

BUREAUCRACY REFORM: A DILEMMATIC BUREAUCRATIC LAW POLITIC

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ABSTRACT

In a government bureaucracy is very important, because the bureaucracy has a role in providing services to the public interest. Each state policy organized by the executive in the form of state administration carried out by bureaucratic institutions. Bureaucratic failure implement its duties is government failure achieving good governance. The basic assumption of this paper is that bureaucratic reform important to do with the main goal in conducting the implementation of public policies effectively and efficiently.

Key words: Bureaucracy Reform, Law Politics

Introduction

Bureaucracy reform has become an interesting subject to discuss. There are many opinions, studies, and seminars organized to talk about the issue and clarify what it is and why it is needed and requires to be addressed. A thorough study, including its paradigmatic aspect, should also be done. However, the bureaucracy reform of the state apparatus is still being underestimated since it has not touched the fundamental part of the administration system. Practically, administration reform or bureaucratic reform has been reduced only by raising the salary of the personnel in a department and supervisory agency as well as appointing honorary staff as civil servants². The government has admitted that bureaucracy reform has not been implemented according to what the community expects³.

The proof showing that the bureaucracy reform in Indonesia has not been applied well can be seen in the survey index of good governance system, done by Governance Assessment Survey and Governance and Decentralization Survey. In 2007, a Human Development Report issued by UNDP recorded that Indonesia was in the 107th rank out of 177 evaluated countries, two ranks below Vietnam that is in the 105th position. In 2007/2008, Indonesia was in the 54th rank in Global Competitiveness Index, which is far below India (48), Thailand (28), Malaysia (21), and Singapore (7) among 131 surveyed countries. In the same year, Indonesia was also recorded as top corrupt countries in the world, stating that Indonesia was on the 143rd position among 178 countries. On the other hand, Vietnam was far better than Indonesia, sitting on 20 levels above Indonesia. Thailand, Malaysia, and Singapore were respectively 59, 102, and 139 levels above Indonesia⁴. Therefore, Zudan Arief Fakhruallah⁵ emphasizes that good governance means a government free from corruption, collusion, and nepotism.

The government's failure to establish good governance is closely related to the bad implementation of bureaucracy reform. There is trade-off toward change and also willingness to perpetuate the old tradition. As a result, it is not surprising that the concepts, policies, as well as reform programs become "half-done."⁶ The trade-off happens between the reformist party and the status quo party. The case is interesting to be observed and analyzed so that we can find the root of the problems, in which recommendations can be offered to fix them. Moreover, the bureaucracy reform done by the government is a law politic bureaucracy, which means that if there is failure in its application, it will totally affect the citizens' trust to the ruling government. In accordance to that, the writer wants to highlight and analyze the factors affecting the failure in bureaucratic reform, associated with local government decentralization law politics.

The Policy Of Bureaucracy Reform As A Bureaucratic Law Politic

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² Sofian Effendi, "State Apparatus Reform to Support Politic Democratization and Open Economy" in Agus Pramusinto and Wahyudi Kumorotomo (Editor). 2009. Governance Reform in Indonesia: Finding the Direction of Democratic Politic Institutionalization and Professional Bureaucracy". Gava Media. Yogyakarta. p. 91.

³ President Regulation Number 7 Year 2005 on Medium-Term Development Plan 2004-2009. Chapter 14. p.119.

⁴ Sofian Effendi.Op.cit. p.93.

⁵ Zudan Arief Fakhruallah, "Anti Corruption Values and Attitudes" in the Public Administration Journal 30th Edition. Year 2009. P. 30.

⁶ Abdul Malik Gismar and Syarif Hidayat (Editor). 2010. Half Done Reformation. PT. Mizan Publika. Jakarta. p. 5.

A. The Urgency of Bureaucratic Reform

The bureaucracy in Indonesia is considered to be very corrupt. This judgment has flawed the good reputation of Indonesia in the international world. The ruling government is considered to have failed to eradicate corruptions, despite the fact that corruption has caused big public financial lost and damage the morale of the authorized officers. The performance of the bureaucracy in Indonesia is ranked as the second worst in Asia, after India, in terms of efficiency in public services and foreign investment climate.⁷ In the scale of 1(for the best) and 10 (for the worst), India gets the score of 9.41, Indonesia 8.59, Philippines 8.37, Vietnam 8.13, China 7.93, Malaysia 6.97, Taiwan 6.60, Japan 6.57, South Korea 6.13, Thailand 5.53, Hongkong 3.49 and Singapore 2.53. Meanwhile, the index of corruption perception attained in SBY-JK presidential era showed a very slow progress. In the scale of 1(for the best) and 10 (for the worst), the good governance system in Indonesia achieved some betterment, from 2.0 in 2004 to 2.9 in 2006 and 2.8 in 2009.⁸ If compared to other nations, Indonesian corruption perception index was in a very low rank. Yunwon Hwang⁹ illustrates that, "according to CPI (Corruption Perception Index), Korea ranks 39th with Brunei and Oman out of 180 countries, while Indonesia ranks 111th with seven other countries such as Djibouti, Egypt, Kiribati, Mali, Sao Tome and Principe, Solomon Islands and Togo. In Relation with the 1th ranked country of New Zealand..."

Taking the data into account, it cannot be denied that the bureaucracy in Indonesia is far from what is expected by the public. Bureaucracy is often seen as the main reason that causes corruption and is considered as a barrier of the investment entering Indonesia. Moreover, bureaucracy is said to be the impediment of the bureaucracy reform in Indonesia.

The decentralization policy in the establishment of regional government, upon the application of Law No. 22 Year 1999 about Local Government, has changed the paradigm of local government establishment in Indonesia. The law has expanded the authority of the local government. The local government, especially the regencies and municipalities, has really big opportunities to reform the administration system, so that it has competencies to perform maximum results in doing its service, development, and other functions.¹⁰

External factors also influence the implementation of bureaucratic reform in the country. It includes the reduction of involvement or interference in the public activities. IMF and World Bank schemes in giving funds require the crisis nations to reduce their involvements in various sectors. Even before crisis hit Asia, IMF and World Bank, along with the United States of America, have issued a package called "Washington Consensus" that underlines some steps to decrease the level of country's or government's interference in dealing with economic problems.¹¹

B. Bureaucracy Reform as A Law Politic Bureaucracy

Bureaucracy reform¹² is basically an effort to renew and make fundamental changes toward the government system, especially when dealing with institutional aspects (organization), business process, and human apparatus. Therefore, bureaucracy reform is a strategic step to develop more empowered and effective apparatus in performing the general duties in the governmental sectors and national development. Talking about the bureaucracy reform is similar to putting efforts on implementing system and bureaucratic behaviors restructuring and repositioning to achieve good governance.¹³ As a result, the reform is aimed to create a professional bureaucracy system and develop adaptive, integrity, efficient, and clean government officers so that they can serve the public neutrally, properly, and with high level of dedication, by holding the basic values and ethic codes of the nation's apparatus.¹⁴

The law politic is an official legal policy about the law implemented in the country, both in the creation of new laws as well as the amendments of the previous law, with the purpose of attaining the nation's goals.¹⁵ Thus, the bureaucracy reform option taken by the government to be implemented in the administration of the state government is the law politic bureaucracy. This statement is proven by the issue of some policies about bureaucracy reform, such as:

1. MPR Decree Number: II/MPR/2002 on Policy Recommendation to speed up the National Economy Recovery, which mandates the acceleration of national economy recovery, including the bureaucracy reform and the administration of a clean nation and businesses.

⁷ Bureaucracy Survey Result 2010 by Political and Economic Risk Consultancy (PERC) in front of 1.373 expatriate executives, early 2010. Media Indonesia Daily, 4 June 2010.

⁸ President Regulation No. 5 Year 2010 on Medium-Term Development Plan 2010-2014

⁹ Yunwon Hwang, "Comparative Overview of Indonesian and Korean Governance", in Ambar Widyaningrum and Jin Park. 2011. Governance Reform in Indonesia and Korea: A Comparative Perspective. Gajahmada University Press. Yogyakarta. p.27.

¹⁰ Agus Herianto Hadna, "Mutualism Symbiotic between Bureaucracy and Politic in the Local Government" in Wahyudi K and Ambar W (Editor). 2010. Gava Media. Yogyakarta. p.153.

¹¹ Erwan Agus Purwanto, "Strategy to Implement Public Service Standard for Bureaucracy Reform" in Agus Pramusinto in Erwan Agus Purwanto (Editor). 2009. Bureaucracy Reform, Leadership, and Public Services: A Study on the Indonesian Local Government Autonomy" Gava Media. Yogyakarta. p: 300.

¹² MENPAN Regulation No.: PER/15/M.PAN/7/2008 on General Guidelines of Bureaucracy Reform.

¹³ Miftah Thoha, "Bureaucracy System and Behaviors Reform toward Good Governance," in the Journal of Public Administration. 30th Edition. Year 2009

¹⁴ President Regulation Number: 81 Year 2010 on Grand Design of Bureaucracy Reform

¹⁵ Moh. Mahfud MD. 2009. Law Politic in Indonesia. PT Raja Grafindo Persada. Jakarta. p: 1.

2. MPR Decree Number: VI/MPR/2002 on Recommendation toward the report of the Implementation of People's Consultative Assembly's verdicts, made by the president, DPA, DPR, BPK, and MA in the Annual Session of the Assembly of the Republic of Indonesia Year 2002, which mandates the eradication of corruption, the enforcement of legal certainty, and the bureaucracy reform, with an emphasis on transparent, accountable, clean, and responsible bureaucratic cultures, so that they can truly be the state and public servants.
3. Law Number 17 Year 2007 on the National Long Term Development Planning of 2005-2025, which affirms that the development of the state apparatus is done through the bureaucracy reform.
4. Regulation of the President of Republic Indonesia Number 7 Year 2005 on the National Medium Term Development Planning, which asserts on the creation of clean and charismatic governance through bureaucracy reform.
5. The Minister of State Administrative Regulation Number: PER/15/M.PAN/7/2008 on the general guidelines of bureaucracy reform.
6. The Minister of State Administrative Regulation Number: PER/04/M.PAN/4/2009 on the guidance to do document filing of bureaucratic reform proposal in the Ministry/Institutions or Agencies/Local Government level.
7. Regulation of the President of Republic Indonesia Number 5 Year 2010 on the National Medium Term Development Planning year 2010-2014, which states that bureaucracy reform and governmental administrative are among the top priorities in the 11 national priorities.
8. Regulation of the President of Republic Indonesia Number 81 Year 2010 on the Grand Design of Bureaucracy Reform of 2010-2025.
9. The Minister of State Administrative Regulation and Bureaucracy Reform Number: 20 Year 2010 on the Road Map of Bureaucracy Reform of 2010-2014.

All the regulations served as the basis of bureaucracy reform implementation stated above are designated as legal laws. Those laws are used as tools¹⁶ to achieve the goal of the nation to actualize good governance. Apparently, the function of the laws is not only as a mean to sustain the stability of the societies that are participating in the development and face rapid changes, but also to help the changing processes in the society itself¹⁷. Therefore, the bureaucracy reform laws are more than just tools to guide the bureaucracy reform policies. They are also needed to change the bureaucracy behaviors so that all the duties as the public servants as well as agents of change in the society can be performed well.

C. **Problems of Bureaucracy Reform and Policy Recommendations**

Reformation is a systematic, integrated, and comprehensive efforts aimed to realize good governance.¹⁸ Apparently, the word "reformation" is easier to say, but is difficult to perform. We often hear and read the comments come from the society members about the accomplishment of today's reformation. The activists of the 98s movement call it as "Reformation is torpor."¹⁹ In addition, some also say that there are various sectors that have not been touched by the reformation. Some of them are the legal sector, the usage of public/state money, and the behaviors of the state apparatus that have not fully supported the interest of the people. Those are some examples of disappointment remarks said by the people. They feel dissatisfied because the painstaking struggles to do the reformation have been used by certain parties to gain their own interests, even after some lives have been sacrificed during the reformation process.

One factor that causes the implementation of reformation has not been done properly, including the bureaucracy reform, is the coalition governmental system, in which the president and the vice president are directly elected by the people, but they do not come from a single party. Instead, both of them come from different political parties that form a coalition. Even, the ministers in the cabinet are also the result of the coalition parties. Therefore, the presidential government becomes weak. Furthermore, the political parties in this reform era often do some intervention in the government bureaucracy so that it limits the governmental discretion.²⁰ The line between the duties of the politicians and the duties of the bureaucracy apparatus becomes unclear. In accordance to the statement, Hosahir Singh²¹ from India questions "Is good governance possible under coalition governance? Moreover, he explains that "The specter of coalition governments is looming larger and larger on the political horizon of India and I feel that it is duty of the scholars assembled here to dissect the phenomenon of coalition government more thoroughly because under some circumstance, coalition governments may mean no governance." Thus, it is clear that in a coalition government, it is extremely difficult to establish good governance. So, what is the function of all of the laws and regulations mentioned above? Are they merely rhetoric or are they forced to be done to make the people involved in the process of their implementations so that the government is considered to have accommodated the public aspirations into the public policies?

The implementation of the local government decentralization in the government administration system as what is stated in the Law Number 22 Year 1999 on Regional Government is proven to be welcomed by all the people of Indonesia because the regulation makes most of the central government authorities are given to the local government. This policy is chosen by

¹⁶ Ibid. p : 2

¹⁷ Mochtar Kusumaatmadja.2006. Law Concept in Development. PT.Alumni.Bandung. p. 14

¹⁸ Sedarmayanti.2009. Public Administration Reform, Bureaucracy Reform, and the Interests of the Future (Establishing Service Excellence and Good Governance).PT.Refika Aditama.Bandung.p: 67.

¹⁹ Equator Daily, Friday 20May 2011, p.1.

²⁰ Miftah Thoha.2009.Indonesia Bureaucracy in Reformation Era. Kencana. Jakarta. p: vi-viii.

²¹ Hoshiar Sings, dkk(Editor).2007.Coalition Governments and Good Governance.Aalekh Publishers, Jaipur, India.p : 6-7.

the government not only to fulfill the public demand following the 1998 reform, but also to meet the international pressure. A democratic government is closely related to decentralization system. Studies done by World Bank in 1224 stated that among 100 democratic nations, 95% of them have performed decentralization.²² The government of Indonesia seemed compelled to accept the decentralization law politic the centralized power and authority of the government that had been highly centralized in the past.

The new authority given to the local government to rule their own region has caused several new problems. Tendencies for corruption cases to happen when the local government gives services to the public seem still high.²³ It is because some of the old bureaucracy habits from the “new regime” of the past government are still preserved, for example the “envelope culture” that exists in a hierarchy bureaucracy system. In the system, the patron-client culture is highly respected, causing the low level officers give their high level of loyalty to their super ordinate instead to the visions and missions of the public services.²⁴ As the result, the decentralization policy has enriched the corruption, collusion, and nepotism practices in the local government level.

Collusion between the bureaucracy and local politicians grow rapidly along with the implementation of decentralization. The issues of the native personnel and political career positions have created frictions between local bureaucrat elites as unhealthy competitions emerge.²⁵ The increasing number of regency or municipality government officers, which is five times higher than the previous period, has made the number of local budgeting plan becomes heavier.²⁶ On the other hand, there are also efforts to cover up some of the budget of the Regional Representative Assembly (DPRD) into the budget of the Local Government Working Units (SKPD), which are overlooked by the politicians.²⁷ Their implications toward the public interests are ignored. “In many provincial budgets, development expenditures are far lower than expenditures on salaries of regional government officials. In the province of Bengkulu, for example, 38 percent of the budget expenditure allocation goes to the payment of public official salaries and just a mere 15.6 percent is for development expenditures.”²⁸

Basically, the background of the reformation in Indonesia was caused by: (1) Corruption, collusion, and nepotism practices that are still ongoing until now; (2) The level of public services qualities that have not met the public demands; (3) The inadequate level of efficiency, effectiveness, and productivity in the government bureaucracy; (4) The low level of transparency and accountability of the government bureaucracy; and (5) The low level of discipline and working ethos of the government officers.

The opinion of the Audit Board of Republic of Indonesia (BPK) on the poor management of the state money is one reality that has to be accepted as a measurement tool of the implementation of bureaucracy reform in Indonesia. The Audit Board (BPK) also said that the financial administration in the level of ministries or state institutions has increased, which was said in the BPK report as “Unqualified Opinion,” rising 15 entities from 19% in 2007 to 34 entities (41%) in 2008 and 44 entities (57%) in 2009. Meanwhile, in 2009, the opinion of “Qualified Opinion” was given only 26 entities (33%), “Adverse Opinion” of 0%, and “Disclaimer Opinion” of only 8 entities (10%). BPK also checked the local government financial management and gave the opinion of “Unqualified Opinion” from 4 entities (1%) in 2007 to 12 entities (3%) in 2008 and 14 entities (4%) in 2009. On the other hand, the “Qualified Opinion” increased from 283 entities (67%) in 2007 to 324 entities (67%) in 2008 and 259 entities (54%) in 2009. “Adverse Opinion increased and “Disclaimer Opinion decreased from 2008 to 2009.”²⁹

The low level of “Unqualified Opinion” and “Qualified Opinion” in the local government financial management has become an important concern for the local governments. Concerns about the local government efforts inspired a statement made by the Deputy of Oversight and Accountability of the Ministry of Administrative Reform and Bureaucratic Reform that the implementation of bureaucratic reforms that will be done in the early of 2012, is expected to threaten the position of the regional leaders. It is because from eight areas of changes that become the target of reform, one of them mention about the transparency of regional leaders’ financial management.³⁰

Considering many of the problems in the implementation of bureaucracy reform above, it is necessary to change the national legal system. It includes the changes in the legal structure sub-system, legal substances, and legal cultures.³¹ The legal

²² Miftah Thoha.2009.Op.cit.p : 82

²³ Agus Dwiyanto,et. al. 2008. Public Bureaucracy Reform in Indonesia.Gajah Mada University Press.Yogyakarta. p: 83.

²⁴ Kausar.2009. Bureaucracy System in the Local Government in the Shadow of Patron-Client Culture. PT.Alumni Bandung. p: 10.

²⁵ Agus Hernanto Hadna, “ Mutualism Symbiotic between Bureaucracy and Politic in the Local Government” in Wahyudi K and Ambar W.2010. State Apparatus Reform Revisited.Gava Media.Yogyakarta.p: 164.

²⁶ Ibid.p: 169.

²⁷ Ibid.p: 171.

²⁸ Agus Pramusinto, “Tensions in Indonesia’s Central-Local Relations and Comparison with Korea Case”, in Ambar Widaningrum and Jin Park (Editor).2011.Governance Reform in Indonesia and Korea : A Comparative Prespective.Gajah Mada University Press.Yogyakarta.p : 363.

²⁹ Audit Board of the Republic of Indonesia.2010.The Summary of 1st Semester Audit Year 2010.BPK-RI.Jakarta.p: 2-6.

³⁰ Equator Daily, Saturday, 21 May 2011.

³¹ Lawrance M. Friedman, The Legal System: A Social Science Perspective, translated by M.Khozim. 2009. Legal System: Social Studies Perspective. Nusa Media.Bandung

structure is the personnel and institutions that perform judicial processes. The legal substances are the legal norms, such as regulations, decrees, etc. used by law enforcers. Legal cultures are ideas, attitudes, hopes, and opinions toward law. It is the law cultures that create differences in the law enforcement process between community members.³² Whether or not someone uses or obeys the laws is highly influenced by the legal cultures he or she has.³³ So, the legal cultures of the state apparatus should be understood on the first hand before we do bureaucracy reform. The state apparatus is a part of the community members and as a part of the societies, the bureaucracy implemented should closely be related to the values prevailing in the societies. A. Muin Fahmal³⁴ gives an example of *Pangadereng*, which is the life guideline for *Bugis* society as well as the benchmark of the assessment of the laws and regulations in force today. As a fundamental value, *Pangadereng* has extensive and open natures toward the dynamic life of the society. It is proven by its elements that contain *assituruseng* principles (deliberation and consensus) as its highest rule.³⁵ In Malay language, there is a saying that has a similar meaning to that, “*Bulat air karena buluh, bulat kata karena mufakat.*” If those values are collected and used to support the development of communities’ legal cultures, it can be assured that bureaucracy reform policy can be done properly as expected.

Because bureaucracy is a part of the community, it is better if the bureaucracy develops in line with the development of the society. One example of the modernization of bureaucracy culture is by the development of *e-governance*, which is an effort to increase the public services through various information-technology innovations, such as e-procurement, e-learning, etc. in order to increase the government performance and to fulfill the expectation of public services cultures. Therefore, a way to modernize the bureaucracy is extremely needed so that the working systems, mindsets, and cultures of the state apparatus can also change.³⁶

The salary of the civil servants in Indonesia is relatively low, so that it affected the working performance of the government officers. Often, they are trying to find additional incomes to fulfill their daily needs. The payroll system in Indonesia is still considered confusing and does not reflect suitability between workloads and salaries.³⁷ The salary of the president is lower than the salary of the director of State Owned Enterprises. Based on the Government Regulation Number 8 Year 2009, the lowest basic salary of the civil servant is Rp. 1,040,000 for the Category I/a, with the tenure of 0 year. On the other hand, the highest basic salary for the Category IV/e with the tenure of 32 years is only Rp. 3,400,000. So, the ratio between the lowest and the highest basic salary is only 1:3.26.

To compare with, the lowest civil servant basic salary is Rp. 4,282,972 and the highest is Rp. 171,320,100, with the ratio of 1:40. In Brunei Darussalam, the lowest salary is Rp 4,112,245 and the highest is Rp. 103,591,610 with the ratio of 1:25.19. In America, the lowest civil servant basic salary is Rp. 10,884,570 and the highest is Rp. 308,033,333 with the ratio of 1:13.³⁸ It is clear that the salary of the civil servants in Indonesia is the lowest, and the comparison between the highest and the lowest salaries is also low. Based on the data, it is natural that there are many parties want to demand higher salaries for Indonesian Civil Servant as an effort of bureaucracy reform.

The increasing amount of salary for the civil servants is highly expected by both the civil servants and the community, but it will certainly drain up the state financial. The Finance Department has tried to apply a remuneration system which has been applied since 2007. The amount of the highest allowances for the state financial coaching is Rp. 46,950,000 and the lowest is Rp. 1,330,000 or 1:27. For the Finance Department itself, an additional amount of Rp. 5.2 trillion is needed.³⁹ If this remuneration policy is continued to other institutions, the amount of budget allocated for the development of the state and the local region will be low. Therefore, the increasing amount of the civil servants’ salary should be done gradually and the government should also reduce the number of new civil servants, except to replace those who are pension (zero growth), at least for the next five years. The government should find other alternatives to solve the problems in bureaucracy reform. It means that the efforts to do bureaucracy reform still needs to be carried out seriously, but the effort to improve the legal culture of the community members, such as the politicians, NGO members, law enforcers, etc., should also be done because pressures from those parties often force the civil servants to do something against the law.

Conclusion

Bureaucracy reform is a policy of bureaucratic law politic that has been established by the government and should be considered as a dilemmatic policy because the policy highly influence further bureaucracy performances. It is possible that bureaucracy reform will make the civil servants become unproductive. They just fulfill their duty for not coming late to the offices, but they hardly do anything. They arrive at 7 in the morning and return back home at 3 p.m.; during the office hours, they just sit down,

³² Esmi Warassih. 2011. *Legal Institution: A Sociology Perspective*. UNDIP. Semarang. p:60

³³ *Ibid.*:p: 63

³⁴ A. MuinFahmal. 2008. *The Role of Appropriate General Governance Principles to Establish Clean Government*. Kreasi Total Media.Yogyakarta . p: 168

³⁵ *Ibid.* p: 166.

³⁶ Feri Anggoro Suryokusumo, “Bureaucracy Culture versus Civilized Bureaucracy”, in Agus P and Wahyudi K.2009. *Governance Reform in Indonesia: Finding the Direction of Democratic Politic Institutionalization and Professional Bureaucracy*. Gava Media.Yogyakarta. p: 345.

³⁷ Agus Pramusinto, “Several Notes on Payroll System for Civil Servants in Indonesia” in Wahyudi K and Ambar W.2010.op.cit. p: 72

³⁸ *Ibid.* p : 73.

³⁹ *Ibid.* P: 60.

read the newspaper, chat, etc. It happens because some of the civil servants avoid legal consequences of doing something or holding positions in the office. What is the advantage of having a position, but you will end up in the jail?

Problems in bureaucracy environment are so complex and dilemmatic. However, as part of the reform policy, bureaucracy reform has to be done seriously, involving all the state apparatus to participate. Sanctions should be given for any violation and postponement of bureaucracy reform, and rewards should be given for the opposite so that they can set examples for further apparatus coaching.

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