statutory approaches that examines and harmonizes 56 Head of the Region Regulations on land and building tax facilities and assesses the urgency to maintain the discretionary power of tax facilities owned by regional governments.

## 3. Results And Discussion

### 3.1. Tax Facility Policy as Implementation of Fiscal Decentralization

The implementation of Regional Autonomy provides a great opportunity for regions to improve their own financial performance. Regional autonomy is followed by fiscal decentralization in regional governments. Fiscal decentralization has had a positive impact on regional autonomy in Indonesia, although there are no specific laws. The existing legal instruments in regulating fiscal decentralization are used to encourage regional economic growth, develop regional economic activities and become the basis for law-making regarding fiscal decentralization in the future.[9]

One form of the implementation of regional autonomy is related to regional finance. In the context of government fiscal relations, the central government ensures the financing of the government affairs that are handed over and/or assigned to the regions. Financial relations in the administration of government affairs that are handed over to the regions include: a) granting of regional revenue sources in the form of regional taxes and charges; b) the provision of funds sourced from the financial balance between the Central and Regional Governments; c) granting of funds for the implementation of special autonomy for certain regional governments as stipulated in law; and d) providing loans and/or grants, emergency funds, and (fiscal) incentives.

The fiscal decentralization policy provides an opportunity for regional governments to take advantage of their own regional economic potential to solve various problems. The regional governments are authorized to formulate Regional Regulations regarding fiscal decentralization in their regions based on the character and potential of the said region, so the fiscal policy can be accepted and well obeyed by the community.[10] One form of fiscal decentralization is the authority to collect taxes by the provincial and district/city governments as a source of local revenue.[11] Tax from the legal point of view is a legal engagement that was born based on the law. Taxes have 2 (two) main functions, namely budgetary and regulatory functions.[12][13] The budgetary function means that taxes are used as a source of local revenue. While the regulatory function means that taxes as an instrument to direct the community to the expected conditions, namely welfare.[14] Tax facility is one form of the tax regulatory function regulated under local tax law and implemented by the regional government toward their taxpayer.[15] The local tax facilities have several purposes, including:

1. Relieve the tax burden under the consideration of the subjective condition of taxpayer and the objective condition tax object;[16]

2. Tax amnesty for arrears of administrative sanctions payment,[17]by considering the efficiency of tax collection costs against the taxpayer;[18] and
3. Encouraging the ease of doing business in the provinces and districts/cities.[19][20][21]

Theoretically, tax facilities are a form of tax expenditure, namely the transfer of resources to the public through a reduction in tax obligations.[22] According to the Organization for Economic Co-operation and Development (OECD), tax expenditures can be in the form of allowances, exemptions, rate relief, tax deferral, credits, and others.[23] The tax expenditure policy has implications for reducing or delaying regional revenues from tax payments, but on the other hand, it reduces the tax burden on taxpayers.[24] The OECD provides guidelines that tax expenditure must meet several conditions such as contributing to the benefit of the industrial sector, or activities of certain taxpayers. Tax expenditure must be held to support a clear and achievable goal through public policy instruments.[25]

### **3.2. Discretion of Tax Facility Policy on Land and Building Taxes by the Regional Government**

The regulation of tax facilities in the regions is an "open norm" and "blanket norm" this can be seen from the formulation of Article 95 paragraph (4) letter a Law Number 28 of 2009 as revised with Article 96 Law Number 1 of 2022. The open norm comes from the phrase "can" in the a-quo article which is the source of discretionary power (*fries ermerissen*).[26] With the discretionary power, the regional government has the legal choice to do and/or not to do a policy related to the tax facility in the Head of the Region Regulation. To review the implementation of discretionary power in regulating tax facilities by regional government, a study was conducted on 56 Head of the Region Regulations related to land and building tax facilities in 42 districts/cities on Java Island. This study is limited to Head of the Region Regulations enacted during 2012-2020 based on Law Number 28 of 2009. The differences in the land and building tax facilities regulations were found, among others:

The differences described above occur because the provision for relief, reduction, and/or exemption of tax principal and administrative sanctions for local taxes are not clearly and completely regulated in Law Number 28 of 2009. The umbrella norm on the authority to provide tax facilities in Law Number 28 of 2009 has the potential to cause injustice to the community. This is because the technical provisions used in each

TABLE 1: The Differences In The Land And Building Tax Facilities Regulations On Head of the Region Regulations.

No.	Regulation Aspect	Difference Finding
1.	Object of the Tax	It was found that various Head of the Region Regulations contained differences in the provision of Tax Objects that were given tax facilities, for example: Private Hospital Tax Object (Surabaya City Government, Jember Regency, Bantul Regency) Tax Objects for Private Universities (Surabaya City Government, Malang City, Jember Regency, Bantul Regency Governments) Private Education Unit Tax Object (Semarang City Government)
2.	Taxpayer	It was found that various Head of the Region Regulations contained differences in the provision of taxpayers who were given tax facilities, for example: Consideration of the taxpayer's income to the Regency/City Minimum Wage (Surabaya City Government) Army veterans
3.	Form of Facility	It was found that various Head of the Region Regulations were found that regulate different forms of tax facilities, for example: land and building tax exemption automatically to taxpayers with the Sales Value of Tax Objects up to Rp. 150,500,000.00 and taxpayers with poverty status (Semarang City Government). Reduction with a certain percentage according to the condition of the tax object and tax subject Elimination of Tax Sanctions
4.	Amount of Facility	It was found various Head of the Region Regulations were found that regulate the amount of reduction/exemption, for example: a) Percentage of tax payable reduction due to the condition of the tax object (due to natural disasters, fires, disease outbreaks or pests). Maximum reduction of 100% (Malang, Magetan and Jember Governments) and maximum reduction of 75% (Surabaya City Government) Percentage of tax payable reduction for corporate taxpayers who experience losses or liquidity. Maximum reduction of 100% (Magetan Regency Government), Maximum reduction of 75% (Surabaya City and Jember Regency Governments) and maximum deduction of 50% (Malang City and Wonosobo Regency Governments) Taxpayers who have a tax object in the form of agricultural or fishery or livestock land with an area of less than one hectare whose yield is very limited are given a reduction of 50% (Surabaya City Government), a maximum of 25% (Malang City Government), or more than one hectare with very limited yields given a reduction of 25% (Surabaya City Government), a maximum of 25% (Malang City Government)
5.	Mechanism of granting facilities	It was found that various Head of the Region Regulations regulate different tax facility mechanisms, some of which are given by the Head of the Region due to certain policies and/or the submission of a request from the Taxpayer. Examples of regions that provide facilities due to Head of the Region policies: Without a taxpayer request but given by the Head of the Region because of their position (DKI Jakarta Government) At the request of the taxpayer
6.	The period of issuing decision on granting facilities	It was found that various Head of the Region Regulations were found regarding differences in the time period for the issuance of tax facility decisions, for example: The decision on the request for reduction, elimination or cancellation is given within a maximum period of 3 (three) months (Regional Government of Surabaya City, Kediri City, Magetan Regency) The decision on the request for reduction, elimination or cancellation is given within a maximum period of 12 (twelve) months (Gresik Regency Government)
7.	Tax facilities due to Covid-19 pandemic	It was found that there were differences in the policy choices taken by the Regional Government in responding to the COVID-19 pandemic related to the provision of tax facilities, for example: Revision of Head of the Region Regulation related to regional tax facilities (Bantul Regent Regulation Number 54 of 2020) Enact a new Head of the Region Regulation (DKI Jakarta Governor Regulation Number 36 of 2020)

region are different. Whereas in practice the community requires tax facilities because of various circumstances that make taxpayers unable to pay off their tax debts.

However, if viewed from the concept of fiscal decentralization in which regional governments have the authority to manage regional potential. Therefore, the discretion of the regulation and provision of land and building tax facilities is still relevant within the framework of implementing regional autonomy.[27][28] This is based on the reason that the use of discretion has the purpose of (a) facilitating the administration of government; (b) filling legal gaps; (c) provide legal certainty; (d) fill the stagnation of government in certain circumstances for the benefit and public interest.[29] The use of discretion can only be carried out by authorized Government Officials.

Further regulated in Article 23 of Law Number 30 of 2014 on Government Administration, the scope of discretion includes: (a) making decisions and/or actions based on the provisions of laws and regulations that provide a choice of decisions and/or actions; (b) making decisions and/or actions because the laws and regulations do not regulate; (c) decision-making and/or action due to incomplete or unclear laws and regulations; (d) decision-making and/or action due to government stagnation for the wider interest.[30]

The use of discretionary power owned by regional governments in the context of fiscal decentralization is still maintained by looking at the formulation of Article 96 Law Number 1 of 2022 which is a substitute for Law Number 28 of 2009. Where the phrases "can" as blanket norms and open norms are still used and relevant. This is to provide flexibility for regional governments in taking discretionary policies, because regions have the authority to regulate and manage their own regional households within the scope of regional autonomy. In addition, if we look at the legal politics of the formation of a Head of the Region Regulations in the implementation of regional autonomy, it arises because of two things, namely the existence of an order for the formation of a Head of the Region Regulations of a higher regulation and other regional regulations, or because of the authority that arises from regional autonomy owned by the regional government.

## 4. Conclusions

Law Number 28 of 2009 as amended by Law Number 1 of 2022 is one of the products of legislation that strengthens the implementation of regional autonomy, especially the implementation of fiscal decentralization. Regency/City Regional Governments have

discretionary power in regulating, determining and providing tax facilities in the regions by first issuing government instruments in the form of Head of the Region Regulations. The implementation of discretion power in the formulation of Head of the Region Regulations in a Regency/City regarding various land and building tax facilities found differences in material content between one region and another. The difference lies in the object of the tax, the taxpayer, the form of the facility, the amount of the facility, the mechanism for providing the facility, the time period for the decision to grant facilities and tax facilities due to the COVID-19 pandemic.

Even though the material difference in the content of the Regulation of the Head of the Regency/City has the potential to cause injustice in the provision of tax facilities to the community between regions. However, the formulation of norms that are vague and open, becomes the basis for the independent authority of the Regency/City Government to support the implementation of fiscal decentralization. Where the Regional Government has flexibility in managing regional financial potential and can consider policies in the field of taxation according to the conditions that occur in each region, this is one of the characteristics of the implementation of regional autonomy.

Regency/City Governments need to review the existing tax facility policies because of some circumstances that caused taxpayers to lose their ability to pay taxes. One of them is the covid pandemic, where not many Regency/City Regions have the initiative to make revisions to Head of the Region Regulations related to tax facilities, by adding the pandemic factor as one of the criteria for granting a reduction or elimination of local tax debts.

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