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# Local Chief Executive Accountability in the Philippines, Indonesia, and Malaysia: A Legal Comparative Analysis

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## ABSTRACT

*This research aims to observe how Constitutions and laws in Indonesia, the Philippines, and Malaysia regulate the role of the people in the local executive accountability system. Accountability, as an essential part of the local representative democratic system, contributes to preventing corruption and improving government responsiveness. However, designing an effective local accountability system in decentralised countries like Indonesia, the Philippines, and Malaysia poses challenges. The complexity of relations between accountability actors, the system for determining local chief executives, and the form of the state and the government system can affect the local accountability model. This comparative study evaluates the Constitutions and laws related to the role of citizens in the local accountability systems in these three neighbouring countries as they progress towards their commitment to enhancing local democracy. This study is carried out under the comparative qualitative methodological framework and utilises secondary sources for analysis. Based on the comparative expositions, Indonesia and Malaysia can learn from the political accountability adopted by the Philippines as it provides wide participation for the citizens to hold local chiefs accountable and features a strong punishment system through recall elections to increase responsiveness and responsibility of local chiefs in administering local government.*

**Keywords:** local accountability, decentralization, direct democracy.

## I. INTRODUCTION

The decentralisation trend has reinforced the vital role that local governments play. Although the impact of implementing decentralization to improve the quality of government and public services has not yet been empirically proven, proponents of this idea believe that decentralization enables elected local officials to be more responsive to community aspirations and to be able to accommodate political participation (Berenschot & Mulder, 2019). While local

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autonomy is inherent in the federal systems, decentralization is an option for the central government in the unitary system to bring the public services closer to the citizen.

However, the effectiveness of decentralized governance hinges on accountability. An accountability system in a representative democracy is important to prevent misuse of mandates by representatives (Stanbury, 2003), to prevent corruption (Ferry et al., 2015), and to optimize performance of the representatives. This accountability role is also essential in a representative democracy system at the local government level implementing a decentralized system (Bovens, 2005).

Decentralization is most likely to be effective only when constituents exercise accountability as a balancing force (Ribot & Agrawal, 1999). Mulgan (2000) argues that accountability system must involve the people as the holder of sovereignty. People who have delegated their sovereignty to representatives (both legislative and executive) through elections must have the space and the authority to control these representatives (Uhr, 1993) (Dunn, 2003).

However, formulating a model of accountability systems in a decentralized government poses challenges, including the complex layer of government and local chief appointment system. Various layers of government can confuse citizens who wish to hold the local authorities accountable as unclear jurisdictions and responsibilities can enable the authorities to shift their responsibilities to other levels to avoid public demands (Beeri & Navot, 2013). The local chief appointment system can also affect the design of local accountability systems and appointed local officials are more likely be responsible to higher authorities, while elected officials will be accountable to citizens (Muriu, 2013).

Indonesia, Malaysia, and the Philippines are three countries in Southeast Asia experiencing a rapid decentralization development. According to the World Bank, Indonesia and the Philippines are both implementing a large-scale decentralization, including devolution of political, fiscal, and administrative responsibilities to local entities (Bhatti & McDonald, 2020), while Malaysia, which has been a federation for more than 60 years, is the only federal nation in the region that is pushing for decentralization. However, democracy and local welfare development tend to decline or stagnate. Cases of corruption at the local level are rampant and the improvement of welfare level is painfully slow. As a result, due to the decline in democracy and local welfare, there has been a push to re-centralize governance.

According to Bhatti and McDonald (2020), transition to decentralization in Southeast Asian countries does not shift funds, functions, and functionaries to the sub-national level to align authority and accountability. Instead, the transition has been managed from the center, resulting

in a long-lasting centripetal bias and a lack of synchronization between Functions-Funds-Functionaries that places considerable constraints on local government authorities.

Therefore, this research compares legal frameworks in Indonesia, Malaysia, and the Philippines regarding local accountability systems based on four accountability parameters introduced by the International IDEA namely standards, responsiveness, answerability, and reward/punishment (Institute for Democracy & Assistance, 2017) to identify and compare the design of accountability systems at the local level. This paper also attempts to meet the following objectives:

- To identify the existing legal frameworks that regulate local accountability systems in Malaysia, Indonesia, and the Philippines; and
- To analyze whether the real options existing within the legal frameworks are consistent with the accountability principles.

This study adopts a qualitative approach, whereby methodology employed is by way of analysis of the legislation related to local government accountability in the Philippines, Indonesia, and Malaysia. The authors conduct a descriptive analysis of the development of decentralization and local democracy by studying scholarly articles, websites, and reports.

### **(A) Literature review**

Accountability at the local level generally entails four elements, including setting accountability standards, obtaining information on policies and actions to be assessed, making judgments about the conformity of policies and actions with standards, and imposing sanction on any unsatisfactory performances (Joshi, 2013).

Accountability system in a decentralized government has several main models. *First*, vertical accountability, which consists of upward accountability and downward accountability. Upward accountability is a mechanism in which the appointed officials in a region are responsible to the central government who appoint them. The downward or political/electoral accountability, where officials whom the people directly elect, are accountable for their performances to their constituents. In the meantime, downward accountability can be carried out in various ways, including general elections whereby a reward and punishment vote approach can be applied, recall elections, referendums, lawsuits through the courts (class action), third-party monitoring by the media, NGOs, or campuses, political pressure by associations and civil society organizations. Downward accountability can expand the people's participation in monitoring government performance (Brenya et al., 2014).

*Second* is horizontal accountability whereby control is exercised by institutions authorized by law and have the will and the ability to oversee other institutions such as local councils (O'Donnell, 1998). Horizontal accountability differs from the concept of checks and balances; yet, both are instruments of self-control in government and widely applied by countries implementing a system of separation of powers.

*Third* is diagonal accountability, which involves vertical, horizontal, and other types of accountability institutions such as the Ombudsman, state audit offices, and community control (Schillemans et al., 2014). It takes into various approaches include lawsuits through the courts (class action); monitoring by the media, NGOs, or campuses; political pressure by associations and civil society organizations, which expand people's participation in monitoring government performance (Brenya et al., 2014).

Community involvement in controlling the government through a diagonal accountability system is needed due to a lack of capacity and structural barriers in supervising government performance of formal accountability institutions – the central government, the parliament, audit offices, or courts (Mechkova, 2019). The public and the media can carry out the "fire alarm" accountability function by monitoring government activities in their daily lives (Grimes, 2013). However, it requires an open political environment that allow citizens to have access to public information and freedom of expression.

Diagonal accountability does not have a direct sanctioning power but uses informal tools (e.g., social mobilization, and media exposure) (Peruzzotti & Smulovitz, 2006). In contrast, the downward/political/electoral accountability system has a full sanctioning power, including dismissing elected officials through a recall election.

Successful implementation of an accountability system requires four elements, namely information, discussion and debate, citizen actions, and government response (Iñaki, 2019). Local governments must disclose "actionable" information to citizens to hold the government accountable (Fox, 2015). Institutionalization of discussion and debate spaces between citizens and local authorities can bring a positive impact on accountability as it promotes dialogue to be more constructive and collaborative (Schillemans et al., 2013), meaning that collective action from citizens to influence service providers can be taken through research groups, public opinion surveys, or recall petitions. Accountability mechanism also requires local governments' active participation, response to community input, and explanations of official policies or reforms. Accountability mechanisms that successfully combines local, bottom-up pressure with pressure from higher levels of government can boost chances of pressure on local authorities to

act (Serra, 2008).

## II. DECENTRALIZATION AND ACCOUNTABILITY IN THE PHILIPPINES

The Philippines' legal framework places strong relationship between decentralization and accountability as two sides of a coin. Decentralization that is applied administratively, fiscally, and politically is accompanied by a local accountability system that involves multi-actors and has a strict system of sanctions against the poor performance of local governments.

### (A) Decentralization in the Philippines

The Philippines has the oldest democratic history in Southeast Asia (Teehankee & Calimbahin, 2020). The decentralized system in the country was introduced during the pre-colonial era and it has an autonomous institution called *barangay* (Maria Ela L Atienza, 2006). The Spanish colonial government implemented a centralized system, while maintaining the presence of those *barangays*. During the era of American colonialism (1900-1935), decentralized system was reinstated (Dolan, 1991).

Following its independence in 1946, the Philippine government implemented a decentralized system. However, the country saw changes following the rising trend of centralization during the implementation of Martial Law (1971-1982) by President Ferdinand Marcos. The 1987 Constitution came into effect after Marcos' fall reinstated regional autonomy.

Local Government Code 1991 (Title Two, Chapter 1, section 41-43) stipulates that governor, deputy governor, mayor, deputy mayor, mayor, deputy mayor, and *punong barangay* (barangay chairperson) are elected through general elections in their respective regions for a term of three years. They may be re-elected to the same position three times in a row (or nine years). An independent Commission on Election (Comelec) is responsible for organizing elections. Political parties and candidates convey campaign promises as a reference for voters to consider their political choices.

The devolution of government in the Philippines is said to be one of the most progressive among developing countries (Guess, 2005). Local Government Law of 1991 expanded the roles and functions of local governments, including expanding their jurisdiction over hospitals, social welfare, environmental protection, public infrastructure, and zoning (Teng-Calleja et al., 2017). This law grants local governments significant power and resources. Beyond mere bureaucratic control and implementation processes, the Local Government Code has empowered local governments, both administratively and financially, to enable a shift towards a public service-oriented government. Therefore, the enforcement of the law is phenomenal as it overhauls the

tradition of centralism, which generally characterizes Southeast Asia (Maria Ela L. Atienza, 2006).

However, the implementation of decentralization runs under the central government's control. The coaching system works in stages: the President closely supervises the provinces, the provinces foster the regencies/cities, and the regencies/cities foster the government under them. The implementation of this supervision by the central government has brought a positive contribution, especially in promoting the willingness of local governments to involve the communities in the regional development process (Ishii, 2017). Precise normative arrangements in the Constitution and laws related to participatory development, for example, also contribute positively and based on this, many regional leaders encourage many community involvement initiatives.

Nevertheless, the power that remains concentrated in the central government - due to the form of a unitary state - causes local governments to depend on the central government (Dressel & Regina Bonoan, 2019). Local authorities often have a poor capacity to collect revenue. Significant regional disparities remain in the country where only three of the seventeen regions (Metro Manila, Calabarzon, and Central Luzon) generate 62 per cent of the GDP. Therefore, some parties advocate federalism as a solution.

### **(B) Legal Framework for Accountability of Local Chief Executive in the Philippines**

Several existing legal frameworks regulate the accountability of local government officials. The legal framework includes the 1987 Constitution, the 1991 Local Government Law, Republic Act 7160 as amended with the Republic Act 9244, the Republic Act 3456 or the Internal Auditing Act of 1962 as amended with the RA 4177, and the Presidential Decree No. 898.

Article X Section 2 of the 1987 Constitution stipulates several norms that guarantee the implementation of regional autonomy, including the granting of powers, resources, and responsibilities to local governments. In order to ensure the implementation of regional autonomy, article X, section 14 of the 1987 Constitution also stipulates the need to regulate the qualifications of regional officials, election mechanisms, appointments, dismissals, term of office, duties, and obligations, as well as the organizational structure of regional government.

The process of administering regional government underscores a participatory approach. The Constitution stipulates that the President must form regional development councils consisting of regional heads, regional department heads, and NGOs.

The 1987 Constitution specifically regulates the accountability of public officials in article XI entitled Accountability of Public Officers. The first part of this article stipulates that officials

and all public servants are accountable to citizens, to serve them with full responsibility, integrity, loyalty, and efficiency, to act with patriotism and justice, and to live a simple life.

At the local level, the accountability system aims to improve the quality of local leadership. Hence, the Constitution underscores effective mechanisms to ensure the accountability of local government units to their respective constituents must be strengthened. As part of the instrument to ensure the responsiveness and accountability of local governments, direct democracy instruments are implemented that encompass effective recall, initiative, and referendum mechanisms (Article X, section 3), showing the great attention given by the Constitution to ensure regional accountability in implementing autonomy. Accountability is not only stated in the form of a concept by the Constitution. However, it is already in the form of concrete instruments, namely recall mechanisms, initiatives, and referendums, all of which will allow for direct people's participation in developing local accountability.

The local accountability system is implemented in several models, one of which is vertical accountability, both upward and downward. An upward vertical accountability system is implemented by requiring local government unit consultations with all agencies and offices at the central level prior to the implementation of any project or program in their respective regions/jurisdictions. Central government also conduct audit to local government's unit to ensure the most economical, efficient and effective manner of delivering public services (Carlos et al., 2018).

Meanwhile, downward/electoral accountability is implemented through a direct democratic system: recall, initiative, and referendum. It is in line with the political decentralization system whereby the people are fully involved in electing local leaders. They are also given an entire space to evaluate performances and to even dismiss local leaders through recall elections.

A recall may only be made once during the term of office and may not be made in less than one year from the appointment of an official to the office or one year immediately before the next local election. Recall petitions may be filed by at least twenty-five per cent of the total registered voters in the region where the local official is serving and submitted to the Comelec. The recalled officer will be automatically considered a registered candidate and entitled to be elected. The winner in the recall election is the candidate who garners the most votes. If the official to be recalled gets the highest number of votes, they will continue to serve (Chan-Robles, 2015).

Several recall elections have been held in the Philippines. In 2010 to 2012, 38 recall petitions were filed before the Comelec, with none of them resulting in an actual recall election. One of



the reasons is the limited local budget.

The local initiative is a process whereby the people can directly demand to establish or amend any regulation. Initiatives and referendums may be implemented at the behest of registered voters in provinces, municipalities, municipalities, and *barangays*. Fewer than one thousand registered voters in the case of provinces and cities, one hundred in the case of municipalities, and fifty for *barangays*. The Comelec or a designated representative will assist in the formulation of the claim (Chan-Robles, 2015). If the proposal is approved by most of the electorate, it will take fifteen days for the Comelec to ratify the election results. Otherwise, the proposed proposal is deemed to have been lost.

Local initiatives and referendums may only be held once a year. The initiative will only cover subjects or matters within the jurisdiction of the relevant regional law and will be cancelled if the government accepts the proposal submitted by the residents before the voting day and the local head agrees. However, those who oppose the measure may apply for the initiative by the same procedure.

Horizontal accountability is implemented through a supervisory function by local representative institutions on the performance of the local head of region. There is no special provision in LGC 1991 that expressly gives supervisory authority to the legislature. However, this is considered inherent in Sangguniang's authority to review the executive budget (Abellera, 2011). The Sangguniang (local legislature) determines whether the enacted regulations are implemented and, if that is the case, how the executive branch implements them. This horizontal accountability system ensures that policies are implemented following the legislature's intent and that state funds are managed responsibly.

### **(C) People's Role in Accountability of Local Chief Executives in the Philippines**

Local chief executive accountability system in the Philippines provides a wide access for residents to participate in. The Constitution and the Local Government Code acknowledge citizens' rights to hold public officials accountable by granting the rights to monitor their performances and to conduct recall elections as the highest sanction for the unacceptable performances of the elected officials. These regulations also allow citizens to demand a referendum and initiative election.

Local accountability system in the Philippines also entails citizen participation instruments through participatory development planning forums. This system is more like providing a participation space for the community to participate in providing input in the process of governance and regional development. However, the implementation is officially mandated in

the Constitution and the Local Government Code.

Local chief executive accountability system in the Philippines adopts four accountability parameters introduced by the International IDEA, which include standards (regulation), responsiveness, answerability, and reward/punishment. The Constitution and the Local Government Code stipulate the local chief executive's vertical, horizontal, and electoral accountability system with a robust reward/punishment tool through the recall election and also equipped with participatory development planning forums. It enables local chief executive to be accountable for the central government, local council, and residents and promotes collaboration among these stakeholders in the local development.

### **III. DECENTRALIZATION AND ACCOUNTABILITY IN MALAYSIA**

Local autonomy should be a necessity in Malaysia in the form of a federal state. However, the control of the federal government and state governments to local governments is still quite strong. Decentralization, which is only applied administratively and fiscally without political decentralization, causes the design of local accountability systems to be limited to the federal, state, and local councils administratively and fiscally with no political accountability to the resident.

#### **(A) Decentralization in Malaysia**

Malaysia is a federation of 13 states and three federal territories based on a constitutional monarchy system and implements a parliamentary system of government (Siddiquee, 2006). The Malaysian government is divided into three levels, namely the federal level, the state level, and the local government level (Hussain & Brahim, 2005), with 144 local governments taking the form of cities (main administrative and commercial centers), municipalities (other urban areas), and districts (mainly rural areas).

The 1963 federal constitution provides a framework of relations to strike a balance between the need for a strong central government at the federal level, the rights and powers of the states, and the expectations and needs at the local level (Nooi, 2008). The Regional Government Law 1976 (UU 171) regulates the rights and obligations of local government, while the City and State Planning Act 1976 regulates the power for planning. Local governments can collect taxes, make laws and regulations, issue licenses, and permits for any trade within their jurisdiction, and plan and develop areas under their jurisdiction (Osman et al., 2014).

The President (yang Di-Pertuan) presides over the executive powers in the rural districts and municipalities, while the mayor (*datuk bandar*) presides over the executive powers for the cities.

A mayor heads the city council, while the President heads the city or district council (Callestino, 2003). Unlike in other countries where leader of the local government is elected, local chief executive in Malaysia is appointed by the state government. Likewise, local council members are appointed by the state government for three years (with the option of reappointment) and, in most cases, are from the ruling coalition (Nooi, 2008).

At the state level, rulers and governors are the ceremonial heads of the executive branch. With the exception of Penang, Melaka, Sarawak, and Sabah where the Kings appoint their governors in consultation with their chief ministers, the other nine states have hereditary rulers elected by various methods according to the respective state constitutions (Callestino, 2003).

Decentralization in Malaysia is deemed to face a number of problems. Division of powers, responsibilities, and sources of revenue between the federal and state governments reflects the highly centralized nature of government in Malaysia as most of power, responsibility, and resources are still in the hands of the federal government (Callestino, 2003). According to Morrison, as noted by Nooi (2008), in practice, states have little autonomy. Although some federal functions have been decentralized, most decision-making remains at the national level. Existing local government scenarios in Malaysia tend to highlight the traditional top-down approach to local administration (Abdul Manaf et al., 2017).

Recent research points to the emergence of neo-centralism. Under the pretext of providing better services to the public, there is a growing trend wherein the central government abolishes traditional functions of local government and privatizes them (Nooi, 2008). This approach means diminishing local autonomy and strengthening the apparent trend toward recentralization in federal-local government relations.

At the same time, local government capacity is increasingly constrained by the burdensome delegation of services from the central government such as urban poverty reduction and urban crime control. These additional responsibilities have placed a strain on local governments' financial and human resources. In contrast, local governments struggle to deliver these services, while their demands for more and better infrastructure, personnel, and finances are often overlooked. As a result, their performance is generally considered poor and their relationship with the public is fragile (Nooi, 2008).

Local governments are also experiencing severe difficulties in tackling the challenges of a changing global environment and the people who are increasingly aware of the inability of local governments to deliver what they want. There also remains a gap between 'demand' and 'supply' in service delivery and local government performance appraisal. As a repercussion, the local

government's perception of what is 'delivered' is often inconsistent with the community.

Various studies have also revealed the absence of transparent public participation and consultation methods, giving rise to detrimental perceptions of local governments. In 1998, Malaysia's Ministry of Public Housing and Local Government supported a national program to implement Local Agenda 21 (LA 21) which expanded community participation and involvement in local government work. LA 21 did generate several promising initiatives and related research. However, initial enthusiasm for the program was not sustained and not all local governments embraced LA21 or actively promoted public participation (Nooi, 2008).

### **(B) Local Executive Accountability Legal Framework in Malaysia**

Malaysia has several laws governing the executive branch accountability system, including the local executive, namely the Constitution, Local Government Act 1976, and the National Audit Act. The Malaysian Constitution, both directly and indirectly, regulates accountability, especially regarding public property. Articles 106 and 107 of the Constitution grant the Office of Auditor General the power to conduct financial and performance audits at all levels of the government. According to Abdullah Sanusi et al. in Ahmad (Ahmad et al., 2003), this audit includes a financial audit to evaluate the system's reliability based on applicable financial regulations and an achievement audit that emphasizes the aspect of effectiveness in achieving the agreed objectives.

Article 32 (1) of the Constitution grants King of Malaysia as Head of the Federation the role of checking and balancing the accountability of the Executive (Ahmad et al., 2003). The Prime Minister needs to inform *Yang Di-Pertuan Agong* (YDPA) issues related to the government so that the YDPA can influence the government to act responsibly. The Constitution also allows the YDPA to obtain relevant information related to state affairs. The monarchical system practiced in Malaysia has fundamentally contributed to the running of democracy and government accountability in the country.

Legal changes in the 1957 Auditing Law also included an element of accountability as a prerequisite for checking the achievement of government organizations in addition to the fund checking. Each government financial report must be submitted to the AG seven months after the end of the year. Otherwise, the AG will make a report to King of Malaysia and subsequently to parliament (Yaakob et al., 2009). However, referring to the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), Celestino shows that many local governments do not have accounts or annual financial reports; thereby hampering the audit work (Callestino, 2003).

In the context of horizontal accountability in Malaysia, the parliament, the highest institution protected by YDPA powers, has a check and balance role. Parliament makes, changes, and repeals laws. Members of parliament are given freedom to debate and deliberate on different current issues for the benefit of the people and the country. Although it is considered to be the most important bastion of accountability, the role of the parliament is decreasing and weakening. While at the local government level, LGA 1976, 53, adopts a horizontal accountability system by stipulating that local authorities must provide regular accounting reports on all local authority transactions that can be examined by any member of the council with prior approval from the mayor or the President.

LGA 1976, 60. (1) also regulates a vertical upward accountability system whereby local government reports can be examined by the Auditor General or another auditor appointed by the State Authority based on the recommendation of the Auditor General. Local authorities shall prepare and submit before the auditor all books and accounts of the authorities together with all vouchers, papers, contracts, and related documents. Meanwhile in Article 61 (1), it is regulated that the auditor may request by a written notification from any local government official or other person such records, minutes, books, and documents and to provide information or explanations that may be required.

In addition to upward vertical accountability through the AG, there is a monitoring system by the Public Complaints Bureau (PCB) established on July 23, 1971. Unlike the Ombudsman in other countries that are independent, the PCB is placed under Department of the Prime Minister. Viewed from the objective of establishing the system, it can improve the quality of governance, protect people's rights, and ensure transparency, justice, accountability, and good governance (Ahmad et al., 2003). However, the presence of the PCB based solely on Development Administration Circular Number 4 of 1992 weakens this role. Some groups are pushing to replace PCBs with the Ombudsman, but the draft law has not yet been ratified by parliament.

However, the 1976 LGA did not regulate the mechanism for sanctioning the local chief executives with poor performance. While there is a performance appraisal mechanism, the absence of this sanction system can compromise the effectiveness of this accountability system.

### **(C) Role of the People in Accountability of Regional Heads in Malaysia**

Apart from these two accountability systems, other channels can be used as a medium for a broader community participation, including meetings for formal and informal face-to-face discussions, electronic participation (e-participation), and through mobile complaint applications such as Cakna launched by Ministry of People's Welfare, Housing and Local

Government (Abdul Manaf et al., 2017).

Communities, through NGOs, also play a role in imparting opinions and advice to the government. NGOs' role has succeeded in raising awareness of democratic practices. The government that used to be more autocratic has now become more flexible in cooperating with NGO leaders, who were previously considered too elite or, worse, accused of being foreign spies (Yaakob et al., 2009).

Mass media are also considered the leading force in disseminating information, shaping public opinion, and becoming a means of control. However, the Official Secret Act (OSA) hinders information disclosure and fosters corruption and cronyism. Some groups are pushing for adopting the Freedom of Information Act. However, it seems this will take a long time.

#### **IV. DECENTRALIZATION AND ACCOUNTABILITY IN INDONESIA**

Recent developments show signs of increasing the control role of the central government in Indonesia. Political decentralization that has accompanied the implementation of administrative and fiscal decentralization in Indonesia has not been accompanied by the implementation of a political accountability system. Instead of being responsible to the local council, the central government or the community, the regional head is only required to submit a performance report without adequate control features and sanctions. People who play a role in choosing regional heads are not given a strong right to control local government policies and give sanctions for poor performance of regional heads.

##### **(A) Decentralization in Indonesia**

Having experienced a period of colonization for more than 3.5 centuries by the Dutch and the Japanese who implemented a centralized government system, Indonesia became an independent nation in 1945. The country enacted the 1945 Constitution that adheres to the form of a unitary state with a presidential system, changing to a federal system in a short time, and in reinstating a unitary system in 1959. The centralization of authority through a unitary system of government aims to maintain national unity within the nation as well as a reaction to previous attempts by the Dutch colonial powers to impose federalism in their last attempt to control the newly independent Indonesia.

After the fall of Suharto in 1998, Indonesia embarked on the process of democratization and decentralization. Successive reforms delegated more budgets and responsibilities to regency governments. These regencies have, since 2005, directly elected the local chief executive. Indonesia is not only one of the largest democracies, but also one of the most decentralized

democracies in the world (Berenschot & Mulder, 2019). However, (Hadiz, 2004) argued that massive explosion of decentralization that followed the collapse of Suharto's authoritarian regime in 1998 left a room at sub-national level for networks of predatory actors to sabotage good governance reforms.

In May 1999, Law Number 22 of 1999 on Local Government and Law Number 25 of 1999 on Financial Balance between Central and Local Governments were enacted with extreme decentralization (Alm et al., 2001). However, the central government has recently been slowly reinforcing centralism by enacting the Law on Local Government Number 23 of 2014 and Law on Job Creation Number 11 of 2020.

In Indonesia, local government consists of two layers, namely the provincial government and the district/city government, but there is asymmetry at the provincial level. Five of the 34 provinces in Indonesia have special status with asymmetrical powers and functions that keep the country united by providing constitutional space for regional uniqueness and managing pressures that arise in a highly divided society (Isra et al., 2019). The local government structure consists of regional head, who leads the executive body and the Local Legislative Council (DPRD) as the local representative council, where the local head and DPRD are elected directly through elections.

Political reforms followed by the implementation of decentralization met with mixed results. On one hand, local media and outside observers celebrate the emergence of reformist politicians who seem willing and able to overcome the exclusive and corrupt bureaucracy they inherit from Suharto's authoritarian regime. Several regents and governors have gained notoriety for their effective governance. They took innovative measures such as subsidized health care programs, 'fit and proper tests' prior to promoting civil servants, and impromptu visits to government offices to counter bureaucratic laziness and improve public service quality (Berenschot & Mulder, 2019). However, many other areas have predatory politics (Diprose et al., 2019). According to the Indonesian Anti-Corruption Agency (KPK), 22 governors and 148 local chief executives have been implicated in corruption cases (ACLC, 2022).

### **(B) Legal Framework for Accountability of Local Chief Executive in Indonesia**

Local chief executive accountability system in Indonesia has undergone numerous changes, influenced by the prevailing government system. The parliamentary system that was in effect from 1945-1959 affected the accountability system of regional heads so they were responsible to the local council. The presidential system imposed from 1959-1998 characterized the pattern of regional government dominated by executive power, while regional heads were not

responsible to the local council but to the central government instead.

In 1998, when political reforms – known as *reformasi* - took place following the fall of the Suharto regime, which was followed by the reinstatement of the decentralized system through Law Number 22 of 1999, the presidential system of government was characterized by the decisive role of the legislature (legislative heavy). Therefore, local head is elected by and responsible to the DPRD. The design of the regional head accountability system based on Law Number 22 of 1999 grants the DPRD the authority to question, assess, and impose sanctions on regional heads, including sanctions for dismissal from the position of local heads.

In practice, implementing this accountability system is considered to give rise to a host of problems partly because the accountability mechanism of the local chief executives is often used as a political tool by the DPRD, instead of assessing the performance of the local chief executives, resulting in many political turmoil and instability in the administration of the local government (Aji, 2017).

Since 2004, Indonesia has seen a stronger presidential system followed by implementation of the local chief executive's election system into a direct election system through Law Number 32 of 2004. Consequently, the design of the accountability system has also changed; local chief executives are no longer responsible for the DPRD. The design of the local chief executive's accountability system consists of three models: vertical reporting, in which the local chief executives submit the Local Government Accountability Report to the central government; horizontal reporting, where the local chief executives submit the Accountability Report to the local council; and downward accountability reporting of the local chief executives to the community where the local chief executives submit the accountability report to the public through print media or electronic media.

However, local head is no longer accountable for his performance to anyone but only submits reports. Under this reporting system, the central government, the DPRD, and the people cannot impose sanctions on local chief executives for any poor performances within the framework of the accountability system.

### **(C) Role of the People in Accountability of Local Chief Executives in Indonesia**

The implementation of political decentralization, which has provided space for the public to elect local chief executive directly since 2004, has allowed for broad political participation and raised hopes for better local democracy. It has become even more evident with Law on Public Information Disclosure Number 14 of 2008 that allows the public to access government information, as well as the implementation of a participatory development planning system



starting at the village level through the Development Planning Deliberation (Musrenbang).

However, the weak role of the community in the local chief executives' accountability system due to the absence of a community sanction system has caused the mechanism for reporting local chief executives to the community to become a mere formality and is ceremonial. People have no means to provide feedback to the report and there is no obligation for local chief executives to answer citizens' questions. And it is a forgone conclusion that this has led to initiatives taken by several citizens to file lawsuits against local chief executives who failed to fulfil their campaign promises.

## V. CONCLUSION

Legal framework in both the Constitution and local government laws in Indonesia, the Philippines, and Malaysia regulate the implementation of decentralization. However, the central government, in practice, still maintains a substantial control over local government administration. Even though Malaysia, as a federal country, theoretically has an autonomous local government, the federal and the state governments still has a strong control over local governments.

Local chief executive accountability systems in Indonesia, the Philippines, and Malaysia can be summarized as follows:

Table 1

*Local Chief Accountability Systems in the Philippine, Indonesia and Malaysia*

Country	Political System	Legal Frameworks on Local Accountability	Accountability Model	Local chief accountable for ...
The Philippine	Unitary State, presidential systems	<ul style="list-style-type: none"> <li>The 1987 Constitution</li> <li>Local Government Code</li> <li>Republic Act 7160 as amended with the Republic</li> </ul>	<ul style="list-style-type: none"> <li>Upward accountability</li> <li>Horizontal accountability</li> <li>Electoral accountability</li> </ul>	<ul style="list-style-type: none"> <li>Local chief accountable for central government</li> <li>Local chief accountable for local council</li> <li>Local chief accountable</li> </ul>

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		Act 9244 on recall election		for constituents
		<ul style="list-style-type: none"> <li>• The Republic Act 3456 or the Internal Auditing Act of 1962 as amended with the RA 4177</li> </ul>		

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Indonesia	Unitary State, presidential systems	<ul style="list-style-type: none"> <li>• Local Government Code 32/2004</li> </ul>	<ul style="list-style-type: none"> <li>• Upward reporting</li> <li>• Horizontal reporting</li> <li>• Electoral reporting</li> </ul>	<ul style="list-style-type: none"> <li>• Local chief report to central government</li> <li>• Local chief report to local council</li> <li>• Local chief report to constituents</li> </ul>
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Malaysia	Federal, parliamentary systems	<ul style="list-style-type: none"> <li>• The 1963 federal constitution</li> <li>• The Local Government Law 1976</li> <li>• The National Audit Act</li> </ul>	<ul style="list-style-type: none"> <li>• Upward accountability</li> <li>• Horizontal accountability</li> </ul>	<ul style="list-style-type: none"> <li>• Local chief accountable for central government</li> <li>• Local chief accountable for local council</li> </ul>
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The administrative, fiscal, and political decentralization implemented in the Philippines is followed by the implementation of a direct local chief executive election system. This political decentralization featured various local chief executives' accountability systems, ranging from vertical accountability to the central government, horizontal accountability to local councils, and downward accountability or electoral accountability to the people. Electoral accountability grants the people the right to file recall election petitions to dismiss the local chief executives. Thus, the local chief executive's accountability system in the Philippines fulfils all the criteria for the accountability system, including the punishment feature that is accommodated by the recall election.

Indonesia's administrative, fiscal, and political decentralization is followed by the local chief executives' direct elections. The country's local chief executive's accountability system includes vertical accountability reporting to the central government, horizontal accountability reporting to local councils, and downward accountability or electoral accountability reporting to the people. However, regulations in Indonesia do not provide space for the public to file a recall petition to dismiss reporting those who are considered unable to perform well. The accountability reporting system doesn't also allow the central government and local council to sanction the poor performance of local head.

Meanwhile, the federal government system in Malaysia, which is supposed to guarantee greater local autonomy, denies political decentralization to local governments. Instead, it only provides administrative and fiscal decentralization, hence the people do not elect local chiefs and local councils. The local head accountability system applies only in the administrative and financial form to the federal and state government and local councils. However, there is no political/electoral accountability system of local chief to the resident.

Local autonomy and accountability norms that are clearly outlined in the Philippine Constitution leads to consistent norms on accountability and decentralization principles in the local government code. In contrast, Constitutions of Indonesia and Malaysia do not explicitly regulate the principles of decentralization and accountability, causing inconsistencies in the local government acts. As countries follow the rule of law, they can learn from the Philippine Constitution's strict arrangements on decentralization and accountability systems to ensure consistency of arrangements in the regional government law.

Indonesia and Malaysia also can learn from the Philippines' experience in designing legal framework for the local chief executive accountability system by strengthening political accountability and punishment systems. Mechanism for political accountability of local chief

executives in a decentralized system can be innovated into two main approaches: the participation approach in government and the control approach. The participatory approach can be realized in various innovative mechanisms such as referendums, initiatives, participatory planning and budgeting, public hearings, and public debates. Meanwhile, political accountability with a control approach can be realized through a recall mechanism, audit demands, and the right to file lawsuits.

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