

# Constitutional Legal Framework of Equitable Distribution of Fiscal and State Resources In Indonesian Federalism: Problems and Solutions<sup>1</sup>

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## Abstract

This presentation will explore the constitutional provisions governing resource distribution in Indonesia's present constitutional system and the federal system in the past. It identifies pressing problems, including regional disparities and transparency issues, and proposes a range of solutions, drawing from international best practices. The presentation delves into the present constitutional framework, outlines key challenges, discusses potential political and social implications, and invites audience engagement to foster a deeper understanding of this critical aspect of Indonesian federalism.

**Keywords:** Unitary state, federal state, Indonesian federalism, devolution system, resource distribution.

## A. Introduction

The reformation era, which has been ensuing for more than twenty five years in Indonesia, started with the resignation of President Soeharto on 21 May 1998 and the appointment as president of the former Vice-President B.J. Habibie. During the first two years of Habibie's administration, profound changes in various products of legislation were introduced especially in the form of laws among which there are new rules regarding regional governance commonly known as regional autonomy laws. Many of the changes were made possible after revoking Law No. 5/1974 concerning Main Principles of

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Regional Governance and Law No. 5/1979 about Village Governance,<sup>3</sup> and replacing them with a new Regional Governance Law No. 22/1999.<sup>4</sup>

Twenty five years after the Reformation Era, The Law on Regional Governance has been divided into 3 laws as follows: (1) Law No. 23/2014 on Regional Governance,<sup>5</sup> (2) Law No. 6/2014 on Village,<sup>6</sup> and (3) Law No. 1/2014 on The Election of Governor, Regent, and Mayor<sup>7</sup> which then been changed several times, and the last time was changed by Law No. 6/2020 on The Establishment of Government Regulation in Lieu of Law No. 2/2020 on the Third Amendment of Law No. 1/2015 on The Establishment Government Regulation in Lieu of Law No. 1/2014 on The Election of Governor, Regent, and Mayor to Become Law.<sup>8</sup>

In this paper, I will explore the constitutional provisions governing resource distribution in Indonesia's present constitutional system and the federal system in the past. It identifies pressing problems, including regional disparities and transparency issues, and proposes a range of solutions, drawing from international best practices. The paper will also delves into the present constitutional framework, outlines key challenges, discusses potential political and social implications, and invites audience engagement to foster a deeper understanding of this critical aspect of Indonesian federalism.

## **B. The Current Constitutional System and the Unitary State**

Based on the original version of The Constitution of the Republic of Indonesia of 1945 (the original version)<sup>9</sup> (hereinafter "The 1945 Constitution") which had not been changed when the Law No. 22/1999 on Regional Governance was legalized in 1999, the divisions of the territory of Indonesia into large and small regions shall be regulated by

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<sup>3</sup> Indonesia, *Law regarding Village Governance*, Law No. 5/1979, State Sheet No. 56/1979, State Sheet Addendum No. 3153.

<sup>4</sup> Indonesia, *Law regarding Regional Governance*, Law No. 22/1999, State Sheet No. 60/1990, State Sheet Addendum No. 3839.

<sup>5</sup> Indonesia, *Law regarding Regional Governance*, Law No. 23/2014, State Sheet No. 244/2014, State Sheet Addendum No. 5587.

<sup>6</sup> Indonesia, *Law regarding Village*, Law No. 6/2014, State Sheet No. 7/2014, State Sheet Addendum No. 5495.

<sup>7</sup> Indonesia, *Law regarding The Election of Governor, Regent, and Mayor*, Law No. 22/2014, State Sheet No. 243/2014, State Sheet Addendum No. 5586.

<sup>8</sup> Indonesia, *Law regarding The Establishment of Government Regulation in Lieu of Law No. 2/2020 on the Third Amendment of Law No. 1/2015 on The Establishment Government Regulation in Lieu of Law No. 1/2014 on The Election of Governor, Regent, and Mayor to Become Law*, Law No. 6/2020, State Sheet No. 193/2020, State Sheet Addendum No. 6547.

<sup>9</sup> Indonesia. *The Constitution of the Republic Indonesia of 1945* (the original version).

law in consideration of and with due regard to the principles of deliberation in the government system and the inherited rights of the Special Region<sup>10</sup>.

In the Elucidation of The 1945 Constitution regarding the subject matter, it is stated that:

Because Indonesia is an *eenheidstaat*,<sup>11</sup> it will not have a region in its area that is also a *staat*. Indonesian regions will be divided into provinces and each province will also be divided into smaller districts. Within autonomous regions (*streek* and *locale rechtsgemeenschappen*) or merely administrative regions, there will be regulations confirmed by laws. In autonomous regions there will be regional representatives; hence, in regions, the governance will also be within the frame of deliberation".<sup>12</sup>

From the historical perspectives, there are five periods of the Indonesian Constitutions as follows:

- 1 The 1945 Constitution (the original version in first period) (from 17 August 1945 to 27 December 1949);
- 2 The Constitution of the United States of Indonesia (The Federal Constitution of 1949 or The 1949 Constitution) (from 27 December 1949 to 17 August 1950);
- 3 The Provisional Constitution of 1950 (The 1950 Constitution) (from 17 August 1950 to 5 July 1959);
- 4 The 1945 Constitution (the original version in second period) (from 6 July 1959 to 19 October 1999);
- 5 The 1945 Constitution (the amended version) (from 19 October 1999 – now)

The 1945 Constitution – either the original and amended versions – held the principles of unitary state. Article 1 of the original version of The 1945 Constitution stated as follows:<sup>13</sup>

**Article 1 (original version):**

- (1) The State of Indonesia shall be a unitary state which has the form of a republic.

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<sup>10</sup> See Article 18 of the 1945 Constitution before being amended (original version) in the People's Consultative Assembly Republic of Indonesia, *The First Amendment of the 1945 Constitution of the Republic of Indonesia* (Jakarta: Secretariat General of the People's Consultative Assembly Republic of Indonesia, 1999), p. 6.; See also in People's Consultative Assembly Republic of Indonesia, *The 1945 Constitution of the Republic of Indonesia* (Jakarta: Secretariat General of the People's Consultative Assembly Republic of Indonesia, 2000), p. 6.

<sup>11</sup> *Eenheidsstaat* means "unitary state".

<sup>12</sup> See Elucidation of Article 18 of the 1945 Constitution in the People's Consultative Assembly Republic of Indonesia, *supra* note 11.

<sup>13</sup> See Article 1 of the 1945 Constitution (the original version), in the People's Consultative Assembly Republic of Indonesia, *supra* note 11.

- (2) Sovereignty shall be vested in the people and shall be exercised in full by the Majelis Permusyawaratan Rakyat (People's Consultative Assembly).

Moreover, Article 1 of the amended version of the 1945 Constitution stated as follows:<sup>14</sup>

**Article 1 (amended version):**

- (1) The State of Indonesia is a Unitary State which has the form of a Republic.
- (2) Sovereignty is in the hands of the people and is exercised in accordance with the Constitution.
- (3) The Indonesian State is a state ruled by law.

The Indonesian People's Consultative Assembly in its First Annual Summit in August 2000 produced several basic regulations related to regional autonomy, especially the second amendment of The 1945 Constitution. In the amendment, the old Article 18 (the original version) was changed to become 3 articles (Article 18, Article 18A and Article 18B) and the core principles reforming the decentralization are embedded in its text:<sup>15</sup>

**Article 18 (amended version):**

- (1) The Unitary State of the Republic of Indonesia shall be divided into provinces and those provinces shall be divided into regencies and municipalities, each of these provinces, regencies, and cities which shall have regional governments, regulated by law.
- (2) The regional governments of provinces, regencies and municipalities shall administer and manage their own affairs according to the principles of regional autonomy and the duty of assistance.
- (3) The authorities of the provinces, regencies, and municipalities shall include for each a Regional People's House of Representatives whose members shall be elected through general elections.
- (4) Governors, Regents, and Mayors, respectively as head of regional governments of the provinces, regencies and municipalities, shall be elected democratically.
- (5) The regional governments shall exercise wide-ranging autonomy, except in matters specified by law to be the affairs of the central government.
- (6) The regional governments shall have the authority to adopt regional regulations and other regulations to implement autonomy and the duty of assistance.
- (7) The structure and administrative mechanisms of regional governments shall be regulated by law.

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<sup>14</sup> See Article 1 of The 1945 Constitution (the amended version), in the People's Consultative Assembly Republic of Indonesia, *supra* note 11.

<sup>15</sup> See Article 18 of The 1945 Constitution (the amended version) in the People's Consultative Assembly Republic of Indonesia, *supra* note 11.

**Article 18A (amended version):<sup>16</sup>**

- (1) The authority relations between the central government and the regional governments of the provinces, regencies, and municipalities, or between a province and its regencies and municipalities, shall be regulated by law having regard to the particularities and diversity of each region.
- (2) The relations between the central government and the regional governments in finances, public services, and the use of natural and other resources shall be regulated and administered with justice and equity according to law.

**Article 18B (amended version):**

- (1) The State recognises and respects units of regional governments that are special and distinct, which shall be regulated by law.
- (2) The State recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.

The equitable distribution of state resources is based on Article 33 of the 1945 Constitution as follows:<sup>17</sup>

**Article 33 (amended version):**

- (1) The economy shall be structured as a joint enterprise by virtue of the principles of kinship.
- (2) Production sectors important for the state and vital for the livelihood of the people at large shall be controlled by the state and utilized for the optimal welfare of the people.
- (3) The land and waters and the natural wealth contained in it shall be controlled by the state and utilized for the optimal welfare of the people.
- (4) The national economy shall be conducted by virtue of economic democracy under the principles of togetherness, efficiency with justice, sustainability, environment insight, autonomy, as well as by safeguarding the balance of progress and national economic unity.
- (5) Further provisions regarding the execution of this article shall be regulated by laws.

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<sup>16</sup> This article becomes the constitutional foundation of the equitable distribution of fiscal in Indonesia.

<sup>17</sup> The Constitutional Court of the Republic of Indonesia, *The Constitution of the State of the Republic of Indonesia of the Year 1945 in One Manuscript and The Law of the Republic of Indonesia Number 24 of the Year 2003 regarding The Constitutional Court as Amended by the Law Number 8 of the Year 2011 regarding the Amendment to the Law Number 24 of the Year 2003 regarding the Constitutional Court in One Manuscript* (Jakarta: The Office of the Registrar and the Secretariat General of the Constitutional Court of the Republic of Indonesia, 2015), p. 33.

### C. The Federal System in the Past Constitutional System

Federalism is the political system in which subnational units have some autonomy and authority and where there is power sharing between a national government and its subnational units. A federal system is one of three distinctive types among nations. In the unitary system, a central government has predominant control and delegates some responsibilities to the subnational units. In the confederate system, the subnational units are largely independent, sovereign units that hold the principle authority, whereas the national government is weak and possesses little or no controlling power over the subunits. In the federal system, overlapping and shared powers generally exist between the national and subnational units, and there are also distinctive areas of authority that belong uniquely to each unit. Not all federal systems distribute the powers and responsibilities of the different levels of government in the same way.<sup>18</sup>

Indonesia has experienced the federal system around 8 months, from 27 December 1949 to 17 August 1950. The federal system of government is the subsequent stages of Indonesian history when the development of the young state of the Republic of Indonesia was undermined by the attempts of the Dutch to reinstate their power in Indonesia. From the historical perspectives, under the influence of the United Nations, a Round Table Conference was held in The Hague, The Netherlands. The Conference was led by the representatives of the Republic of Indonesia (RI), the *Bijeen-komst voor Federal Overleg* (BFO), the Government of the Kingdom of The Netherlands, and the United Nations Commission for Indonesia. The Conference produced three principal agreements, namely:<sup>19</sup>

- (1) to establish the State of the Republic of the United States of Indonesia;
- (2) to transfer the sovereignty to the Republic of the United States of Indonesia;
- (3) to establish a Union between the Republic of the United States of Indonesia and The Kingdom of The Netherlands.

The draft of the text of the Constitution of the Republic of the United States of Indonesia was also decided upon in the Round Table Conference by the Republic of Indonesia (RI) and the BFO from the Indonesian side, the draft constitution was approved on 14 December 1949 by the Central National Committee, recognized as the people's representative body in the territory of the Republic of Indonesia. Furthermore, the said draft constitution was approved by both sides, and it was agreed that it would come into effect as of 27 December 1949. Since then, the Republic of the United States of Indonesia was officially established based on The 1949 Constitution of the Republic of the United States of Indonesia (hereinafter "The 1949 Constitution").

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<sup>18</sup> Mark J. Rozell and Clyde Wilcox. *Federalism: A Very Short Introduction*. USA: Oxford University Press, 2019, pp. 73-75.

<sup>19</sup> Jimly Asshiddiqie, *The Constitutional Law of Indonesia: A Comprehensive Overview* (Selangor: Sweet & Maxwell Asia, 2009), pp. 65-66; see also P.J. Drooglever, "The Genesis of the Indonesian Constitution of 1949", *Bijdragen tot de Taal- Land- en Volkenkunde*, Deel 153, 1ste Afl. (1997), pp. 65-84.

On 27 December 1949 the formal transfer of sovereignty from The Netherlands to the Republic of the United States of Indonesia took place. The previously prepared provisional constitution of this newly created federal state immediately came into force. This constitution – Indonesia's second – provided for democratic procedures, the protection of human rights, and, of course, the division of power that was so essential for the functioning of the federation as a whole.<sup>20</sup>

The Indonesian committee, chaired by Prof. Soepomo, a professor of law at the Faculty of Law University of Indonesia who was also the former President (Rector) of the University of Indonesia, produced a document that was very different from the 1945 Constitution as it contained more human rights guarantees and provided for a bicameral system of government with a Senate and a lower chamber. The Republican side wanted a dominant role within the federal state, while the Dutch wanted a greater role for the non-Republic states. The constitution had 197 articles in six main sections as follows:

- I. The State of the United States of Indonesia;
- II. The United States of Indonesia and Its Component Regions;
- III. The Instruments of State;
- IV. Administration;
- V. The Constitutional Assembly;
- VI. Amendments, Transitional and Final Provisions.

The equitable distribution of state resources is based on Article 38 of The 1949 Constitution as follows:<sup>21</sup>

**Article 38:**

- (1) The economy shall be structured as a joint enterprise by virtue of the principles of kinship.
- (2) Production sectors important for the state and vital for the livelihood of the people at large shall be controlled by the state and utilized for the optimal welfare of the people.
- (3) The land and waters and the natural wealth contained in it shall be controlled by the state and utilized for the optimal welfare of the people.

The contents of that article is fully similar with Article 33 of The 1945 Constitution (the original version).<sup>22</sup>

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<sup>20</sup> Drooglever, *supra* note 20, pp. 65-66.

<sup>21</sup> See Article 38 of The 1950 Constitution.

<sup>22</sup> The Constitutional Court of the Republic of Indonesia, *The Constitution of the State of the Republic of Indonesia of the Year 1945 in One Manuscript and The Law of the Republic of Indonesia Number 24 of the Year 2003 regarding The Constitutional Court as Amended by the Law Number 8 of the Year 2011 regarding the Amendment to the Law Number 24 of the Year 2003 regarding the Constitutional Court in One Manuscript*, *supra* note 18.

It was realized that the text of The 1949 Constitution was not perfect, because it had been created in a negotiation with foreign nations and not by a council representing the interests of the entire sovereign people. Therefore, Article 186 of The 1949 Constitution stipulated that the Constitutional Assembly along with the Government would immediately stipulate the Constitution of the Republic of the United States of Indonesia. It is evident from the wording of this provision that the 1949 Constitution itself was indeed to be provisional.<sup>23</sup>

Constitutional change did not stop here. Sovereignty had been transferred not to the Republic that had proclaimed its independence in 1945, but to an Indonesian federation, of which the Republic was the most dominant, though certainly not the only member. At least four other well-defined states, together with eleven political entities with a more fragile structure, formed part of it. With the retreat of the Dutch army, however, the force that had supported this federal construction disappeared from the Indonesian stage. The component states of the federation subsequently crumbled away one after another as the result of a mixture of intimidation and free will.<sup>24</sup>

On 17 August 1950, the United States of Indonesia was officially dissolved by President Soekarno (the first President of the Republic of Indonesia) and replaced by a Unitary Republic of Indonesia with a new provisional constitution, i.e. The Provisional Constitution of 1950 (hereinafter “The 1950 Constitution”) which implemented the unitary state system.

#### **D. Some Critical Aspects of Indonesian Federalism: Problems and Solutions**

In the previous section I have explained about the Indonesia’s very short experience in implementing the federal system under The 1949 Constitution. It was then replaced with The 1950 Constitution because it had been created in a negotiation with foreign nations and not by a council representing the interests of the entire sovereign people. Because of this reason, I can not provide some critical aspects of Indonesian federalism under The 1949 Constitution.

But interestingly after the Reformation Era in 1998, Indonesia has become a more democratic state. In 1999, there was a new law on regional governance, i.e. Law No. 22/1999 on Regional Governance<sup>25</sup> and Law No. 25/1999 regarding Financial Balance between The Central and Regional Governance.<sup>26</sup> Apart of that, as a result of MoU Helsinki in 2005, there was a new law on the Governing of Aceh, i.e. Law No. 11/2006 on

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<sup>23</sup> Asshiddiqie, *supra* note 20, p. 66.

<sup>24</sup> Drooglever, *supra* note 20, p. 66.

<sup>25</sup> Indonesia, *Law regarding Regional Governance*, Law No. 22/1999, *supra* note 5.

<sup>26</sup> Indonesia, *Law regarding Financial Balance between the Central and Regional Governance*, Law No. 25/1999, State Sheet No. 72/1999, State Sheet Addendum No. 3848.

the Governing of Aceh which is mandated by the MoU Helsinki.<sup>27</sup> There are also Law No. 13/2012 on the Special Features of the Province of Daerah Istimewa Yogyakarta<sup>28</sup> and Law No. 21/2001 as Amended by Law No. 35/2008 as Secondly Amended by Law No. 2/2021 on the Second Amendment of Law No. 21/2001 on the Special Autonomy of the Province of Papua.<sup>29</sup> All of these laws tend to implement the federalism rather than unitary state values. I will explain some critical aspects of these laws.

## **1 Law No. 22/1999 on Regional Governance and Law No. 25/1999 on Financial Balance Between the Central and Regional Governance**

From the previous description, it is clear how the 1945 Constitution provides a strong foundation for regional and autonomy by giving an authority that is extensive, real, and accountable to the regions. Further steps have been taken in order to develop this constitutional principle, as it is made evident by reading the Decisions of the Republic of Indonesia's People's Consultative Assembly No. XV/MPR/1988 (hereinafter "Decision XV/MPR/1998"). This decision is concerned with the implementation of regional autonomy; coordination, distribution, and utilization of national resources that are equitable and; balance of the central and regional finances within the frame of the unitary state of the Republic of Indonesia.<sup>30</sup>

In accordance with the Decision XV/MPR/1988, regional autonomy is implemented by proportionally giving an authority that is, again, extensive, real, and accountable to regions. The authority is shape into coordination, distribution, and utilization of national resources that are equitable, balanced with regards of the central and regional finances, and implemented on the basis of democratic, community participatory, fair and just principles, taking into account regional potentials and diversities.<sup>31</sup>

The principles of establishing regional autonomy referred to Laws No. 22/1999 follows several conditions: *first*, the implementation of regional autonomy is carried out by taking into account the aspects of democracy, justice, fairness, and regional potentials

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<sup>27</sup> Indonesia, *Law regarding the Governing of Aceh*, Law No. 11/2006, State Sheet No. 62/2006, State Sheet Addendum No. 4633.

<sup>28</sup> Indonesia, *Law regarding Special Features of the Province of Daerah Istimewa Yogyakarta*, Law No. 13/2012, State Sheet No. 1702012, State Sheet Addendum No. 5339.

<sup>29</sup> Indonesia, *Law regarding Special Autonomy of the Province of Papua*, Law No. 21/2021, as Amended by Law No. 35/2018 and Secondly Amended by Law No. 2/2021, State Sheet No. 135/2001. State Sheet Addendum No. 4151.

<sup>30</sup> People's Consultative Assembly Republic of Indonesia, *Decisions of the People's Consultative Assembly Republic of Indonesia, Results of Extraordinary Summit Year 1998* (Jakarta: Secretariat General of the People's Consultative Assembly Republic of Indonesia, 1998).

<sup>31</sup> See *Elucidation of Law No. 22/1999 regarding Regional Governance*, *supra* note 5.

and diversities; *second* it is based on an extensive, real and accountable autonomy; *third*, in regencies and municipalities the autonomy is extensive and intact, whereas the autonomy of provinces is limited; *fourth*, it should raise the self-sufficiency of autonomous regions, and therefore, in regencies and municipalities there should no longer be administrative districts; *fifth*, it should increase the role and functions of the Local House of Representatives, including the legislative function and the monitoring function, as well as budgeting and regional administrative functions; *sixth*, the implementation of deconcentration principle is placed on provincial areas in their position as administrative areas to execute certain governmental authorities delegated to governors as the government's representatives and; finally, the law acknowledges that the implementation of the delegation principle is possible, not only from the central government to the regional administration, but also from the central and regional government to village administration, along with budget, facilities and infrastructures, and human resources responsible for reporting the implementation and accountability to the delegating party.<sup>32</sup>

Law No. 22/1999 regarding Regional Governance<sup>33</sup> was followed by the promulgation of Law No. 25/1999 regarding Financial Balance between the Central and Regional Administration.<sup>34</sup> The latter developed several main objectives to deepen preceding principles, among which we find:<sup>35</sup> empowering and increasing the financial ability of the regions, the creation of a regional financing system that is fair, proportional, rational, transparent, participatory, accountable, and firm; the realization of a financial accountability system by regional government and becoming a reference in the allocation of state income for regions and for regional finances.

The federalism nature of Law No. 22/1999 regarding Regional Governance<sup>36</sup> then been corrected in 2000 when the new Article 18 of the 1945 Constitution was stipulated in the Second Amendment of the 1945 Constitution. Law No. 22/1999 regarding Regional Governance now became Law No. 23/2014<sup>37</sup> and Law 25/1999 regarding Financial Balance between the Central and Regional Governance now became Law No. 1/2022.<sup>38</sup> Both of the new laws didn't hold the principles of federalism anymore.

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<sup>32</sup> See Satya Arinanto, "Decentralization and the Constitutional System of Government in Indonesia", in Clauspeter Hill and Jörg Menxel, eds. *Constitutionalism in Southeast Asia, Volume 3: Cross-Cutting Issues* (Singapore: Konrad Adenauer Stiftung, 2009), p. 158.

<sup>33</sup> Indonesia, *Law regarding Regional Governance*, Law No. 22/1999, *supra* note 5.

<sup>34</sup> Indonesia, *Law regarding Financial Balance between the Central and Regional Governance*, Law No. 25/1999, *supra* note 27.

<sup>35</sup> See Indonesia, *Elucidation of Law regarding Financial Balance between the Central and Regional Governance*, Law No, 25/1999, *supra* note 27.

<sup>36</sup> Indonesia, *Law regarding Regional Governance*, Law No. 22/1999, *supra* note 5.

<sup>37</sup> Indonesia, *Law regarding Regional Governance*, Law No. 23/2014, *supra* note 6.

<sup>38</sup> Indonesia, *Law regarding Financial Balance between the Central and Regional Governance*, Law No. 1/2022, State Sheet No. 4/2022, State Sheet Addendum No. 6757.

## 2 MoU Helsinki and Law No. 11/2006 on the Governing of Aceh

The Province of Aceh, which is located in the top end of the Sumatera Island, is one of the total of 38 provinces in Indonesia. From the historical perspectives, Aceh was known as an area where conflicts were always happen. These even happen since the era of pre Indonesian independence, i.e. since the era when some kingdoms governed Aceh during the Dutch colonial government.<sup>39</sup>

Since Indonesian independence in 1945 until around 2005, the Indonesian government has established some policies for Aceh, which include implementing some regulations in Aceh. In 2005, during the government of President Susilo Bambang Yudhoyono and Vice President M. Jusuf Kalla. On 15 August 2005, in Helsinki, Finland, representatives of the Indonesian government and the Free Aceh Movement signed a Memorandum of Understanding (MoU) aiming to end the conflict in Aceh, Indonesia's westernmost province and the site of an armed insurgency that has operated at varying levels of intensity since 1976.

After taking several steps of peace process through some previous policies and agreements, finally the Free Aceh Movements announced in February 2005 that it was willing to set aside its goal of independence and accept a solution based on "self-government" for Aceh within Indonesian state. In short, the Memorandum of Understanding (MoU) Helsinki between the Indonesian government and the Free Aceh Movement was signed on 15 August 2005. In the MoU, there are some agreements dealing with the Law on the Governing of Aceh as follows:<sup>40</sup>

1. A new law on the Governing of Aceh will be promulgated and will enter into force as soon as possible and not later than 31 Mei 2006.
2. The new Law on the Governing of Aceh will be based on the following principles:
  - a. Aceh will exercise authority within all sectors of public affairs, which will be administered in conjunction with its civil and judicial administration, except in the fields of foreign affairs, external defence, national security, monetary and fiscal matters, justice and freedom of religion, the policies of which belong to the Government of the Republic of Indonesia in conformity with the Constitution;
  - b. International agreements entered into by the Government of Indonesia which relate the matters of special interest to Aceh will be entered into a consultation with the consent of the legislature of Aceh.

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<sup>39</sup> Husaini. "Konflik Sosial di Aceh" [Social Conflict in Aceh], *Jurnal Studi Kepolisian* [Police Studies Journal], Edisi [Edition] 059, Januari-Maret [January-March], 2004.

<sup>40</sup> See Edward Aspinall. *The Helsinki Agreement: A More Promising Basis for Peace in Aceh?* (Policy Studies 20). Washington: East-West Center, 2005, pp.75-76.

- c. Decisions with regard to Aceh by the legislature of the Republic of Indonesia will be taken in consultation with and with the consent of the legislature of Aceh.
  - d. Administrative measures undertaken by the Government of Indonesia with regard to Aceh will be implemented in consultation with and with consent of the legislature of Aceh.
  - e. Administrative measures undertaken by the Government of Indonesia with regard to Aceh will be implemented in consultation with and with the consent of the head of the Aceh administration.
3. The name of Aceh and the titles of senior elected officials will be determined by the legislature of Aceh after the next elections.
  4. The borders of Aceh correspond to the borders as of 1 July 1956.
  5. Aceh has the right to use regional symbols including a flag, a crest and a hymn.
  6. Kanun<sup>41</sup> Aceh will be re-established for Aceh respecting the historical traditions and customs of the people of Aceh and reflecting contemporary legal requirements of Aceh.
  7. The institutions of Wali Nanggroe with all its ceremonial attributes and entitlements will be established.

Dealing with equitable distribution of fiscal and state resources, there are some agreements dealing with Economy as follows:<sup>42</sup>

1. Aceh has the right to raise funds with external loans. Aceh has the right to set interest rates beyond that set by the Central Bank of the Republic of Indonesia.
2. Aceh has the right to set and raise taxes to fund official internal activities. Aceh has the right to conduct trade and business internally and internationally and to seek foreign direct investment and tourism to Aceh.
3. Aceh will have jurisdiction over living natural resources in the territorial sea surrounding Aceh.
4. Aceh is entitled to retain seventy (70) per cent of the revenues from all current and future hydrocarbon deposits and other natural resources in the territory of Aceh as well as in the territorial sea surrounding Aceh.
5. Aceh conducts the development and administration of all seaports and airports within the territory of Aceh.
6. Aceh will enjoy free trade with all other parts of the Republic of Indonesia unhindered by taxes, tariffs, or other restrictions.
7. Aceh will enjoy direct and unhindered access to foreign countries, by sea and air.
8. Gol (Government of Indonesia) commits to the transparency of the collection and allocation of revenues between the Central Government and Aceh by agreeing to outside auditors to verify this activity and to communicate the results to the head of the Aceh administration.

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<sup>41</sup> "Kanun" is the name of regional regulation in the Province of Aceh.

<sup>42</sup> Aspinall, *supra* note 39, pp. 77-78.

9. GAM<sup>43</sup> will nominate representatives to participate fully at all levels in the commissions established to conduct the post-tsunami reconstruction (BRR).

These are the example of some key principles in the Section of the “Law of Governing of Aceh” and “Economy” of Memorandum of Helsinki (MoU) which then be implemented in the Law No. 11/2006 on the Governing of Aceh.<sup>44</sup> This law I still valid until now, except some articles those were been annulled by the Constitutional Court Republic of Indonesia.<sup>45</sup>

### **3. Law No. 13/2012 on Special Features of the Province of Daerah Istimewa Yogyakarta**

Law No. 13/2012<sup>46</sup> was an integral part of the Province of Special Features of Yogyakarta. This Law replaced the previous Law No. 3/1950 on the Establishment of the Special Features Region of Jogjakarta.<sup>47</sup> From the historical perspectives we know that Yogyakarta was awarded this special features status was given by the Indonesian first President Soekarno on 19 August 1945, two days after the Proclamation of Indonesian Independence on 17 August 1945 in the form of a charter. But this charter finally was given on 6 September 1945 after Sri Sultan Hamengkubuwono IX, the King of Yogyakarta, proclaimed the Mandate of 5 September 1945 which declared that the Sultanate of Yogyakarta was the integral part of the newly established Republic of Indonesia. The same mandate was also been proclaimed by the Sri Paduka Paku Alaman VIII (the King of the Duchy of Paku Alaman) at the same day.

According to Law No. 13/2012, the special features of the Province of Daerah Istimewa Yogyakarta is in the implementation of governance affairs. The special feature authorities is the specific additional authority which owned by this region as stipulated by law on regional governance. The asymmetric viewpoints of this special features are in the fields as follows: (1) the procedures of the election, position, task and authority of its Governor and Vice-Governor; (2) the institutionalization of the Local Government of Yogyakarta Special Features Region; (3) culture; (4) land; and (5) spatial.

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<sup>43</sup> “GAM” is the acronym of :Gerakan Aceh Merdeka” (the Free Aceh Movement).

<sup>44</sup> Indonesia, *Law regarding the Governing of Aceh*, Law No. 11/2006, *supra* note 27.

<sup>45</sup> For a stimulating discussion see May, Bernhard. “The Law on the Governing of Aceh: The Way Forward or a Source of Conflicts?”, *Conciliation Resources* (Accord Issue 20), September 2008, pp. 42-45.

<sup>46</sup> Indonesia, *Law regarding Special Features of the Province of Daerah Istimewa Yogyakarta*, Law No. 13/2012, *supra* note 28.

<sup>47</sup> Indonesia, *Law regarding the Establishment of the Special Features Region of Jogjakarta*, Law No. 3/1950, State Official Gazette No. 3/1950.

#### **4. Law No. 21/2021, as Amended by Law No. 35/2018 and Secondly Amended by Law No. 2/2021 on Special Autonomy of the Province of Papua**

The establishment of this law was mandated by The People's Consultative Assembly Decision No. IV/MPR/1999 on Broad Outlines of State Policy. The decision mandated to provide Papua with the status of special autonomy. This special authority basically provided Papua with a wider authority in the framework of the Unitary State of the Republic of Indonesia. Special autonomy is a special authority which was recognized and was given to the Province of Papua to regulate and manage their own government based on the aspiration and basic rights of the Papua's people.

The asymmetric authorities of this province are in the fields of all governance authorities except in the fields of foreign affairs, defence and security, monetary and fiscal, religion and court and other specific authorities which were established by laws and regulations. These authorities further were regulated by Special Local Regulation or Province Local Regulation. Under Law No. 2/2021 on the Second Amendment of Law No. 21 Tahun 2001 on the Special Autonomy of the Province of Papua.<sup>48</sup> Under this Law, a Special Body was established in order to optimize the synchronization, harmonization, evaluation, and coordination in the implementation of the special authority development in the Province of Papua. This Special Body is chaired by the Vice President and is responsible to the President of the Republic of Indonesia.<sup>49</sup>

#### **E. Conclusion**

Indonesia is a unitary state, but from the historical perspectives, there were some eras when it applied the federalism principles. Firstly, it was between 27 December 1949 to 17 August 1950 when the 1949 Constitution was enacted. Secondly, there were mostly from the Post-Reformation era when there were some laws dealing with regional autonomy been enacted. These laws provide special features for regional government and 3 special provinces in Indonesia.

Those law were: (1) Law No. 22/1999 on Regional Governance;<sup>50</sup> (2) Law No. 21/2021, as Amended by Law No. 35/2018 and Secondly Amended by Law No. 2/2021 on Special Autonomy of the Province of Papua;<sup>51</sup> (3) MoU Helsinki and Law No. 11/2006

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<sup>48</sup> Indonesia, *Law No. 2/2021 regarding the Second Amendment of the Law No. 21/2001 on the Special Autonomy of the Province of Papua*, State Sheet No. 155/2021, State Sheet Addendum No. 6697.

<sup>49</sup> *Id.*, see Article 68 A.

<sup>50</sup> Indonesia, *Law regarding Regional Governance*, Law No. 22/1999, *supra* note 5.

<sup>51</sup> Indonesia, *Law regarding Special Autonomy of the Province of Papua*, Law No. 21/2021, as Amended by Law No. 35/2018 and Secondly Amended by Law No. 2/2021, *supra* note 29.

on the Governing of Aceh;<sup>52</sup> and (4) Law No. 13/2012 on Special Features of the Province of Daerah Istimewa Yogyakarta.<sup>53</sup>

Based on these experiences, Indonesia now is implementing unitary state system with the combination of symmetric and asymmetric decentralization. The asymmetric decentralization is applied to the 3 provinces as follows: (1) The Province of Daerah Istimewa Yogyakarta (or Yogyakarta with Special Features Region); (2) Aceh (or the Province of Aceh Darussalam); and (3) The Province of Papua.

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<sup>52</sup> Indonesia, *Law regarding the Governing of Aceh*, *supra* note 27.

<sup>53</sup> Indonesia, *Law regarding Special Features of the Province of Daerah Istimewa Yogyakarta*, Law No. 13/2012, *supra* note 28.

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