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Asymmetry in a Decentralized, Unitary State: Lessons from the Special Regions of Indonesia

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Abstract

Since the enactment of its post-war Constitution, Indonesia has recognized asymmetry as an important tool to accommodate and manage the complexity of its population and its regional diversity, while at the same time retaining its unitary character. Indonesia has 260 million people, 300 ethnic groups, a large number of islands and 34 major provinces. The founders of the Indonesian state had to strike a balance between harnessing an integrated national political culture and recognizing the complexity and unique characteristics of its regions. Under the current Constitution, therefore, five of Indonesia's 34 provinces have special status with asymmetrical powers and functions. Each of the special regions has a unique background and circumstance that, in some cases, predates the existence of the Indonesian state. Although asymmetric decentralization adds complexity to the administration of the Indonesian state, it keeps the country together by allowing constitutional space for regional uniqueness, managing the stresses that arise in deeply divided societies. Indonesia's combination of symmetry and asymmetry provides unique lessons for other countries trying to strike a balance between unity and recognition of diversity.

Key words: Decentralization, Indonesia, Special regions, Asymmetry, Accommodation of diversity, Self-government, Aceh, Papua, Jakarta, Yogyakarta

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Asymmetry is a system whereby special powers and functions are granted to subnational governments¹ within federal and decentralized unitary systems. In federal systems, it is usually the federal constitution that guarantees the special powers of the region; in unitary systems, it is usually done by a statute of parliament (Weller and Nobs, 2012). Asymmetry implies that some regions are treated differently to other regions within the same country in terms of the nature, scope or extent of their powers and functions. The special powers of a region can, for example, relate to specially designed governmental institutions (e.g. recognition of traditional authorities or monarchy), the electoral system (e.g. reserved seats for minorities or traditional leaders), the use and allocation of natural resources by and to the region (e.g. special formulae for income to be retained or returned to the region), or the scope of legislative and administrative powers and functions (e.g. expanded autonomy in areas such as land management, culture, education, and criminal and family law) (Funk, 2010).

Watts uses the term ‘constitutional asymmetry’ where the difference between subnational units ‘in the status or legislative and executive powers is assigned by the constitution...’ (2007: 127). A more apt term may be ‘legal asymmetry’, which refers to the differences in constitutional or statutory arrangements between regions. The rationale for creating special, asymmetrical regions is often found in the unique history of a particular region (e.g. Aceh in Indonesia or Scotland in the UK), the geographical separation of the region from the rest of the country (e.g. Corsica in France), the capital status of a region (e.g. Jakarta in Indonesia) or the unique language, cultural or religious identity of the regional population (e.g. Canada’s Quebec, Spain’s Catalonia or Indonesia’s Yogyakarta) (Requejo Coll and Klaus-Jurgen, 2010).

Asymmetry is, generally speaking, a less-preferred option in constitutional design since it inevitably adds complexity to any multitiered arrangement. Asymmetry is usually adopted as an exceptional solution to a situation where legal symmetry does not adequately cater for the unique circumstances of a country. Asymmetry is often only granted after some form of protestation by disgruntled regions, as a special condition to amalgamate new regions into a sovereign state, as a tool to prevent or curb secession of a region from an existing sovereign state, or to reduce or manage violence within a region by recognizing its unique status. Examples of countries that have regions with legal asymmetry include Spain (Catalonia), Italy (South Tyrol), Canada

(Quebec), the United Kingdom (Scotland), China (Hong Kong) and Indonesia (Aceh, Yogyakarta and Jakarta). The Philippines is currently in the process of a constitutional review to grant asymmetrical powers to the area of Bangsamoro (also known as Mindanao) (de Villiers, 2015).

This article focuses on the special regions of Indonesia and discusses the reasons, and statutory arrangements, for their asymmetry. The analysis is aimed at gaining greater insight into how asymmetry has been used to retain the integrity of the Indonesian state and to identify possible lessons for other nations facing the twin objectives of recognizing regional diversity and promoting national unity. There are several conflict areas, particularly in Asia and the Middle East, where the experience of Indonesia may be relevant – particularly in light of the role of the Islamic faith and Sharia law in the special status of Aceh, the role of the monarchy and traditional leaders in Yogyakarta and Papua respectively, and the way in which regions may utilize and share local resources.

Background to asymmetry in Indonesia

Asymmetry in Indonesia has been pursued by necessity rather than by a grand philosophy. It has enabled Indonesia to cater for the unique circumstances of the respective regions, to retain national unity and to involve local communities in matters that affect their daily lives. Indonesia's circumstances arise from a combination of factors, including its 260 million people, the complexity arising from 300 ethnic groups, the large number of islands comprising the country and the 34 major provinces which demanded a form of decentralized government (Pratiwi, 2002). Bell describes the complexity of the population composition of Indonesia as follows:

Indonesia is a fascinating amalgam of ethnicities, languages, cultures, and religions, united by history, by a common national language, by political will and sometimes by sheer force, and spread over thousands of separate, distinct, and often distant islands (2003: 119).

The form that the State of Indonesia would take was one of the important issues discussed by the Investigating Committee for Preparatory Work for Independence, or *Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan* (BPUPK), set up by the Japanese at the end of the occupation in 1945. There had been proposals for a federal Indonesia, but this never gained wide support (Alrasyid, 1999). The majority of the founders preferred the concept of a unitary state, but it was also acknowledged that special rights of autonomy would have to be granted to the original regions. A decentralized, asymmetrical unitary arrangement was seen as an adequate balance between the needs for national unity and the demands for special regional autonomy (Rakyat, 2005). Even during the colonial era, the Dutch *Decentralisatie Wet 1903* (Decentralization Act) acknowledged that not all regions could be managed in a uniform manner, owing to their historic origins (Haris, 2003). The 1945 Constitution thus foreshadowed the creation of special regions but did not list those regions or enumerate their powers (Kusuma, 2004: 177).

This constitutional framework was consistent with concurrent debates in India where a *de facto* federal system was negotiated, although the Constitutional Assembly called it a ‘union’ (Isra, 2000: 1). As in South Africa, India and the Philippines, the word ‘federal’ has never been popular in Indonesia; sceptics feel it implies an emphasis on diversity with a risk of undermining national unity. The founders of the Indonesian state had to strike a balance between harnessing an integrated national political culture and recognizing the complexity and unique characteristics of the respective regions that made up the new sovereign nation (Isra, 2012). Several objectives had to be pursued simultaneously: decentralization to regional and local governments, design of an administrative framework that accommodated regional diversity within a unified country and accounting for limitations in the administrative capacity of subnational governments to discharge their functions (Jaweng, 2011: 32).

Indonesia has, for some time now, been experimenting with different degrees of asymmetry with regard to five special regions (Chapter 6 of Constitution of 1945 as amended), namely *Nanggroë Aceh Darussalam* (Aceh), Papua, West Papua, Jakarta and Yogyakarta (McGibbon, 2004). An interesting aspect of Indonesian asymmetry is that there is a different rationale for each of the special regions; for example, Aceh’s situation is principally informed by the strong adherence to the Islamic faith and Papua’s asymmetry is predominantly in

recognition of its traditional laws and customs (Bertrand, 2007: 580). But whereas asymmetry in some regions (Aceh, Papua, West Papue and Yogyakarta) has historical roots that can be traced back to the Dutch colonial era, there is also a contemporary rationale for introducing asymmetry, in the case of Jakarta, where it was pursued due to its status as the capital city. Time will tell whether more provinces – Bali for example – will seek special status. But at present, policymakers are not seriously considering expanding asymmetry to other provinces.

The following sections provide an overview of the efforts to accommodate the historic regions by way of asymmetrical arrangements, the challenges experienced and the nature and extent of current asymmetrical arrangements.

Asymmetry in constitutional design

It is widely acknowledged that asymmetry in the allocation of regional powers and functions can be a useful mechanism to retain national territorial integrity and prevent and manage conflict that may arise as a result of special regional circumstances (McGarry, 2007). The trade-off in asymmetry is that special powers and functions are decentralized to a region, and in return, the region accepts the national authority and sovereignty of the nation of which it forms a part.

Tarlton played a leading role in applying the concept of ‘asymmetry’ to the special allocation of powers and functions to certain regions (1965). He saw asymmetry as an arrangement whereby varying degrees of autonomy and power are granted to regional governments by statutory or constitutional arrangements to accommodate the unique features of the beneficiary region. More recently, Watts described the potential benefit that asymmetry offers as follows:

Asymmetrical constitutional and political arrangements appear to have made possible the accommodation of deep diversity that could not otherwise be reconciled within a symmetrical organization (2005: 45).

Although asymmetry is often associated with federal systems of government (Burgess, 2006), asymmetrical arrangements are also found in decentralized unitary systems, most notably in the United Kingdom, Italy, Spain, Tanzania and Indonesia. Asymmetry is therefore associated

with multitiered systems of government, be it in federations or decentralized unitary states (Funk, 2010).

The reasons for states opting for asymmetry may vary, but it is often pursued in an effort to accommodate an ethnic minority whose members are concentrated within a specific region, from where they demand special recognition and self-government. Asymmetry therefore reflects the ‘pragmatism that underlies decentralization and the organization of powers of government on a subnational level’ (de Villiers, 2015: 274). Burgess speaks about asymmetry as ‘Janus-faced’ since it is perceived as a ‘positive instrument’ to sustain diversity, but it may also be seen as disturbing the equilibrium of the system (2006: 209).

Asymmetry does indeed have two faces. On the one hand, it represents flexibility, diversity and pragmatism. On the other hand, it carries the risk of secession, eroding national unity and concerns about minorities within the region being exposed to unfair treatment by a regional majority. Watts acknowledges these risks, but also notes that in some countries, it is often a lack of flexibility that undermines national unity – refusing to recognize regional diversity can erode national stability, and enforced hegemony can give rise to regional-national ethnic violence. Watts concludes as follows:

Thus, in spite of the increased complexity and the risk of provoking countermeasures for symmetry, it appears that in a significant number of federations and unions, the recognition of constitutional and political asymmetry has in fact provided a way of accommodating major differences between constituent units that otherwise would not have been possible (2005: 7).

Criticism aside, asymmetry has been shown to be a potentially useful mechanism in preventing, controlling and managing regional conflict within the confines of an existing sovereign state. Critics have cautioned, however, that decentralization may lock in ethnic identities at a regional level and thereby fail to address the real origins of inter-ethnic conflict (Monteux, 2006: 163). Watts appreciates this risk, but describes the overarching potential benefit of asymmetry as follows:

Clearly, constitutional asymmetry among the regional units within a federation [or decentralized unitary state] introduces complexity. Nevertheless, some federations have found that the only way to accommodate the varying pressures for regional autonomy has been to incorporate asymmetry in the constitutional division of powers...It appears that the recognition of constitutional asymmetry has proved an unavoidable way of accommodating major differences between constituent units in the relative pressures for autonomy (2005: 130).

Asymmetry in the 1945 Constitution of Indonesia

The founders of the Constitution of Indonesia opted for a decentralized unitary state in 1945, with Article 18 of the Constitution establishing the basis for special local rights for certain areas. The principle of asymmetry was recognized in the Constitution without specific mention of the term, or identifying any specific regions that may be the recipients of asymmetrical powers. The debates in the leadup to the ratification of the Constitution highlighted the challenge of balancing uniformity with diversity and historic uniqueness. For example, in Muhammad Yamin's speech before the BPUPK on May 29, 1945, he explained the vision of establishing a unitary republic with an emphasis on a uniform national identity (Kusuma, 2004: 98). Similarly, Tirtoprodjo argued that the State of Indonesia had to be unitary, not federal, since nation-building and a national identity were so important for the new nation (Kusuma, 2004: 120). Likewise, in the BPUPK meeting held on May, 30 1945, Rachim Pratalykrama reiterated the importance of a unitary state.

However, this did not detract from the significance of decentralization and regional diversity. Rachim, for example, explained that some regional governments and cities in Indonesia would be autonomous, which at the time was seen as an enhanced form of self-government (Kusuma, 2004: 120). Similarly, Soepomo explained that, on the one hand, the State of Indonesia had to be integrative to provide a common nationality for all the diverse communities, while on the other hand, the organization of regional and local governments would need to recognize the diversity of the population. He concluded that it was inevitable that many policy issues would have to be resolved by regional governments, since local needs in Indonesia are so diverse (Mahkamah Konstitusi RI, 2010: 46).

In the Grand Meeting of Constitution Designers' Committee (July 14, 1945), Soepomo expressed the following view:

We have agreed with the unitary state (*eenheidstaat*). Therefore, under the State of Indonesia there are no understates, no *onderstaat*, but only regional governments. The division of Indonesian regions and the form of regional governments will be stipulated by law. According to Article 16, the division of Indonesian regions, either large or small, and their governmental structure will be regulated under a law, reviewing and observing the deliberative principles in the state government system and original rights of specific regions. (Mahkamah Konstitusi RI, 2010: 49)

The 1945 Constitution (Article 18) sought to effect the spirit of unity and regional uniqueness by providing as follows:

Relations as to authority between the central government and the administrations of a province, a *kabupaten*, a *kota*, as well as between a province and a *kabupaten* or a *kota*, are to be regulated by law with special regard for the specificity and diversity of each region.

As a result, the original Article 18 of the 1945 Constitution (since amended) determined that Indonesia was a heterogeneous, unitary state and comprised regions and localities with their own respective characteristics. Although Article 18 did not, at the time, explicitly provide for asymmetry, it recognized the special nature and identity of specific regions. This constitutional basis for asymmetry was a strategy for building and maintaining the integrity of the nation state (Syaukani, 2002: 37).

Article 18 of the 1945 Constitution therefore provided a legal basis for establishing a decentralized unitary system wherein the status of regions could be grouped into three categories: autonomous regions, administrative regions and special regions (Indrayana, 2005). It is important to note that the status of those regions was not 'granted' by the Constitution, but rather 'recognized' as a condition for forming the Republic. The special rights were therefore acknowledged to be pre-existing to the sovereign State of Indonesia. In this sense, the formation of Indonesia was similar to that of older federations such as the USA and Australia, which had

been formed through the aggregation of previously existing autonomous entities, rather than by decentralization to newly regional entities, as happened in Nigeria and South Africa. In contrast to cases such as the USA and Canada where constitutional recognition of pre-existing autonomous regions occurred, the actual defining of those regions and their powers in Indonesia was left to subsequent legislation enacted by the national parliament; this process in Indonesia is generally associated with unitary arrangements such as in Kenya, Kosovo and the United Kingdom.

Failure to effect the vision of the founders

In practice, the expectations of the founders of the Indonesian state were difficult to implement as different approaches to the spirit of Article 18 emerged soon after independence. The spirit of Article 18 was not reflected in the new independent parliament or executive, which prioritized the formation of a unified country with an overarching identity. As a result, many pre-independence regulations continued to serve as guidelines for the existing regions with no particular measures in place for special regions (Gie, 1993: 97).

The Law on the Application of Self-Governing Governments (Law No. 22/1948) sought to more comprehensively regulate the relations between central and regional governments (Krishnamohan, 2016). Law No. 22/1948 required the central government to allocate powers of autonomy to the regions (Manan, 1990: 195; Article 1). According to Jaweng (2011: 40) the provisions of this law indicated a more progressive approach to decentralization compared to Law No. 1/1945, which was enacted shortly after the new Constitution. These provisions, enacted in 1948, stipulated that regions shall manage their governmental affairs under their own capacity, competence and capability. However, no timeline was set down to implement those lofty ideals (Articles 1, 2 and 3 Law 22/1948). These provisions were therefore more aspirational than practical, and the allocation of powers and functions remained highly centralized under the control of Jakarta.

However, the progress brought about by the regional autonomy laws (No. 22/1948 and No. 1/1957) was halted/set in reverse by President Sukarno's decree of July 5, 1959. Through Presidential Declaration No 6/1959 on Regional Governments (Penpres No 6/1959), all region-

related issues were effectively centralized, and the discretion and autonomy of all regional governments was curtailed (Djohan, 2009: 90). This centralization attracted criticism and fierce opposition as it was seen as conflicting with the letter and spirit of the Constitution – undemocratic, annihilating historical sovereignties of the special regions, and in general a setback for the process of regional autonomy (Gie, 1993: 238).

The Sukarno administration's effort to erode the spirit of Article 18 continued with the passing of the Law on the Basis of Local Government (Law No. 18/1965), which further enhanced the powers of Jakarta vis-a-vis the regions. According to Gie, this law contained many weaknesses and still resembled colonialism; the autonomy of the regions remained vague and undefined and the law imposed Jakarta's regulations uniformly rather than allowing for asymmetry as envisaged in Article 18 (Gie, 1993: 273; Legge, 1957).

President Suharto, in his turn, increased centralization and eroded of the powers of the regions and local governments. The local government system designed by Suharto essentially aimed to minimize, and if possible to remove, the autonomy of local and regional movements. The drive to uniformity was said to be for the benefits of 'political stability' as a purported prerequisite for the economic development of the entire nation. The centralizing trend culminated with the Law on the Principles of Regional Administration (Law No. 5/1974) which significantly curbed the decentralization spirit of the 1945 Constitution. The regional governments had practically been relegated to 'sub-ordinate' administrative agencies rather than autonomous governments. This centralization, in turn, caused political and economic instability which, in effect, was exactly the opposite of what had been intended by those promoting centralization.

In summary, there was an increasing trend towards centralization following the enactment of the 1945 Constitution. However, the spirit of decentralization and recognition of special regions lost its impact on Jakarta's post-independence administrations. The relations between central, provincial and local governments became highly centralized over the nearly five decades following the enactment of the 1945 Constitution. Therefore, the founders' desire to implement autonomy within the Indonesian state failed to materialize. The term 'unitary' in the Constitution was interpreted to justify a highly centralized authority with uniformity as a guiding principle. The irony, as Watts has pointed out above, is that Jakarta's effort to enforce uniformity

for the purposes of stability had the opposite effect by emphasizing diversity and encouraging conflict with regions such as Aceh.

Reform era and the rebirth of asymmetric decentralization

The ideals behind Article 18 of the 1945 Constitution were never implemented during Suharto's time in power. As a result, when the authoritarian system collapsed simultaneously with Suharto's resignation (May 21, 1998), several regions demanded a return to the spirit of asymmetry (Rahman, 2000: 65). During the transition period, marked by the weakening of central power and stronger demands for separation from regions (such as Aceh and Papua), President B.J. Habibie enacted the Law on Local Government (No. 22/1999). In the 'points of consideration' that accompanied the law, it was acknowledged that Article 18 of the 1945 Constitution had not been adhered to, neither in letter nor in spirit. This was a major symbolic concession by Jakarta, for the first time acknowledging the frustration experienced by the subnational governments in general, and by the special regions in particular.

As a result of this concession, a process began whereby local and provincial governments would enable local communities to regulate and manage matters of direct concern to them. Nevertheless, regions such as Aceh and Papua continued in their attempts to secede from Indonesia. Under the threat of possible secession, decentralization was again raised as a way to constitutionally guarantee legal certainty to the special regions (Nordholt, 2002).

Several new statutes were enacted to accelerate the devolution process and give clarity of regional institutions, powers and functions (see, for example, Law No. 22/1999 on special autonomy for Aceh; Law No. 25/ 1999 on the Financial Balance between Central and Local Governments and Law No. 44/ 1999 on the Special Administration of Aceh Province). Although these laws did not completely satisfy Aceh's demands for extensive autonomy, it signified a clear change of direction by Jakarta policymakers (Djohan, 2005: 568). Jakarta had come to recognize that stability and the economic growth of the entire nation depended on flexibility in constitutional and statutory arrangements, rather than rigidity and centralization as pursued by earlier administrations.

The decentralization initiatives of the late 1990s and early 2000s were necessitated by Jakarta's desire, on the one hand, to maintain the territorial integrity of Indonesia and for Aceh to be part of it, and Aceh's demand, on the other hand, for special autonomy based on their socio-, religious and cultural reality (Djohan, 2005: 568). To fulfil Jakarta's commitment to commence decentralization to Aceh and Papua, Decree No. IV/MPR/1999 issued by the People's Deliberative Assembly (MPR) stated:

In order to develop regional autonomy within the framework of the Unitary State of the Republic of Indonesia or *Negara Kesatuan Republik Indonesia* (NKRI), and to settle, in a just and integrated manner, regional problems that need immediate and serious handling, it is necessary to introduce the following steps: to maintain the national integration under the NKRI framework by respecting equality and plurality of the social and cultural lives of the people of Aceh and Papua by establishing Aceh and Papua as special autonomous regions based on the law.

Major milestones were reached with the passing of the Law on Special Autonomy for Aceh (Law No. 18/2001) and the Law on Special Autonomy for the Papua Province (Law No. 21/2001). Both these laws sought to effect the letter and spirit of autonomy and asymmetry first expressed in the 1945 Constitution. Special statutes for Yogyakarta and Jakarta followed.

Encouraging asymmetry through amendment of Article 18

The enactment of the autonomy laws described above was preceded by an amendment to Article 18 of the Constitution in 2000. The amendment sought to capture the spirit of special regional autonomy and cast it into constitutional certainty. In law, this demonstrated strong federal characteristics, even though the Constitution did not enumerate the exact powers and functions of the regions. The amended Article 18 comprises three parts, namely Articles 18, 18A and 18B, each dealing with specific aspects of regional autonomy and self-government (Indrayana, 2008).

The essential spirit of the amended Article 18 is that the unitary nature of the Indonesian state is re-affirmed (Article 18(1)), but that the pluralistic nature of the population is

acknowledged under the slogan: *Bhinneka Tunggal Ika* ('unity in diversity') (Article 36(A)). Article 18 does not mention 'asymmetry' as a term, but it does set out the principles of regional autonomy, the importance of self-government and the rights of special regions to manage their own affairs (e.g. Article 18(5)). Specific reference is made to 'special and distinct' regions (Article 18B(1)), but the Constitution is silent on the name and number of the provinces and their powers or functions; these aspects are left for subsequent legislation. The Constitution also envisages a different relationship between the centre and each special region in light of their 'particularities and diversity' (Article 18A(1)); these unique relationships with Jakarta reflect the complexity of asymmetry.

In some respects, Article 18 reads like a political manifesto rather than a legal document; for example, it states that regional authorities shall have 'wide-ranging autonomy' and that some regions are to be 'special and distinct', but with detail to be provided by subsequent statutes and regulations. It is not surprising that Article 18 has been described as 'confusing', but it must also be recognized that it was not politically or practically possible to give greater clarity at the time of amending (Bell, 2001: 793).

The speaker of the Reform Faction, A.M. Luthfi, stressed the idea of special autonomy when he reiterated the founding fathers' commitment to plurality within a united Indonesia (Penyusun, 2008: 1,115). The idea of asymmetry gained traction within main political groupings, as could be seen when secretary general Sutjipno of the F-PDIP expressed his party's commitment to the unitary state, while at the same time reinforcing local autonomy, observing the diversity of ethnic groups, religions, languages and cultures as well as their geographical conditions (Penyusun, 2008: 1,118).

All major stakeholders involved in the amendment of the 1945 Constitution therefore accepted asymmetry as an appropriate mechanism for managing the relationship between the historic regions and Jakarta. This recognition in itself was ground-breaking since it was the result of a national consensus and could not be exploited by political parties opposed to the special arrangements. It is arguable that without the violence and threats of secession that preceded the amendment of the Constitution, this national consensus would not have been possible.

The amendments to Article 18 therefore established a legal and philosophical basis for decentralization to all regions and to implement asymmetry with regard to special regions. This was, and remains, an essential requirement for the national unity and sovereignty of Indonesia.

Effecting the (amended) Article 18

Article 18 of the Constitution does not, by itself, create regions or define their powers and functions; rather, it anticipates the enactment of legislation to create regional and local governments, to define and vary their powers and functions, to arrange the relationship between the different levels of government, and, where necessary, to decentralize additional powers and functions to special regions. The nature of the Indonesian multitiered arrangement is therefore a combination of constitutional recognition of the principle of decentralization and statutory enactment. This is commonly the case in unitary systems, in contrast with federal arrangements where the powers and functions of the regions are defined and protected by the Constitution. Thus, the Indonesian arrangement is flexible, pragmatic and open to adjustment.

However, these asymmetrical arrangements inevitably bring challenges to central-regional relations. Critics have pointed out that since Jakarta had no clear vision for how asymmetry would be implemented, special regions had filled the vacuum and devised arrangements that suit them (Kingsbury and Aveling, 2003: 123). The outcome is an exceedingly complex statutory arrangement that gives the special regions rights of self-government that are rarely found, even in federal systems.

Several laws have been enacted in order to effect Article 18 B (1): the Law on Special Autonomy for the Province of Aceh (No. 18/2001 and Law No. 11/2006), the Law on Special Autonomy for Papua Province (No. 21/2001), the Law on the Jakarta Province Administration as the capital of Unitary State of Indonesia (No. 29/2007) and the Law on the Special of Yogyakarta Region (No. 13/2012). The main elements of these respective laws are considered below.

Special regions

Special autonomy for Aceh

The asymmetry of Aceh is particularly prevalent in the exploitation and management of natural resources and the application of Sharia law (Siregar, 2009). Aceh was identified as an area for special autonomy for two major reasons: First, because of its Islamic history and drawn-out resistance to Dutch colonization, it had been closely associated with Indonesia's freedom struggle. In fact, Aceh is widely believed to have played a significant part in Indonesia's independence by fighting the Dutch occupation of the archipelago. Their resistance to Dutch colonization gave rise to the Aceh War (1873–1903), and the civil war and resistance movement gained momentum in the twentieth century after the discovery of large gas reserves, which the Acehnese wanted to utilize for their own benefit (Missbach, 2012). The second reason for their special autonomy is the Acehnese's strong adherence to the Islamic faith, contributing to the unique identity of the majority of the region.

The people of Aceh are historically known for their strong desire for independence and self-determination – neither the Dutch nor the post-independence Indonesian government ever really succeeded in exerting central control in Aceh. The separatist Free Aceh Movement (GAM) was only dismantled after the peace agreement was signed in 2004. The province differentiates itself from the rest of Indonesia in that it wishes to be associated with, and governed by, the principles of Islam (Schultze, 2004). Although there is not necessarily a consensus in Aceh regarding the application of Sharia in public policy, particularly with respect to minority communities, the pro-Sharia opinion has prevailed. Aceh has therefore opted for Sharia law to guide its governmental and social practices, while other provinces and Jakarta practice a rather moderate form of Islam. Aceh's adherence to Sharia is not without its critics, but it has been accepted as a condition for ending the civil war and keeping Aceh as an integral part of Indonesia (Hasan, 2006).

The special autonomy for Aceh is contained in two laws: Law No. 18/2001, which was repealed and replaced after only five years by Law No. 11/2006 as the result of the Helsinki Memorandum of Understanding (MoU) between Jakarta and Aceh (MoU; Aspinall: 2005; Mustikawati: 2008). Law No. 11/2006 acknowledges the 'uniqueness' of Aceh and states that 'Aceh is a province constituting a legal social unit having unique characteristics and granted

with a special authority to manage and administer its local governance and social interests in accordance with the laws of and within the system and principles of the Unitary State of the Republic of Indonesia...’ (Article 2(2)).

The powers and functions decentralized to Aceh include planning and development, education, health, infrastructure, public order, environment, land affairs, coordination of religious life, personal and family law, criminal law and the judicial system. Law No. 11/2006 also stipulates that the heads of the region (the *Wali Nanggroe* and *Tuha Nanggroe*) are the guardians of Acehese customs and in charge of upholding customary law (Article 96). The regulation of the substance of preserving customs and culture is delegated in accordance with *Qanun* (an Aceh regulation) (Article 125).

Regarding Aceh’s utilization of its own natural resources, Article 3 of Law No. 18/2001 provides that the shared funds allocated to Aceh comprise of shared yield as follows: land and building income (90%), right acquisition fees on land and building (80%), personal income tax (20%), revenues from natural resources of the forestry sector (80%), general mining (80%), fishery (80%), oil mining (15%) and natural gas mining (30%) (Article 181). In addition, 55% of revenues from oil and 40% of revenues from natural gas for an initial period of eight years are allocated to Aceh (Article 182). This division of income provides Aceh with a secure base for undertaking planning, but it severely curtails Jakarta’s ability to use national resources to assist poorer regions (Managing Resources, 2008). The notion that natural resources belong to the region rather than the nation as a whole is controversial, but it was a necessary compromise for achieving the stability of the Indonesian state.

An important subject of Aceh regional autonomy is the organization of the provincial judicial system, with particular reference to the role of the Islamic Court (Article 1(15); Article 125; Article 128). Aceh has the right to establish an Islamic Court system that functions in accordance with Islamic law. While Muslims are expected to obey and comply with Islam, all residents of Aceh must ‘respect’ the implementation of Islamic Law (Article 126). The national Supreme Court remains the highest court of Indonesia and it hears appeals from the Aceh Islamic Court as well as reviewing *Qanun* in accordance with the laws and regulations (Article 235 (3) Law No. 11/2006).

The application of Islamic law has significant influence, albeit not without controversy, in the institutional design and day-to-day governance of Aceh. Isa (2014) believes that the asymmetry of the Aceh arrangement exceeds what is found in other unitary and even federal states. The nature and extent of Aceh's autonomy does indeed resemble that of federal states, but the variety of asymmetrical arrangements may be more challenging. De Villiers (2016) observes:

In some respects the autonomy of Aceh is so asymmetrical that it appears as if the central government has no or limited oversight or control over legislative measures taken by the province, while on the other hand the absence of intergovernmental structures in local government acts (LoGA) and the continued supremacy of the national parliament create the risk of inadequate coordination between central and provincial government or central interference in the affairs of Aceh (155).

Some elements of Aceh's autonomy exceed that of federal states. For example, all profit sharing deals related to the exploitation of Aceh's natural resources are subject to the approval of the Aceh People's Representative Council. Further, government administration incorporates Islamic principles and recognizes Islamic scholars (*ulama*), who have the authority to exercise and enforce Islamic law (Article 138). There is a special recruitment system for the Aceh government and administration (Hannum, 2008) and Aceh enjoys increased influence in Jakarta's conduct of foreign relations. Jakarta recognizes the customary institutions in Aceh, even though they are based on different principles to other regions and the Acehese have the right to establish provincial political parties (Article 1(14); Article 75). All of this is in addition to Jakarta and Aceh's special shared yield, especially the additional shared yield of oil and gas revenues, described above (Managing Resources, 2008).

Special autonomy for Papua

Papua was granted special autonomy after many years of conflict with Jakarta over social, political and economic issues (Saltford, 2003). The Papuan community accused Jakarta of failing to fight increasing poverty and to protect the basic rights of the people of Papua (Djohan,

2004). These concerns led to violent protest and instability across the region and contributed to Papua's demand for secession. To cope with these events and to prevent future unrest and possible secession, the national government passed Law No. 21/2001 on Special Autonomy for the Province to grant special autonomy to Papua. The Law acknowledged that the 1945 Constitution anticipated 'special or extraordinary administration units' (Preamble) and that Papua is one of the special regions that ought to benefit from special arrangements (Jurusan, 2012).

Two fundamental aspects influence decentralization for Papua: first, the need to balance national integration with respect for the social and cultural lives of Papuan people, and second, respect for the unique culture, history, customs, monarchy and language of the regional population (Blair and Phillips, 2002: 23). In recognition of the special status of Papua, Article 1(b) (Law No. 21/2001) recognizes special autonomy for the region, empowering Papua to regulate and manage their own affairs according to their own customs, and to undertake their own initiatives based on the aspirations and basic rights of Papuan people.

The special status of Papua is set out in Law No. 21/2001 which states: First, the region is responsible for the physical and spiritual development of the Papua people and a special chamber is established for the Papua native people to give advice about matters that affect them (Article 1(g) and Article 19). Second, native Papuans will benefit from affirmative action policy in politics, employment, and other public sector programs (Article 27 and Article 61). Third, customary law, usage rights of natural resources, customary administration and customary courts are recognized as part of local identity characteristics. Fourth, a Commission of Righteousness and Reconciliation was established to investigate and report on human rights abuses in Papua (Article 46). Fifth, the law promoted the unique symbols of Papua without eroding the integrity of Indonesian sovereignty (Article 2), and sixth, the allocation of funds for special autonomy includes 2% of the National Public Allocated Fund and Shared Revenue Fund (70% of oil and gas derived from Papua) (Article 34(3)). The fiscal arrangements between Aceh and Papua therefore differ in that Aceh is guaranteed a percentage of income from resources extracted from the region, whereas Papua receives a guaranteed share of the national account.

Papua is unique in the way it seeks to accommodate traditional forms of government within its institutional arrangements (Chapter 5 Law No. 21/2001). The governor of Papua is a

traditional native Papuan and the provincial parliament includes the Papua People's Assembly (Article 19); the Papuan Representatives Council is vested with special power to protect and promote the religious and customary rights of all native Papuans (Article 23). Positive steps must be taken to protect and promote the interests of the native Papuan tribes (Mulyawan, 2013). These arrangements include affirmative action programs to enable tribe members to bridge the gap between traditional communities and the rest of the Papuan population. Recognition of the tribes includes accommodating their customary laws and practices, particularly with regard to the management of land (Article 43).

Special autonomy for Jakarta

The special status of Jakarta stems from it being the national capital. The explanatory memorandum of Law No. 29/2007 states that the autonomy of Jakarta is to facilitate its role as the capital city of the nation. An important example of Jakarta's special institutional design is that it forms a single administration at the provincial level (Jaweng, 2011: 42). Jakarta therefore does not recognize other regencies or cities as autonomous entities within its boundaries. Subregions of Jakarta are regarded as administrative regions rather than self-governing governments. The governor of Jakarta is directly elected and is required to command at least 50% of the popular vote (Article 107, Law No. 12/2008 on the Second Amendment, Law No. 32/2004 on Local Government). The percentage required for election is different from other regional heads in other provinces.

Article 26(1) (Law No. 29/2007) provides that the Jakarta provincial government, as an autonomous region, shall have authority over all government affairs except foreign policy, defence, security, judicial power, monetary and national fiscal policy, religion and other matters as stipulated by law. Jakarta does have power over policies and laws that relate to spatial land use, natural resources and environment, control of residents and residential areas, transportation, industry and commerce, and tourism (Article 26(1.11) Law No. 29/2007 Special Region of Jakarta).

Special autonomy for Yogyakarta

The Kingdom of Yogyakarta, with its unique political, social and economic organization, existed long before Indonesia gained its independence from the Dutch (Holtzappel and Ramstedt, 2009: 97). Despite this, Sultan Hamengkubuwono IX and Sri Paku Alam VIII decided to be a part of the newly formed Indonesian nation and opted to place their Kingdom under the rule of the central government, subject to the uniqueness of the region being recognized. This decision helped to consolidate the power of the government and to rid the archipelago of both the Dutch and the Japanese, as well as to build the Unitary State of Indonesia.

In addition to its role in opposing colonialism, Yogyakarta served as the capital of the Republic of Indonesia from January 4, 1946 to December 27, 1949 to protect the national government from the Dutch who were attempting to subdue the independence movement (Carey, 1986). As well as helping the newly formed government prevail, the Kingdom provided funds to help pay government officials to keep the state running. The rationale for Yogyakarta's autonomous status after independence was therefore strong and uncontroversial.

The special status of Yogyakarta was recognized in Law No. 13/2012 on The Special Region of Yogyakarta. This Law acknowledges that the Kingdom of Yogyakarta (Ngayogyakarta Hadiningrat Sultanate and Kadipaten Pakualaman) existed prior to the independence of Indonesia (Elucidation of Law No. 13/2012 on The Special Region of Yogyakarta). This Law also recognizes the role and contribution of the Kingdom of Yogyakarta in securing independence and establishing the republic. As is the case with the other special regions, the law effects the original understanding of Article 18.

Yogyakarta has the authority to elect the governor and vice governor and to determine their position, status, task and power, as well as the organization of the Yogyakarta local government, culture, land use and spatial planning (Articles 2, 7 and 9 Law No. 13/2012 on The Special Region of Yogyakarta).

The method of appointing the governor and vice governor is one of the most interesting arrangements of Law No. 13/2012. Unlike the other special regions, Yogyakarta's governor and vice governor are not elected by the constituents or the Regional House of Representatives. The governor comes from Ngayogyakarta Hadiningrat Sultanate and the vice governor comes from Kadipaten Pakualaman, a duchy within the sultanate (Article 9, The Special Region of

Yogyakarta). With the passing of Law No. 13/2012, there is an ongoing effort to democratize this process by granting the Regional House of Representatives the authority to approve or disapprove the appointment.

Reflections on asymmetrical decentralization in Indonesia

Since 1945, the operation of the Constitution of Indonesia has experienced centralizing and decentralizing trends. The founders of the Constitution acknowledged the need for special regions, but it is only during the last two decades that practical progress has been made in implementing asymmetry. The letter and spirit of asymmetry only became operational when Jakarta realized centralization was causing, rather than resolving, instability. Article 18 of the Constitution now provides a legal basis for acknowledging regional specificity and diversity, even though the detail is subject to legislation. The combination of constitutional promise and statutory detail allow greater flexibility for the young democracy; it allows for the special statutes that give rise to asymmetry to be adjusted. Had the asymmetry been entrenched in the Constitution, the inflexibility may have caused frustration and deadlock.

The diversity of the population of Indonesia, the size of the country, its religious heritage, and its unique regional interests, cultures and traditions demand a flexible approach to decentralization. Each of the special regions has a unique background and circumstance that, in some cases, predate the existence of the Indonesian state.

The asymmetry of the special regions does add complexity to the administration of the Indonesian state, but it is also a prerequisite for keeping the country together. In Aceh, where Sharia law is strictly applied, those who disagree, be they Muslims or minorities of other faiths, find themselves in conflict with the regional government (Siregar, 2009). Thus the unitarist government of Aceh, in some respects, symbolizes the centralization and uniformity that it so abhorred in Jakarta.

Indonesia is an example of how asymmetrical decentralization can be used to allow for and manage the stresses that arise in central and regional relations in deeply divided societies. Indonesia's combination of symmetry and asymmetry is arguably unique in the world. Although by no means perfect, a unique balance had been struck whereby the Constitution acknowledges

the principle of regional asymmetrical autonomy, but legislation gives practical effect thereto, thereby allowing flexibility and pragmatism. Consequently, according to the four autonomy laws discussed above, each special region has different statutory and administrative arrangements of governance. Although Article 18 of the Constitution does not specify the number of historic regions, there is currently no strong desire in Jakarta for additional special regions to be created.

In conclusion, Indonesia offers several insights that may be of relevance to other countries:

1. Legal asymmetry is a credible mechanism for granting special rights of self-government to regionally concentrated communities in order to accommodate their special needs, culture, traditions, heritage or religion.
2. Indonesia shows that asymmetry does not in itself threaten the integrity or sovereignty of the state; asymmetry may enhance the integrity of the nation. As Watts pointed out, asymmetry may be a requirement for defending and protecting the sovereignty and integrity of the state. Indonesia is a useful example of how central rule has caused instability, whereas asymmetry has brought a level of stability not seen since independence.
3. Asymmetry can take various forms; the two categories most relevant to Indonesia are asymmetry of institutional arrangements with unique governmental arrangements (e.g. Papua and Yogyakarta) and asymmetry in the distribution of powers and functions (e.g. Aceh and Jakarta). Indonesia highlights how the appropriate formula for each special region reflects the unique circumstances of that region, rather than adopting a one-size-fits-all approach. The various asymmetrical arrangements in Indonesia give rise to complexity, but also reflect the complexity of the nation.
4. One of the most challenging questions to answer in Indonesia – and in other countries – is ‘when does a region qualify for special, asymmetrical treatment?’ There is no simple response. The Constitution of Indonesia does not limit asymmetry to the current special regions, nor does it define what is meant by a special region. The experience of Indonesia suggests that a special

region is only recognized when symmetry between regions is clearly not acceptable, practical or appropriate. It appears, unfortunately, that violence or a threat of secession is often an important trigger that gives rise to asymmetry.

5. Managing a multitiered arrangement which allows for asymmetry is complex; it can be confusing for the public and costly to administer. Indonesia highlights the complexity of different regional arrangements, challenges to protect human rights within the regions and the risk of an us-versus-them political culture between a region and the central government (Marashinghe, 2007). The experience of the special regions of Indonesia suggests that asymmetry must only be pursued if it is of necessity; it must be limited to the extent of the uniqueness of the region and it must be subject to ongoing national oversight and national minimum standards.

6. Special regions can be created in federal or decentralized unitary systems. The special regions in Indonesia arguably enjoy greater statutory autonomy than many regions in federal systems. Emerging democracies may find the experiences of Indonesia instructive to facilitate asymmetry by way of an organic statute that can develop rather than entrenching asymmetry into a rigid constitution.

7. Finally, international law and politics do not encourage the formation of new sovereign states and hence several international case studies contain asymmetrical elements as a way of keeping states together. Most notably in recent times has been asymmetrical arrangements in countries such as Iraq, Afghanistan and currently in process of implementation, the Philippines. The concept of asymmetrical autonomy for special regional entities is imbedded in sound international law and supported by various state practices and international agencies.

Conclusion

This article investigated the asymmetrical arrangements of special regions in Indonesia and highlighted the special arrangements that exist for each of those regions. It was shown that

Indonesia acknowledged the principle of special autonomy for historic regions at the drafting of the 1945 Constitution, even though little practical effect was given to the principle. Asymmetry in the special regions has only become a reality over the past two decades. The article illustrates how each of these special regions is treated differently according to its specific history and circumstances. The outcome is a highly complex system of government, but one which seems to have brought stability to Indonesia – a prospect that seemed remote under the previous, centralized rule.

¹ In this article we use 'region' as a generic term for a second-tier government.

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