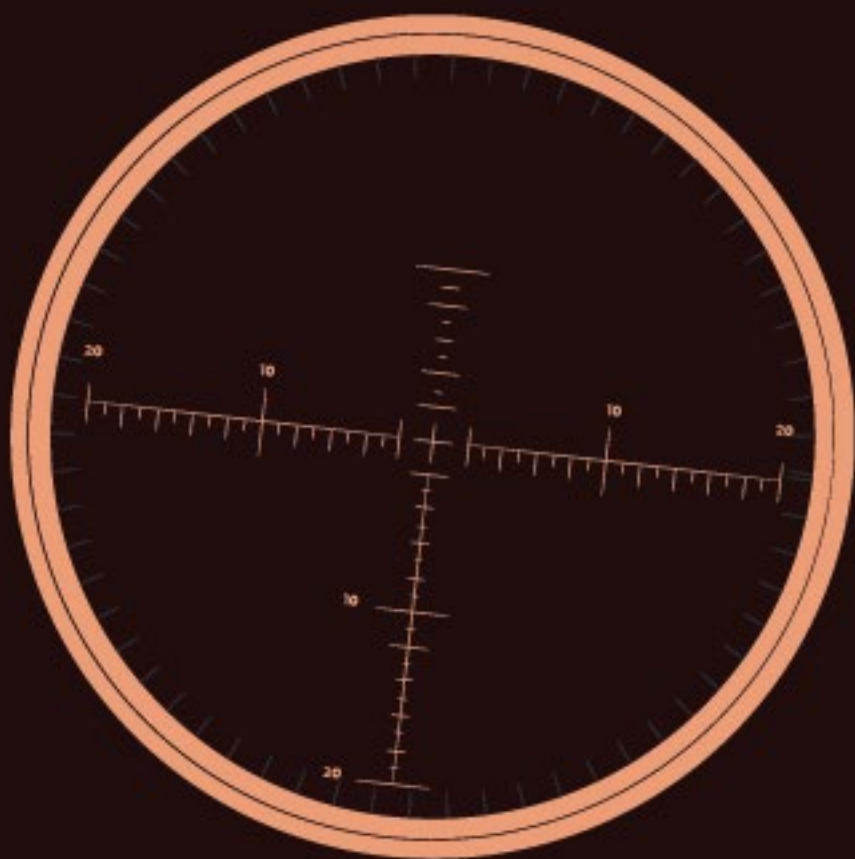


POLICY REVIEW

March 2022



The Role of Local Government in the Implementation of the *RAN PE*: Challenges and Problems



Herman Suparman, Ucu Aditya Gana, Gufron Maburi

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Policy Review

IMPARSIAL, The Indonesian Human Rights Monitor

Description

The Policy Review presents an original study of urgent social and political policies for the democratic situation in Indonesia, particularly on issues of Human Rights, Security Sector Reform, Human Rights Defenders, Abolition of the Death Penalty, Freedom of Religion or Belief, Torture by State, Papua Conflict Resolution, Extremism Violence and Terrorism. This writing addresses stakeholders, policymakers, academics, journalists, and the general public. This series of studies provides new policy insights and perspectives based on the situation, context and work in the field.

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I. Introduction

On 6 January 2021, President Joko Widodo signed Presidential Regulation number 7 year 2021 on the 2020-2024 National Action Plan on Preventing and Countering Violent Extremism that Leads to Terrorism (hereinafter referred to as NAP-PCVE). The Presidential Regulation on PCVE should be commended because it shows how the state is actively countering any action and/or belief that uses violent means or (?) to achieve specific objective. The NAP-PCVE can also be seen as a comprehensive strategy to ensure formulation of systematic, planned and integrated steps through active engagement of all stakeholders, as well as to serve as reference for ministries, state agencies and regional governments in implementing PCVE measures.

The NAP-PVCE places regional governments as key stakeholder. According to this regulation, PCVE Actions is defined as “activities or programs as further elaboration of the NAP-PVCE to be carried out by ministries, institutions and regional governments”. The above definition emphasized local government’s responsibility to implement the NAP-PVCE program and activities at the local level. The responsibility is under the central supervision-

monitoring mechanism that is carried out through the Joint Secretariat, established specifically to observe and coordinate all local PCVE Actions. The Presidential Regulation also mandates all regional government leaders (governors, *bupati* (heads of district), or mayors) to be accountable for the implementation of NAP-PCVE by coordinating with and submitting six-monthly report to ministry in charge of administering domestic government affairs (the Ministry of Home Affairs/MOHA). This responsibility given to the regional governments is reflected also in the regional government budget allocation for the implementation of NAP-PCVE. Article 9 of the regulation stated that funding for NAP-PCVE is sourced from central budget, regional budget, and other legitimate and non-binding source of fund in accordance with prevailing rules and regulations.

The NAP-PCVE can also be seen as the state’s endeavor to construct conducive security through systematic, planned, and integrated engagement of all stakeholders. Therefore, participation of regional government in the implementation of NAP-PCVE is an inevitability in a constitutional system of a decentralized unitary state.

II. NAP-PCVE in Central – Regional Government Relation: Collaborative Governance

Following-up on that context, the efficacy of NAP-PCVE implementation by the local governments can be studied within the framework of decentralization and regional autonomy system. Autonomy is achieved when regional governments are given the authority to administer and manage government affairs in accordance with prevailing rules and regulations (decentralization of administration). Therefore, regional governments are also given an authority to manage their own revenue and expenditures (decentralization of fiscal) and authority to build (?), accountable, and inclusive regional governments (decentralization of politic). Meaning, the implementation of NAP-PCVE is closely intertwine with the central-regional government authority, finance, and development-supervisory relations.

Implementation of NAP-PCVE in autonomous areas can only be accomplished if, and only if, the regional government is given an authority to do so as a result of delegation and/or transfer of authority from the central government. Therefore, mechanism of transfer of government authority is an inherent dimension in regional autonomy discourse. At the current implementation level, the authority took the course of devolution, de-concentration and delegation of authority, from the central government to “local administrative units, semi-autonomous and parastatal organizations, local governments, or non-governmental organizations”.¹ The three models of transfer of authority are intended to accelerate the achievement of people’s welfare through improvement of service, empowerment, people’s participation and increased regional competitiveness. Regional governments or local administration institutions that are the recipients

of those authorities will have the opportunity to administer and manage government affairs, starting from planning and budgeting to development, public service, as well as contextual program and activities.

Nevertheless, not all government affairs are transferred and delegated to regional governments. Law number 23 year 2014 on Regional Government divides government affairs into three categories:

First, absolute central government affairs. Those are authorities and responsibilities of central government, including foreign affairs, **defense, security**, justice, monetary and fiscal policy, and religion. In their administration, central government can independently carry out or delegate its authorities to regional government institutions or governor as representative of central government.

Second, concurrent government affairs, that are shared between central and regional governments. These affairs consist of (a) mandatory affairs in the form of basic services in: education, health, public works and spatial management, public housing and residential development, **public order, peace and community protection**, and social affairs; (b) non-basic service mandatory affairs, including: labor issue, women empowerment and children protection, food, agrarian affairs, environment, population administration and civil registry, community and village empowerment, population control and family planning, transportation, communication and information technology, cooperative (small and medium enterprises), investment, youth and sport, statistic, cryptography, culture, library, and archives; (c) optional government affairs, including maritime

1. Definition according to Cheema & Rondinelli, quoted from Wastiono, Sadu, 2010. “Menuju Desentralisasi Berkeseimbangan (Toward a Balanced Decentralization)”. Jurnal Ilmu Politik (Journal of Political Science), 21st Edition: pg. 31-50

and fisheries, tourism, agriculture, forestry, energy and mineral resources, trade, industry, and transmigration. Responsibilities within concurrent affairs are distributed in parallel between the district/municipal and provincial governments. The difference, according to Law number 23 year 2014, is on the scale or scope of each affair. Determination of the scale is based on the principles of accountability, efficiency, externalities, and national strategic interest. Administration of those affairs should be placed in the context of central-regional government. Regional governments should always refer to guidelines stipulated by the central government in administering those affairs.

Third, general government affairs, that include national character building and national resilience in order to strengthen implementation of Pancasila, implementation of Indonesia's 1945 Constitution, conservation of *Bhinneka Tunggal Ika*, and defending and maintaining the unity of Indonesia; **fostering national unity and integrity; fostering harmony of inter-ethnic and intra-ethnic, among religious community, ethnicity and other group in order to establish stability of security at the local, regional and national levels**, managing social conflict in accordance with rules and regulations. General government affairs are implemented by governors and *bupati*/mayors with assistance from subordinate institutions. Funding for general government affairs is sourced from National Budget. In implementing general government affairs, governors report directly to the president through relevant cabinet minister, and *bupati*/mayors report to cabinet minister through governors as representative of central government.

This distribution of government affairs should be a consideration in assessing efficacy and challenges faced by regional government in implementing the NAP-PCVE. It is important to identify, where prevention and countering of violence-based extremism that leads to terrorism falls within the different government affairs categories: absolute government affairs (defense and security),

concurrent government affairs (public order), or general government affairs (fostering unity and integrity, ethnicity/religious/race/group harmony). Although this action plan is a national level plan and it mandates regional governments to participate, its implementation is defined within existing framework of government administration.

To identify the NAP-PCVE position within government administration, it is important to consider the collaborative governance approach as an instrument to determine potential efficacy and challenges faced by regional government in implementing the national action plan. Regional governance includes management of policy, institutions, public service, planning and budgeting. Those variables are crucial to the success or failure of regional government, including efficacy of government program implementation. In current governance design, collaborative governance approach is considered to be an inclusive and effective instrument that placed all stakeholders in equally important position in every policy stage (agenda setting, design, implementation, and monitoring and evaluation).

According to Ansell & Gash,² collaborative governance is

"A governing arrangement where one or more public agencies directly engage non-state stakeholders in a collective decision-making process that is formal, consensus-oriented, and deliberative and that aims to make or implement public policy or manage public programs or assets".

2. Ansell, C., Gash, A., 2007. Collaborative Governance in Theory and Practice. *Journal of Public Administration and Theory*. 18.543-571

This definition highlights several important points in collaborative governance: (1) as a forum initiated by public agency or institution, (2) which participants includes non-state actor, (3) they are actively involved in decision making process and not merely “consulted with” by the public agency, (4) the forum is formally organized and met collectively, (5) the forum’s objective is to make decision through (?) even if (?) is not achieved in practice), and (6) collaboration is focused on public policy or public management.

The Ansell & Gash collaborative model consists of several important pillars, which are: first, starting

condition. At this stage, disparities (in power/ authority, knowledge, resources, and information) among stakeholders are identified. This process is aimed to design and mitigate collaboration risk. Second, collaborative process. It is a process of dialog aimed to build trust, to share knowledge/ insights, and to build common commitment. Third, institutional design that is the process of designing rules/regulations and institutions as commonly agreed upon foundation and way of life. Fourth, facilitative leadership. They are the captain who direct the collaborative work into commonly expected and established target/objective (outcomes).

III. Challenges of Regional Implementation

A. Policies

As a public policy, the NAP-PCVE emphasizes comprehensive engagement of government (central and regional) and community. However, once again, regional implementation of the NAP-PCVE is highly dependent on the current regional policy and institutional design as basis of government (affairs) administration at the regional level. Using the perspective of collaborative governance of Ansell & Gash, this section will review the starting conditions of Presidential Regulation number 7 year 2021 and Law number 23 year 2014 on Regional Government. The starting conditions will identify the position of the two regulations relative to each other and its relation of power (authority) among stakeholders that they regulate. Identification of this condition is important in order to have early identification of any structural challenges faced by regional government in implementing the NAP-PCVE.

Referencing Law number 12 year 2011 on Formulation of Rules and Regulations, Presidential Regulation is a regulatory product that is hierarchically positioned below a national law. Presidential Regulation 7/2021 is formulated in accordance with higher governing regulation especially Law 15/2018 on the Eradication of Criminal Act of Terrorism and Law 23/2014 on Regional Government (compare with legal principle of *lex superior derogate legi inferior*).

Principle Dimension: Certainty and Coherency of Authority. The Presidential Regulation stated that regional government is responsible in implementing the NAP-PCVE. In administering regional government affairs, any responsibility assigned must have a legal basis to assure its legitimacy. The responsibility is attached to the authority to administer regional government affairs in

accordance with the rules and regulations. Looking at how government affairs are structured, the authority to prevent and counter violent extremism that lead to terrorism should be a part of absolute government affairs (security). So, the NAP-PCVE should have been the responsibility of central government. Therefore, in principle, this transfer of responsibility in implementing the NAP-PCVE to regional government is actually problematic, because it contradicts the regional government's scope of affairs. This problem will potentially constraint regional government's subsequent actions, especially in its regional governance (policy, institution, and planning-budgeting), because regional governments can only establish regulatory or non-regulatory policies and regional institutions needed to implement the NAP-PCVE within the scope defined in Law number 23 year 2014 on Regional Government.

Empirical experience shows that regional governments focus their attention mostly on mandatory concurrent government affairs (basic and non-basic service) and optional government affairs. Those government affairs are clearly understood by regional governments as their responsibilities to carry out, and that they would be regularly supported and supervised in carrying out those affairs by the central government. Those affairs will also determine regional governments' (executive and legislative) competitiveness and political bargaining power in the eye of their community. This condition is confirmed

by a study done by the Wahid Foundation that identified weak regional policy respond in countering terrorism. Only two regional governments, City of Purwakarta and City of Depok, carried out de-radicalization program due to their local leaders' special attention to the issue.³

The next question is then, whether prevention and countering violent based extremism that leads to terrorism is part of general government affairs? If so, this action should fall under the category of "development of national unity and integrity; fostering inter-ethnic and intra-ethnic harmony, harmony among religious communities, races, and other groups in order to establish local, regional and national security stability." However, the responsibility for administering these affairs rests with the President as the holder of government power. This position of authority is confirmed in related regulations regarding funding for general government affairs that is sourced from National Budget, instead of Regional Budget. Therefore, although the affairs are implemented by governors and regents/mayors, the responsibilities continue to be at the central government (compare with Article 25 of Law number 23 year 2014).

Second, Substantial Aspect: Certainty and Clarity of Regulations. In principle, the distribution of responsibility in implementing the NAP-PCVE to regional governments is problematic. However, as mandated by Law number 23 year 2014, absolute government

3. Amin Mudzakir, etc.. Menghalau Ekstrimisme, Konsep & Strategi Mengatasi Ekstremisme Kekerasan di Indonesia (Dispelling Extremism: Concept and Strategy to Address Violent Extremism in Indonesia),(Wahid Foundation, 2018).

affairs should be implemented solely by the central government, or for the central government to delegate its authority to regional governments as representatives of the central government, based on de-concentration principle. Therefore, the distribution of the NAP-PCVE authority to regional governments can only be legitimate if and only if, it is part of the process of delegation (instead of transfer) of central government's affairs to the regional government through the mechanism of de-concentration. Based on our review, such mechanism of de-concentration was not explicitly stated in the Presidential Regulation on the NAP-PCVE. The regulation only stated that governors and regents/heads of district/mayors are responsible for the implementation of NAP-PCVE in their respective region. Therefore, the problematic principle issue can be addressed if the regulation includes provisions on delegation of responsibilities on the NAP-PCVE within the framework of de-concentration.

Other than amending the Presidential Regulation to include provisions on de-concentration, this problem can be addressed if, the central government can design supporting policy, such as Regulation of the Ministry of Home Affairs (Permendagri) that regulates the delegation of responsibility in implementing the NAP-PCVE to governors as representatives of central government at the regional level. The Presidential Regulation on the NAP-PCVE also did not specify in detail

the responsibilities of regional government in implementing the NAP-PCVE. Whereas, governors and *bupati*/mayors are required to submit six-monthly report to the Ministry of Home Affairs. In the attachment to the regulation, both in the PCVE actions column and institution-in-charge column, there is no explicit description of activities that regional governments would have to carry out. Implicitly, regional governments are made to only be reactive to programs and directions given by the Ministry of Home Affairs and relevant ministries/agencies.

For example, in Pillar I (Prevention), especially on Focus II (Building Awareness and Capacity of Stakeholders), the action of "formulating standard operating procedures to build community based early detection system" is considered to be the responsibility of the MOHA. Whereas, regional governments are noted as part of an "output," in that the central and regional government can carry out early detection on prevention of violent based extremism that leads to terrorism. In this case, the MOHA is expected to implement the early detection system in several areas (PCVE Action), however there was no further explanation on roles/responsibilities of regional government in that activity. Absence of such regulation will potentially affect regional planning and budgeting. PCVE activities are intended to be funded by State Budget, Regional Budget, and other non-binding funding source and in accordance with rules and regulation. Referring back to the previous

principle issue, using Regional budget to fund PCVE activities could generate problems because PCVE activities are not part of regional authority. So, is PCVE part of general government affairs? If so, authority to carry out general government affairs rests in the hand of the president. Even if the authority is implemented by governors and *bupati*/mayors, funding for the related activities should still come from National Budget.

Third, Legal-Judicial Aspect: Up-to-date and Judicial Completion. In this dimension, the Presidential Regulation on the NAP-PCVE should have made Law number 23 year 2014 as one of its legal considerations, because regional government is one of the stakeholders responsible for its implementation. The law on regional government provides certainty in terms of central-regional coordination in the implementation of the NAP-PCVE by regional government.

The three above issues (principles, substance, and legal-judicial) identify the starting conditions of the NAP-PCVE implementation at the regional level. First, the NAP-PCVE did not give any certainty in terms of regional government's responsibility in implementing the NAP-PCVE. The vague legal basis for regional authority and mechanism of transfer of responsibility (de-concentration) will potentially create hesitancy among regional governments to implement this national action. Second, said uncertainty will also create uncertainty in kinds of incentive and disincentive for the regional government in implementing this NAP-PCVE. This issue also

occurred in the absence of any arrangement on national supervision and monitoring models over regional implementation of the NAP-PCVE. Third, those uncertainties in terms of authority and incentive-disincentive will have continuous impact over regional planning and budgeting process. Regional planning and budgeting processes are crucial initial stage, as well as key determinant in either success or failure of this national action plan.

B. Institution

The Presidential Regulation on the NAP-PCVE mandates the establishment of a Joint Secretariat that consist of (?) ministry and relevant ministry/institution. The Joint Secretariat is tasked to coordinate, monitor and evaluate the ministries/agencies' implementation of the NAP-PCVE. The Joint Secretariat does not directly interact with regional government (governor/*bupati*/mayor). Report on the implementation of the NAP-PCVE is submitted to the Ministry of Home Affairs to be then forwarded to the Joint Secretariat. Based on that institutional relation, it is implied that regional government is relying upon the Ministry of Home Affairs policy for the implementation of the NAP-PCVE at the regional level. Such policy direction can potentially address the above principle issue (clarifying de-concentration mechanism), provide clear guidelines on what should carried out at the regional level, be it in the form of regional institutional policy or budgeting and planning for the NAP-PCVE activities. However, if the NAP-PCVE is considered as general government affairs to be carried out

by governor and *bupati*/mayor, then the heads of regional government will determine the institutional model at the regional level. Therefore, any implementation support, be it from the policy or institutional side, will be dependent on the capacity and political will of the regional leaders (political leadership). Head of regional government will determine whether to give the full responsibility to the Regional Office of National Unity and Politics, or to establish a multi-stakeholder collaborative institution.

C. Planning and Budgeting

Local planning and budgeting are determining instruments for the implementation of NAP-PCVE at the local level. Any vision-mission, policy, and program-activity can only be effective if they are incorporated in planning and budgeting document (Regional Revenue and Expenditure Budget/APBD). For that reason, implementation of NAP-PCVE should be traceable in various policy documents, such as National Priority, Government Action Plan, Regional Priority, and Regional Government Work Plan, as well as regional finance management guidelines.

Director General of Politics and General Administration of the Ministry of Home Affairs has instructed local governments to include the NAP-PCVE into their regional planning documents. “We have to discuss it since the beginning (of the process), then the Directorate General of Regional Finance of the Ministry of Home Affairs, as supervisory body of regional finance management, can include

issues related to the NAP-PCVE into their 2022 Guidelines for Regional Budget Formulation. Therefore, the regional governments can incorporate their program of activities into their Regional Budget. That is the concrete step that must be taken.”⁴

In their planning and budgeting processes, regional government has to comply with prevailing rules and regulations, including the Law number 23 year 2014 on Regional Government, Law on Central and Regional Governments Financial Relationship, Government Regulation number 17 year 2017 on Synchronization of National Development Planning and Budgeting, Government Regulation number 12 year 2019 on Management of Regional Finance, Regulation of the Ministry of Home Affairs on Guidelines for the Regional Revenue and Expenditure Budget Formulation, and Regulation of the Ministry of Finance on Management of Financial Transfer and Village Fund that is issued on annual basis. These regulations serve as guidelines (Norms, Standards, Procedures, Criteria) for regional governments in establishing their regional development plan and budget. For example, Regulation of Ministry of Home Affairs number 64 year 2020 on the Guidelines for the Regional Revenue and Expenditure Budget Formulation for financial year 2021 stated that formulation of 2021 Regional Government Budget should consider principles of suitability with the need to carry out government affairs that fell under regional authority, and capacity of regional revenue, as well as compliance to Regional Government Workplan (RKPD), General Policies

4. As stated by the Director General during official launching of the Presidential Regulation on the 2020-2024 National Action Plan on Preventing and Countering Violent Extremism that Leads to Terrorism (NAP-PCVE), in Shangri-La Hotel Jakarta, Wednesday (16/6/2021). <https://www.tribunnews.com/nasional/2021/06/17/kemendagri-beri-dukungan-kepada-bnpt-laksanakan-ren-pe-2020-2024>

of Regional Budget (KUA) and Temporary Budget Priority and Ceiling (PPAS). That means, their budget should be allocated to fund affairs that fall within regional government authority and in line with regional government planning, especially RKPD and KUA-PPAS. Other example, Government Regulation number 17 year 2017 asserts “money follows program” paradigm in the formulation of regional budget. The paradigm directs regional government to establish annual priority program that can then be funded by the budget. Regional priority should be in line with head of regional government’s vision and mission, as described in their planning documents (Regional Mid-term Development Plan / RPJMD and Regional Government Work Plan / RKPD).

Because the NAP-PCVE serves as control/guidelines, its inclusion-term in planning and budgeting proses at both the national and regional levels, must be secured. However, there are several potential problems at the initial stage. First, at the central level, from a quick reading of the 2020 National Priority document, the NAP-PCVE should be under Priority 7 “Strengthening the stability of political, law, security and human rights, and transformation of public service with policies aimed to establish democratic consolidation.” However, upon detailed look, the NAP-PCVE is not included in the list of Priority Program and Shortlisted Project based on the National Priority document. This absence can potentially ‘drown out’ the NAP-PCVE narrative in the budgeting and planning consultation and design processes within relevant ministries/institutions.

Second, at the regional level, based on the principle for regional budget formulation, authority is an important indicator. Therefore, as it has been described before, mechanism for NAP-PCVE related authority transfer to the regional government must be confirmed through other central government policies. For example, Regulation of the Ministry of Home Affairs on NAP-PCVE. It should be clarified whether the NAP-PCVE is indeed a responsibility bestowed to the regional government through mechanism of de-concentration and co-administration. The clarification will ensure that funding allocation for the plan is incorporated in the Special Allocation Fund (that includes funding for de-concentration and co-administration duties), that is set up to fund national priority that falls under regional government responsibility. This policy will give confidence to heads of regional government in including the NAP-PCVE into their planning and budgeting document. In addition, based on the ‘money follows program’ paradigm, it is possible for heads of regional government to exclude the NAP-PCVE from regional priority. They can focus on other programs that are considered to be regional priority or urgent needs.

IV. Recommendation

Based on the above analysis, this Policy Paper proposes two-step recommendation as a follow up for the NAP-PCVE at the regional level:

First, a collaborative process to build trust and to agree on scope of work and desired ultimate goal. The process should involve all stakeholders (government, military/police, representatives of religious institution, community and cultural leaders, tribal chiefs, universities/academia, components of civil society, mass media, etc.) This is a crucial step to determine regional policy and institution design needed to respond and follow up the NAP-PCVE at the regional level.

Second, design a collaborative-inclusive institution. This institution should be a place where all stakeholders can be involved in all governance aspects of the NAP-PCVE at the regional level (planning, budgeting, policy, and monitoring-evaluation). All stakeholders will contribute in accordance with their role/competence/expertise/interest in implementing all NAP-PCVE program at the regional level.

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Law number 23 year 2014 on Regional Government

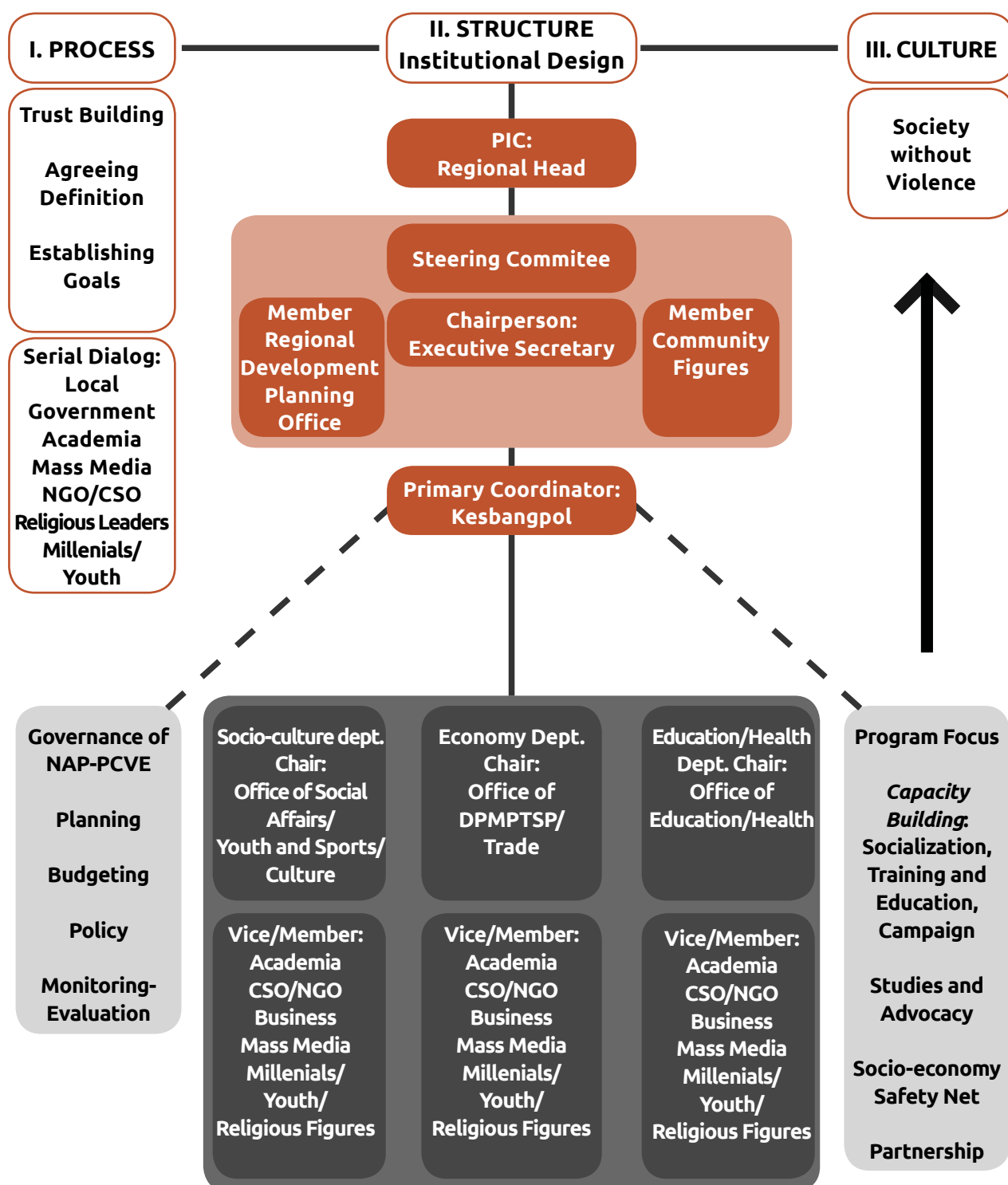
Law number 33 year 2013 on National and Regional Fiscal Balance

Regulation of the Ministry of Home Affairs of the Republic of Indonesia number 64 year 2020 on Guidelines for the Formulation of Regional Revenue and Expenditure Budget Fiscal Year 2021

Government Regulation number 12 year 2019 on Regional Finance Management

Government Regulation number 17 year 2017 on Synchronization of National Development Planning and Budgeting

Attachment: Proposed Follow-up Model for NAP-PCVE Implementation at Regional Level



Translator's Notes for above diagram:

- Bappeda: *Badan Perencana Pembangunan Daerah* / Regional Development Planning Office
- Kesbangpol: *Kesatuan Bangsa dan Politik* / Office of National Unity and Politics
- DPMPTSP: *Dinas Penanaman Modal dan Pelayanan Terpadu Satu Pintu* / Regional Office of Investment and One-Roof Integrated Service
- [blue square below "PIC: Regional Head Government"]:

Steering Committee

Chairperson:

Executive Secretary

