



SPECIAL AUTONOMY DILEMMA IN THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA

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Abstrak

As the largest archipelagic country in the world with cultural pluralism in its people, Indonesia, the 1945 Constitution of the Republic of Indonesia has guaranteed the existence of unique or special regional government units. However, in practice, the implementation of special autonomy has been slow in realizing the welfare of the local community. The focus of this research seeks to answer two problems: First, how is the design of special autonomy arrangements in the 1945 Constitution of the Republic of Indonesia? Second, is the implementation of special autonomy in Indonesia following the ideals of regional government regulation in the 1945 Constitution of the Republic of Indonesia? The method used in this research is normative legal research with data collection techniques in library research. The study results reveal that the 1945 Constitution of the Republic of Indonesia has provided space for regions to organize an asymmetrical government. However, in reality, the implementation of special autonomy in Indonesia is not based on the design of regional diversity awareness in the 1945 Constitution of the Republic of Indonesia. In addition, implementing special autonomy in Indonesia still leaves various problems.

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I. INTRODUCTION

Indonesia is a unitary state, as stated in Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which reads, "*The State of Indonesia is a Unitary State, in the form of a Republic.*" This provision is emphasized by maintaining Article 1 paragraph (1) in the amendment process of the 1945 Constitution of the Republic of Indonesia. Theoretically, the Unitary State is not composed of several countries but single, so there is only one country (Rahman 2018). A unitary state (*eenheidsstaat*) is a form of an independent and sovereign state in which, in the entire territory of the country, there is only one ruling government, namely the central government (Kasmawati 2012). A unitary state contains the principle that the one who holds the highest power over all state affairs is the central government without any delegation of authority to the regions (Huda 2018).

Historically, the form of a unitary state was chosen by The Founding Parents through a long process in the pre-independence session of the Indonesian Independence Preparatory Research Body and the Indonesian Independence Preparatory Committee (BPUPKI-PPKI). There are at least two

options for the form of state that will later be implemented in an independent Indonesia, namely the form of a unitary state pioneered by M. Yamin and the form of a federal state pioneered by M. Hatta. In short, through a vote in the session of the Constitution Drafting Committee, the results were obtained, four votes were in favor of a federal state, while 17 people voted for a unitary state (Yudi 2021). Since then, the form of the Indonesian state has been the Unitary State, later determined in the ratification of the 1945 Constitution dated August 18, 1945.

Although the format of the unitary state was chosen as the form of the Indonesian state, the founding parents did not turn a blindfold to the reality of diversity in the archipelago. This can be seen in Article 18 of the 1945 Constitution (before the amendment), which emphasizes that the division of regions in Indonesia is carried out by observing and remembering the basis of deliberation in the state government system and the rights of origin in the particular areas. Furthermore, the Elucidation of Article 18 states that:

"...In the territory of the State of Indonesia, there are approximately 250 zelfbesturende landschappen and volksetmeenschappen, such as villages in Java and Bali, the state in Minangkabau, hamlets and clans in Palembang and so on. These areas have an original structure and can be considered special. The State of the Republic of Indonesia respects the position of these special regions, and all state regulations will remember the rights of the origin of these regions."

The provisions of Article 18 and its explanations consciously show that Indonesia has since the beginning adopted the form of a unitary state with the unusual principle of decentralization, better known as asymmetric decentralization. Further, Moh. Hatta emphasized that the formation of an autonomous regional government is one aspect of the implementation of people's sovereignty, namely the right of the people to determine their fate at the top of the country's leadership and in every place in the region (Sukriono 2013). This idea can be understood considering Indonesia's vast geographical condition with all the diversity in it requires the implementation of asymmetrical decentralization in the form of the broadest possible autonomy.

Awareness of the diversity of each region is increasingly emphasized along with changes to the constitution. For example, article 18A paragraph (1) of the 1945 Constitution of the Republic of Indonesia states, *"the relationship of authority between the central government and regional governments of provinces, regencies, cities, or between provinces and regencies and cities, is regulated by law by taking into account the specificity and diversity of regions."* Then in Article 18B paragraph (1) states, *"the state recognizes and respects regional government units that are special or special in nature regulated by law."*

This provision confirms the recognition of particular regions with unique and special government systems at all levels of government. In practice, this is then realized through the implementation of special autonomy in several areas, which include: Aceh, Papua and West Papua, the Special Region (DI) Yogyakarta, and the Special Capital Region (DKI) Jakarta. However, the

implementation of special autonomy in these regions did not depart from the same awareness. In the context of Aceh and Papua, the consideration of asymmetric decentralization in the form of special autonomy is to prevent disintegration.

Although special autonomy was applied to Aceh and Papua, this did not necessarily reduce the turmoil in the two regions. Against Aceh, tensions between the central government and GAM (Free Aceh Movement) could only be ended after the tragedy of the tsunami disaster, which was followed by the signing Memorandum of Understanding (MoU) on August 15, 2005 (Abdurahman and Dewansyah 2019). Meanwhile, the conflict in Papua has not yet been fully resolved. On the other hand, welfare and economic growth in Aceh and Papua are still lagging compared to other regions (Nurmasari and Hafis n.d.). The portrait above shows that implementing special autonomy in Indonesia appears to be a dilemma. It encourages the need to reinterpret the implementation of special autonomy in Indonesia. Therefore, this study seeks to review the special autonomy in Indonesia by departing from the following two problem formulations: How is the special autonomy arrangement designed in the 1945 Constitution of the Republic of Indonesia? And is the implementation of special autonomy in Indonesia following the ideals of regional government regulation in the 1945 Constitution of the Republic of Indonesia?

II. METHODS

This research is normative juridical research that examines the object of the rule of law, especially the 1945 Constitution of the Republic of Indonesia, which contains provisions regarding the regulation of special autonomy in Indonesia. The data source is secondary data consisting of primary, secondary and tertiary legal materials. The data collection technique was carried out using a literature study, namely conducting an inventory and studying library data in the form of laws and regulations, literature books, scientific articles and official websites. The approach method used is the statutory approach, the conceptual approach, and the historical approach.

III. RESULT AND DISCUSSION

3.1. History of the Concept of Regional Autonomy in General in Indonesia

The concept of regional autonomy is not new in Indonesia. Since Indonesia was still called the Dutch East Indies, which was still controlled by the Dutch colonial government, regional autonomy had been debated and implemented with all its limitations. The geographical and sociological conditions of the Dutch East Indies are the main reasons.

Historically, entering the decade of the 1880s, the pressure to demand change began to be felt by the private Dutch people who were engaged in various business fields in the Dutch East Indies spread across multiple regions, including in Batavia, Bandung, Semarang, Surabaya, Makassar, Medan and Padang. They demanded the opportunity to participate in speaking (which at that time was

termed *medezeggenschap*) in making government policies. The fast development and complicated problems in various parts of the Dutch East Indies were impossible to handle from afar and behind the desk by the central administrators' power (Wignjosoebroto 2008).

This demand came to fruition on July 23, 1903, with the promulgation of a law on decentralization of government in the Dutch East Indies, named *De Wet Houdende Decentralisatie van Het Bestuur in Nederlands Indië (Decentralisatie Wet 1903)*. In principle, *Decentralisatie Wet 1903* opened up the possibility of the realization of an autonomous government in particular regions called *gewesten*, or in parts of specific regional units called *gedeelten van gewesten (afdelingen)*, which could carry out its government affairs (*zelfbestuur*). To give direction to the implementation of regional autonomy, the *Decentralisatie Besluit 1904* was followed by the *Locale Ordonantie 1905* (Wignjosoebroto 2008). At the same time, to fulfill the interests of the development of the life of the indigenous population in the villages, a particular ordinance, namely *De Inlandsche Gemeente Ordonnantie 1906* for Java-Madura, and followed by *Inlandsche Gemeente Ordonantie Buitengewesten 1938* for other regions (Huda 2014).

Although it was slow and stumbling in its implementation, the process of granting autonomy to the Dutch East Indies and the regions within it continued to move forward. After the formation of *Volksraad* on December 16, 1916, various political developments among the natives began to show their function. It was followed by the establishment of several provinces in Java between 1926-1930. In 1932, all *regentschaps (districts)* in Java-Madura were equipped with *regentschap raden (a local council)*, of which 1538 members were of which 837 were natives (Wignjosoebroto 2008).

However, the government order based on the principle of decentralization, which required a long process, had to end when the troops of Dai Nippon (Japan), on March 7, 1942, succeeded in getting rid of the Dutch and controlling Indonesia. For effective control of the regions, recentralization was reinstated by the Japanese military government. Through Law no. 28, the Java island's division into three provinces was discontinued and replaced by reviving residency areas called *syuu* (Wignjosoebroto 2008).

The centralization of power implemented by the Japanese military government persisted when Indonesia declared independence. At that time, a central command structure was deemed necessary to oppose the return of Dutch troops to Indonesian soil. Although constitutionally, broad autonomy is promised through Article 18 of the 1945 Constitution and its explanations, in its implementation, the government has been complacent in taking advantage of the centralization of power. When Suharto entered force with his New Order, efforts to realize autonomy were carried out through Law no. 5 of 1974, but what happened even more revealed the face of a centralized government (Huda 2005). After the fall of Suharto's power, the arrangement of autonomous regional government again found its way by starting to amend the constitution in 1945 Constitution which, among other things, overhauled the provisions regarding provincial government.

3.2. Special Autonomy Design in the 1945 Constitution of Republic of Indonesia

The fall of the New Order government on May 20, 1998, through a reform movement, was the beginning of a realignment of Indonesia's constitutional system. Through the acceleration of the 1999 General Election, the 1945 Constitution, which during the New Order government was sacred and could not be changed, in October 1999, the People's Consultative Assembly (MPR) made changes to the 1945 Constitution for the first time. To the 1945 Constitution by amending and adding, among others, Article 18, Article 18 A and Article 18 B, which contain regulations concerning regional government approved by the MPR.

After the amendment, the material regarding regional government in the 1945 Constitution reads as follows.

CHAPTER VI REGIONAL GOVERNMENTS

Article 18

- (1) *The Unitary State of the Republic of Indonesia is divided into provincial regions and those provincial regions are divided into regencies (kabupaten) and municipalities (kota), whereby every one of those provinces, regencies, and municipalities has its regional government, which shall be regulated by laws*
- (2) *The regional governments of the province, the regency, and the municipality shall regulate and manage their own government affairs according to the principles of autonomy and duty of assistance*
- (3) *The regional governments of the province, the regency, and the municipality have Regional People's Representative Councils whose members are elected through a general election*
- (4) *Every Governor, Regent (Bupati), and Mayor being respectively head of the regional government of the provinces, regencies, and municipalities shall be elected democratically*
- (5) *The regional governments exercise widest autonomy, save to government affairs determined by law as the affairs of the Central Government*
- (6) *The regional governments are entitled to determine regional regulations and other regulations for the execution of the autonomy and the duty of assistance*
- (7) *The structure and procedures for the conduct of regional governments shall be regulated by laws*

Article 18A

- (1) *The authority relations between the central government and the regional government of the provinces, regencies, and the municipalities, shall be regulated by laws by having regard to regional specificity and diversity*
- (2) *The financial relations, public service, the utilization of natural resources and other resources between the central government and the regional governments shall be regulated and be executed justly and harmoniously by virtue of law*

Article 18B

- (1) *The State shall recognize and respect units of regional governments of specific or special nature which shall be regulated by laws*
- (2) *The State shall recognize and respect entities of the customary law societies along with their traditional rights to the extent they still exist and are in accordance with the development of the*

society and the principle of the Unitary State of the Republic of Indonesia, which shall be regulated by laws.

The provisions of Chapter VI of the 1945 Constitution of the Republic of Indonesia above, which regulate regional government, have adopted several decentralization principles to carry out government affairs effectively within the Unitary State of the Republic of Indonesia. It is stated that the provincial, district and city governments regulate and manage their government affairs according to the principles of autonomy and co-administration. This provision emphasizes that regional governments exercise the broadest possible freedom, except for government affairs determined by law to be the affairs of the Central Government. Thus, it can be seen that the 1945 Constitution, as a result of the amendments, requires the transmission of government affairs from the central government to regional governments within the Unitary State of the Republic of Indonesia (Mahmuzar 2020). So, it can be said that Indonesia is a unitary state with a decentralized system. Furthermore, the following principles are contained in the 1945 Constitution of the Republic of Indonesia after the amendment (Rudiani 2017):

- 1) The regional principle regulates and manages its government affairs according to the principle of autonomy and co-administration as stipulated in Article 18 paragraph (2). The principle of exercising the broadest possible autonomy to manage its government affairs as stipulated in Article 18, paragraph (5)
- 2) Regional specificity and diversity principle implies that the form and content of regional autonomy do not have to be uniform (uniformity). Instead, this principle supports the structure and content of regional autonomy determined by various exceptional circumstances and regional diversity as mandated in Article 18 A paragraph (1).
- 3) The principle of recognizing and respecting customary law community units and their traditional rights is Article 18 B paragraph (2). The article contains acknowledgement and respect for regular law community units. In addition, it upholds traditional rights, including ulayat rights and rights to obtain benefits or enjoyment from the homeland, following the principles of the Unitary State of the Republic of Indonesia.
- 4) The principle of recognizing and respecting unique and special Regional Governments is contained in Article 18 B paragraph (1).
- 5) The principles of regional representative bodies are directly elected by the people in a general election as stated in Article 18, paragraph (3)
- 6) The principle of the relationship between the centre and the regions must be implemented harmoniously and fairly in the context of realizing an independent regional government and the welfare of the people in the area concerned following Article 18 paragraph (2).

Arrangements regarding regional government in the constitution after the amendments have been made are far more comprehensive than before, which were only described in the explanation. According to Jimly Asshiddiqie, the new provisions of Article 18, Article 18 A and Article 18 B have changed the Indonesian state from a rigid unitary state to a dynamic unitary state (Asshiddiqie 2006). In the dynamics of the relationship between the centre and the regions, it is possible to develop a pluralist autonomy policy to apply a different pattern of autonomy to each part (Asshiddiqie 2006). The granting of further independence for each region is equivalent to implementing asymmetric decentralization. Geographical and sociological conditions and cultural richness in each area are supporting factors for implementing asymmetric decentralization in granting pluralist autonomy.

The same thing was also expressed by Bagir Manan, according to which the principle of regional specificity and diversity in Article 18 A paragraph (1) implies that the form and content of regional autonomy do not have to be uniform (*uniformity*). Furthermore, Bagir Manan stated that the structure and content of regional autonomy are determined by various particular circumstances and the diversity of each region. Autonomy for agricultural areas can differ from industrial sites and between coastal and inland areas, and other arrangements must be made. Likewise, potential regional differences must be the basis for determining the form and content of autonomy (Manan 2001). It is essential to understand genuine autonomy, namely multiple autonomies.

Absolute autonomy through the application of various types of independence follows the living conditions of the Indonesian people. As is known, geographically, Indonesia is the largest archipelagic country in the world, with more than 17,000 islands with a water area of 5.8 million km² (Rahman 2018). In addition, Indonesia has more than 1,331 tribes, and each tribe has diverse characteristics and cultures (BPS n.d.). Therefore, the 1945 Constitution of the Republic of Indonesia, which has guaranteed the widest possible autonomy to regional governments with the principles of diversity and specificity, has shown Indonesia's spirit of diversity. Moreover, Article 25 A of the 1945 Constitution has also agreed to Indonesia as an archipelagic country. Taking into account the geographical conditions and social life of the Indonesian people, the form of a unitary state with an asymmetrical decentralization system is necessary for Indonesia.

On the other hand, the 1945 Constitution of the Republic of Indonesia, through the provisions of Article 18B paragraph (1), has affirmed the unique or special government's position by stating that the state recognizes and respects these regional government units. It shows the state's awareness of the existence of individual or special restricted government units under the auspices of the unitary state. In addition, Article 18B paragraph (1) has also provided space for each unique and special region in Indonesia to carry out its government affairs specifically.

However, according to Ni'matul Huda, implementing special autonomy in Indonesia so far is not based on the mechanism and spirit of the 1945 Constitution of the Republic of Indonesia but rather is a sporadic demand. Based on political reasons, call it special autonomy for Papua and Aceh

to suppress the demands for independence from the two regions. As for granting a Special Region to Jakarta, it is because of its status as the State Capital. Meanwhile, special autonomy by giving special status to Yogyakarta is more based on the history of the kingdom of Yogyakarta in its contribution to the independence of the Republic of Indonesia. Furthermore, according to him, ideally, the arrangement of special autonomy in Indonesia is based on a carefully prepared design that considers all aspects based on regional uniqueness (Huda 2014). Because, considering Indonesia's pluralistic condition and rich in its people's diversity, the choice of asymmetric decentralization is a rational choice for Indonesia (Rahman 2018).

In addition, the issue regarding the criteria for regions that can be granted special autonomy status is still unclear. Article 18 B paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that the state recognizes and respects special or special regional units which are regulated by law phrase "... *regulated by law*" implies that there must be a derivation from Article 18 B paragraph (1) in the form of a law that regulates the criteria and conditions for regions that can obtain special autonomy status. However, because the rules for delegation of authorities from Article 18 B paragraph (1) do not yet exist, this causes the implementation of special autonomy in Indonesia seems to run in disarray way.

3.3. Notes on the Implementation of Special Autonomy in Indonesia

Amendments to the 1945 Constitution of the Republic of Indonesia have demonstrated Indonesia's spirit of diversity. It is indicated by confirming the regulation regarding the position of unique and special regional government units. However, as mentioned earlier, the criteria for determining specific regions are still unclear. In practice, the regulation regarding particular areas is more sporadic in which political demands dominate. Five provincial-level parts are granted special autonomy status in its implementation: Aceh Province, Papua Province and West Papua Province, Yogyakarta Special Region Province and Jakarta Capital Special Region Province. However, what will be noted in this study only concerns four regions which are considered still to have problems with the status of special autonomy.

1. Special Region of Yogyakarta

During the Dutch rule over the Dutch East Indies, Yogyakarta was an area with its government or was called a self-governing area, namely the Sultanate of Yogyakarta and the Duchy of Pakualaman. The Sultanate of Yogyakarta and the Duchy of Pakualaman were self-governing kingdoms, each independent. By the Dutch government, the areas of the kingdom were determined through a political contract renewed when the kings changed. In the contract, the Dutch recognized the position of these kingdoms to run the government regarding their regional households called *Zelfsturende Landschappen* (Huda 2014).

After the proclamation of Indonesian independence, Sri Sultan Hamengkubuwono IX and Sri Paku Alam VIII told President Soekarno that the Yogyakarta Sultanate Region and the Pakualaman Region are part of the territory of the Republic of Indonesia. Following up on this, for the first time, the regulation on the Special Region appeared in Law no. 1 of 1945 concerning the Position of the Regional National Committee, which essentially allowed Yogyakarta and Surakarta to use different rules. Through an Indonesian National Committee for the Yogyakarta Region, on September 5, 1945, the committee with the Sultan issued a mandate which contained: *First*: Ngayogyakarta Hadiningrat in the form of a kingdom which is a Special Region, part of the Republic of Indonesia. *Second*: All domestic power and government affairs are in the hands of Hamengkubuwono IX. *Third*: The relationship between Ngayogyakarta Hadiningrat and the Government of the Republic of Indonesia is direct, and Sultan Hamengkubuwono IX is directly responsible to the President of the Republic of Indonesia (Illiyan 2020).

Regarding the privileges of Yogyakarta, it was later confirmed through Law no. 3 of 1950 concerning the Establishment of the Special Region of Yogyakarta. By looking at the state's development, Law no. 3 of 1950 underwent several changes through Law no. 19 of 1950 in conjunction with Law no. 9 of 1955. The law states that DIY is at the same level as the province, covering the Sultanate of Yogyakarta and the Paku Alaman area. In addition to regulating the territory and position, the law regulates the DIY DPRD and DIY household affairs. In addition, Law no. 3 of 1950 was also the first practice of special autonomy in Indonesia (Dardias 2017).

From the end of Soekarno's reign until Suharto's New Order rule, the arrangements regarding Yogyakarta did not experience significant changes. Various changes to local government laws still recognize the existence of Yogyakarta as a unique region. The new chapter regarding the Special Region of Yogyakarta began at the same time as the amendment of the 1945 Constitution of the Republic of Indonesia. Their position in the constitution then strengthened the regulation of unique regions. In 2012, Law no. 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta (*UUK DIY*) as an answer to the anxiety of the people of Yogyakarta over the privileged status contained in Law no. 3 of 1950 in conjunction with Law no. 19 of 1950 in conjunction with Law no. 9 of 1955 which is considered still not too precise. With the promulgation of the DIY UUK, the people of Yogyakarta responded with joy to the certainty of the specialities of DIY (Thontowi 2019).

The UUK DIY emphasizes that the Special Region of Yogyakarta is a province that has privileges in the administration of government affairs within the framework of the Unitary State of the Republic of Indonesia. Regarding these privileges, it is then explained that "privileges" are privileges in the legal position that DIY has based on history and origin rights

according to the 1945 Constitution of the Republic of Indonesia to administer and regulate special powers. The authority of DIY as an autonomous region includes the authority in the affairs of the Regional Government of DIY as regulated in the regional government law and privileges stipulated in the UK DIY. The authority in matters of privilege includes:

- a) Procedures for filling the positions, positions, duties, and authorities of governors and deputy governors;
- b) DIY Regional Government Institutions;
- c) Culture;
- d) Land; and
- e) Spatial.

Furthermore, the Yogyakarta local government in carrying out the authority for privilege matters is based on the values of local wisdom and partiality to the people. It follows the purpose of special autonomy to advance the community's welfare. Further provisions regarding the authority in matters of privilege are further regulated by the Special Regional Regulation of DIY (*Perdais*).

However, the problem of inequality and welfare in Yogyakarta is still considered to have not been maximally resolved. BPS data states that Yogyakarta will be the province with the highest inequality in Indonesia in September 2021. The Gini ratio in DIY is recorded at 0.436 (Mahdi 2022). On the other hand, there is a problem that is still a polemic in Yogyakarta today, namely regarding the regulation of land. Because with the birth of the DIY UUK, which included land affairs as a matter of privilege, has confirmed the existence of the former self-government land, namely land belonging to the Sultanate called the Sultan Ground (SG) and land belonging to the Duchy called Pakualaman Ground (PAG). The presence of SG and PAG is suspected of triggering various land conflicts in Yogyakarta, which include: 1) refusal from village officials regarding claims to village land; 2) the refusal of the Yogyakarta Legal Aid Institute (*LBH*) regarding several eviction cases reported by the community for land claimed as SG and PAG; 3) cases of land tenure discrimination by Indonesian citizens (WNI) of Chinese descent (Illiyani 2020).

2. Special Autonomy for Papua and West Papua

Papua became part of the territory of the Republic of Indonesia after going through a long process between Indonesia and the Netherlands. The territorial dispute between Indonesia and the Netherlands against Papua has also reduced the international community's attention, demanding the United Nations participate in resolving the conflict. As a result, – on August 2, 1969, the People's Opinion (*Papera*) was held, the official Indonesian term for the Act of Self-Determination (Huda 2014).

Subsequently, on November 19, 1969, the UN General Assembly held a debate and vote with the result that 84 countries agreed and 30 countries abstained from the Papera results in Papua. The UN General Assembly accepted the Act of Free Choice, and Papua, which later changed its name to West Irian, officially became the 27th province of Indonesia on November 19, 1969 (Huda 2014).

However, not all parties can accept the results of the Papera. Some community groups then try to continue to voice independence for Papua. These demands' peak reached momentum when the 1998 reforms took place and the fall of President Suharto. Massive demonstrations took place in various circles of the Papuan community. In its development, the aspirations of the people want the return of the name Irian Jaya to Papua as stated in the Decree of the Irian Jaya Provincial DPRD No. 7/DPRD/2000 concerning Renaming Irian Jaya to Papua.

Although the demands for independence continue to be voiced, the middle ground between the Central Government and the Papuan People has reached an agreement, namely Special Autonomy for the Papua Province. On November 21, 2001, Law no. 21 of 2001 concerning Special Autonomy for Papua. The primary things that are regulated include (Huda 2014):

- a) Arrangement of authority between the Government and the Government of Papua Province as well as the implementation of such jurisdiction in Papua Province, which is carried out with specificity;
- b) recognition and respect for the fundamental rights of indigenous Papuans as well as strategic and essential empowerment;
- c) Realizing good governance and characterized by: i) maximum people's participation in planning, implementation, and supervision of government administration and development through representatives of adat, religion, and women. ii) implementation of development that is directed as much as possible to meet the basic needs of the indigenous Papuans in particular and the population of the Papua Province in general by adhering to the principles of environmental conservation for the community; and
- d) The division of authority, duties, and responsibilities is firm and transparent between the legislative, executive, and judicial bodies, as well as the Papuan People's Consultative Assembly, as a cultural representation of the indigenous Papuans who are given certain powers.

On progress, Law no. 21 of 2001 changed to provide legal certainty for the Province of West Papua. The government then issued Perppu No. 1 of 2008 concerning Amendments to Law no. 21 of 2001 regarding Special Autonomy for Papua Province, which the DPR later approved into Law no. 35 of 2008 concerning the Stipulation of Peppu No. 1 of 2008 concerning Amendments to Law no. 21 of 2001 regarding Special Autonomy for the Province of Papua Becomes Law (Huda 2014). Article 1 confirms that the Papua Province is the

Province of Irian Jaya which later became the Province of Papua, and the Province of West Papua, which was given special autonomy within the framework of the Unitary State of the Republic of Indonesia.

The granting of Special Autonomy for the Provinces of Papua and West Papua is intended to achieve justice, uphold the rule of law, respect human rights, accelerate economic development, and improve the welfare and progress of the Papuan people, in the context of equality and balance with the progress of other provinces. To support this, there is a special autonomy fund for Papua, calculated at 2% (two percent) of the National General Allocation Fund (*DAU*) ceiling. Furthermore, with the special autonomy fund, it is hoped that it will become a means of accelerating development in the field of education in Papua, which is still lagging.

Although, in general, the allocation of special autonomy funds for Papua continues to increase yearly, the realization in the field still has not found satisfactory results. BPS data shows that the Human Development Index (HDI) data for Papua Province and West Papua Province still ranks the lowest in Indonesia (BPS 2021). It shows that the management of special autonomy funds is still not optimal. Furthermore, the BPK reports that it is suspected that there was misappropriation of special autonomy funds in the education sector from 2011-2017 (Mustikawati and Maulana 2020).

In addition, to this day, the conflicts in Papua are still not entirely resolved, and the echoes of the demands for an independent Papua are still being heard (Benny Mawel 2021). On the other hand, granting special autonomy funds for Papua, which is only valid for 20 years, has expired in 2021. In response to this, the government then decided to extend the disbursement of special autonomy funds to Papua until 2041 through Law no. 2 of 2021 as the second amendment to Law 21 of 2001. In Law No. 2 of 2021, it is also stated that what is meant by Papua Province are provinces located in the Papua region which are granted Special Autonomy within the framework of the Unitary State of the Republic of Indonesia. This later became the basis for expanding the Papua region by adding three new provinces: South Papua Province, Central Papua Province, and Papua Mountains Province.

But unfortunately, some people think that the expansion of the Papua region is full of political interests and is too hasty. The policies taken by the central government do not pay attention to the root of the problem in Papua (Muksin et al. 2021). The LIPI team, in their study, stated that there are four root causes of Papua's issues, which to this day have not been resolved and hinder the implementation of Special Autonomy for Papua, which is less than optimal. The four roots of the problem are (Mustikawati and Maulana 2020): *First*, the process of integration of the Papua region into the Unitary State of the Republic of Indonesia is still considered problematic by some supporters of Free Papua. *Second*, state violence and

accusations of human rights violations. *Third*, the failure of development, especially in the fields of education, health, and people's economic empowerment. *Fourth*, marginalization and discriminatory effects on indigenous Papuans due to the economic development of political conflicts and mass migration to Papua began to intensify in 1970.

3. Aceh Special Autonomy

The implementation of special autonomy for Aceh was motivated by the prolonged conflict that occurred in Aceh, which in turn gave rise to the demands of the Acehnese people to separate themselves from Indonesia (Suharyo 2018). Historically, the seeds of conflict between the central government and Aceh stem from the disappointment of Daud Beureuh, the leader of the Acehnese people, against the government's decision to designate Aceh as a residential area in North Sumatra Province. In one of his speeches, the disappointment peaked when President Soekarno emphasized that Indonesia couldn't use Islam as the basis of the state. As a result, on September 21, 1953, Daeud Beureuh declared that he had joined as part of the Islamic State of Indonesia/NII, which Kartosuwiryo had previously proclaimed (Abdurahman and Dewansyah 2019).

Seeing the turmoil in Aceh, President Soekarno decided to make Aceh an Autonomous Region of Aceh Province through Law no. 24 of 1956. Although Aceh had been made a separate province and given autonomy, this did not dampen the rebellion in Aceh. It is because the people of Aceh are not satisfied with Law no. 24 of 1956, which is considered not to mention the granting of autonomy to Aceh in applying Islamic law (Huda 2014).

On May 23, 1959, the Central Government again offered to give a "Special Region" to the Province of Aceh. This title gave Aceh broad autonomy rights in religion, customs, and education. This status is reinforced by Law no. 18 of 1965. Furthermore, President Soekarno then issued Decree No. 449, granting amnesty and abolition to rebels willing to return to the Republic (Mukhlis 2014).

Efforts to restore security in Aceh through awarding the title "Special Region" had to meet obstacles when there was a national upheaval with Soekarno ousting from the seat of President power and being replaced by Suharto. The New Order government, with its military style, actually did decentralization of power through Law no. 5 of 1974. So, the implementation of privileges in Aceh does not run well as it should. Furthermore, the disappointment led to a rebellion movement called the Free Aceh Movement (*GAM*) (Suharyo 2018). In the eyes of the New Order, *GAM* was nothing but a gang that had to be crushed through a security approach and designated Aceh as a Military Operations Area (*DOM*).

The fall of President Suharto from the seat of power in 1998 caused a shift in the dynamics of national politics, which in turn also affected the Aceh conflict. The direction of resolving the Aceh conflict by President BJ Habibie then prioritized peaceful ways through negotiations. As

a result, Law no. 44 of 1999 concerning the Privileges of the Special Province of Aceh was a step to restore conditions in Aceh. The implementation of Islamic law in Aceh is confirmed in Article 4 paragraph (1) of Law No. 44 of 1999, which regulates the implementation of Islamic law for its adherents and the role of the ulama in determining regional policies (Huda 2014).

Although the granting of special autonomy to Aceh has been carried out, this has not diminished GAM's demands for independence. Until the change of President from BJ Habibie continued to Abdurrahman Wahid (Gus Dur) and again to Megawati Soekarno Putri, the resolution of the conflict in Aceh was still protracted and had not found a solution. Even under President Megawati, a new status with special autonomy was granted to Aceh through Law no. 18 of 2001 concerning Special Autonomy for the Province of the Special Region of Aceh as the Province of Nanggroe Aceh Darussalam. Implementation of Law no. 18 of 2001 was not carried out optimally because it was considered insufficient to accommodate the aspirations of economic development in Aceh (Huda 2014). On the other hand, there is mutual distrust between GAM and the Central Government. This condition peaked when President Megawati re-imposed Martial Law in Aceh through Decree no. 28 of 2003 concerning the Declaration of a State of Danger with Military Emergency Level in NAD Province (Abdurahman and Dewansyah 2019).

The reconciliation between the Central Government and GAM found its momentum when the natural tsunami disaster hit Aceh. This condition fosters solidarity with the nation's potential to rebuild the community and the Aceh region. Through the Helsinki Memorandum of Understanding (MoU), the governments of Indonesia and GAM agreed to end the conflict in Aceh. To accommodate the contents of the agreement between the Government of Indonesia and GAM, Law no. 11 of 2006 concerning the Government of Aceh adopted Law no. 44 of 1999 in conjunction with Law no. 18 of 2001 (Huda 2014).

Through Law no. 11 of 2006 regulates matters that follow the lives of the Acehnese people, which are based on Islamic Shari'a, including local political parties; application of Islamic law in the fields of worship, *muamalah* (civil law), *ahwal al syakhsyah* (family law), *jinayah* (criminal law), *qadha'* (judicial). It is further emphasized in Law no. 11 of 2006 that the central government cannot freely provide administrative policies related to Aceh without consultation and approval of the Aceh government. Furthermore, it is regulated that the mandatory affairs that fall under the authority of the Aceh Government are the implementation of the privileges of Aceh:

- a) Organizing religious life in the form of implementing Islamic law for its adherents in Aceh while maintaining inter-religious harmony;
- b) Organizing traditional life based on Islam;
- c) Providing quality education and adding local content according to Islamic law;

- d) The role of the ulama in setting Aceh policies; and
- e) The organization and management of the pilgrimage follow statutory regulations.

To encourage the implementation of Aceh Special Autonomy, one of Aceh's regional revenues is the Special Autonomy Fund. The Aceh Government's revenue is the Special Autonomy Fund intended to finance infrastructure development, people's economic empowerment, poverty alleviation, education, and social and health funding. The Special Autonomy Fund is valid for a period of 20 (twenty) years, with details for the first to the fifteenth year, whose amount is equivalent to 2 (two) percent of the ceiling of the National General Allocation Fund and for the sixteenth to twentieth year which the amount is equal to 1 (one) percent of the top of the National General Allocation Fund.

The large Special Autonomy Fund should ideally be able to impact the people of Aceh positively, but on the other hand, it can potentially create budget abuse. The results of the BPK audit even show that Aceh is the first most corrupt area in Sumatra (Suharyo 2018). On the other hand, BPS data also shows Aceh as the poorest province in Sumatra (Badan Pusat Statistik 2021). It is presumably due to the lack of professional human resources at the level of Otsus implementation, which in turn causes unequal distribution and social inequality in Aceh.

Furthermore, the general evaluation of the implementation of special autonomy in Indonesia is that the management of special autonomy funds and institutional governance has not been optimal. The results of the LIPI study stated that the management of special autonomy funds in Aceh, Papua, West Papua, and special funds in Yogyakarta showed that the management of special autonomy funds and special funds was hampered by several problems, mainly related to development ranging from planning readiness at the central to regional levels, problems institutions, human resources and finally on the issue of supervision (Latifah et al. 2019). So far, there has been no severe supervision on managing special autonomy or funds. Even if there is, it is only carried out to the extent of inspection and evaluation, so it is still not optimal. In the context of Yogyakarta, the still strong 'ewuh pakewuh' culture in the sultanate system resulted in ineffective supervision by the DPRD, the internal Palace, and the community. Therefore, it is necessary to establish an independent institution that explicitly oversees the management of special autonomy funds and special funds (Aziz et al. 2019).

Institutionally, particular institutions in unique autonomous regions are considered less than optimal in carrying out their roles. For example, in Aceh, there are Wali Nanggroe, the Traditional Council, the Ulema Consultative Council, and the Aceh Party. Meanwhile, there is the Papuan People's Assembly (MRP) in Papua and West Papua. These institutions generally have the same problems, namely the overlapping authority, under-representation of women, and the recruitment of special institutional membership has not been accompanied by a fit and proper test. Therefore, building a rationale, functional and synergistic local government institutional structure is urgent. On

the other hand, there needs to be an improvement in the quality of human resources to create a capable, capable, and professional local government (Aziz et al. 2019).

IV. CONCLUSION

After reviewing the implementation of special autonomy in Indonesia, it can be concluded that as the largest archipelagic country in the world with a plurality and cultural complexity of its people, the 1945 Constitution of the Republic of Indonesia requires genuine and pluralist regional autonomy. It can be said that the design of regional regulation in Indonesia indirectly involves the formation of a unitary state with pluralist and non-uniform decentralization so that each provincial government can independently develop its region according to its potential. But on the other hand, the 1945 Constitution of the Republic of Indonesia also guaranteed the existence of unique or special regional government units. Therefore, it is the constitutional basis for implementing special autonomy in Indonesia. It simultaneously provides space for the regions to carry out their government expressly or specifically as a form of awareness of diversity in the nation and state.

However, the practice of asymmetric decentralization in the form of special autonomy in Indonesia has so far not been based on the design and spirit of the 1945 Constitution of the Republic of Indonesia. Still, it has been dominated by demands of a political nature. Moreover, the delegation rules from Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia have not yet existed, causing a legal vacuum to further regulate special autonomy in Indonesia. In practice, the rationalization of the implementation of particular freedom runs sporadically. For example, in the context of DKI Jakarta, certain independence is granted because Jakarta is the State Capital. As for DI Yogyakarta, special autonomy was given because of the historic factor of the Kingdom of Yogyakarta, which has privileges and still exists in Indonesia, even though the Privilege status was obtained through a long process and drama of tug-of-war for political interests. Meanwhile, for Aceh, Papua, and West Papua, special autonomy was granted with the excuse of embracing these regions from the threat of national integration after a prolonged conflict.

4.4. Suggestion

Ideally, the basis for regulating special autonomous regions in Indonesia should be based on the awareness of diversity as stated in the 1945 Constitution of the Republic of Indonesia. The respect for the state, as stated in Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, should be regulated more firmly in the law. The regulation at least contains regional requirements and criteria that can implement special autonomy at all regional levels. In addition, it is also necessary to regulate the supervision mechanism of the special autonomous regions so that the special autonomy policies can be carried out according to the state's goals, namely for the most excellent welfare of the people.

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