



Occasional Paper Series

Number 31

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© Forum of Federations, 2019
ISSN: 1922-558X (online ISSN 1922-5598)

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Overview

Indonesian politics have been characterised by a large number of territorial cleavages that have only been partially addressed since the beginning of democratisation in 1998. It is a very diverse country with a history of several challenges to the state's external boundaries, as well as internal ethnic and religious conflict. A strong anti-colonial nationalist movement constructed a core set of symbols and ideas around which the nation and state of Indonesia were eventually created, including Bahasa Indonesia as the national language.¹ During three decades of authoritarian rule, the state primarily emphasised unity and national integrity over accommodating its diversity.² Repression was routinely used to quell rising grievances.

When the regime began to democratise in 1998, several groups mobilised and demanded more autonomous powers and resources. Most groups primarily grumbled over strong state centralisation. Acehese, Papuans and East Timorese, however, developed sub-state nationalist movements, all of which demanded independence in response to deeply seated grievances. Decades of violent repression, human rights abuses at the hands of the armed forces, displacement and marginalisation fed strong resentment against the Indonesian state.

A 'constitutional transition' began with the fall of President Suharto's authoritarian regime in May 1998 and ended with the adoption of the Law on Aceh in 2006. In the first instance, Indonesia's highest governing body, the People's Consultative Assembly (Majelis Permusyawaratan Rakyat, MPR) adopted several constitutional amendments between 1998 and 2002. While preserving the 1945 Constitution, which had formalised a strong centralist and authoritarian regime, the MPR nevertheless radically transformed its substance to support democratic change. Among its notable features, it enshrined principles of "wide-ranging autonomy" for Indonesia's diverse regions (Art. 18, sec. 2 and 5) and mandated the adoption of legislation that recognised the "particularities and diversity of each region (Art. 18A, sec. 1). Legislation that addressed these issues includes two iterations of fiscal and administrative decentralisation laws that applied to all regions of Indonesia, in 1999 and 2004.³ The state adopted two special autonomy laws in 2001 to address grievances in Aceh and Papua. While the special autonomy law still governs Papua, it no longer applies to Aceh. Instead, new legislation ensures broad autonomy powers and highly favourable fiscal concessions under the 2006 Law on Aceh. East Timor obtained a referendum on independence in 1999 and seceded from Indonesia.⁴

In this chapter, I compare how Acehese and Papuans negotiated this constitutional transition. While the Acehese obtained very detailed and extensive powers under the Law on Aceh, Papuans have repeatedly rejected the Special Autonomy Law that they obtained in 2001. Conflict in Aceh has largely subsided, while it continues in Papua. I argue that Indonesia's incrementalist and responsive approach to constitutional change enabled a flexible and asymmetric accommodation of ethnic groups that has largely strengthened Indonesia's stability and democratic character. Nevertheless, it reached its limits in Papua, where the state's fear of secession fuels an overly defensive, and ultimately self-defeating approach. Furthermore, Papuans have been divided and much weaker than the Acehese, whose sustained unity and insurgency placed strong pressure on the Indonesian

¹ George McTurnan Kahin, *Nationalism and Revolution in Indonesia* (First published 1955, Cornell Southeast Asia Program Publications 2003); Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso 1983) 113-14.

² Jacques Bertrand, *Nationalism and Ethnic Conflict in Indonesia* (Cambridge University Press 2004).

³ Andrew Ellis, 'Indonesia's Constitutional Change Reviewed' in Ross H McLeod and Andrew J MacIntyre (eds), *Indonesia: Democracy and the Promise of Good Governance* (Institute of Southeast Asian Studies 2007).

⁴ The case of East Timor is somewhat of an exception, and therefore not addressed in this chapter. Only a handful of countries had ever recognized Indonesia's integration of East Timor. There were therefore ongoing international negotiations with Portugal over its future status. International pressures at the time of the democratic opening, when Indonesia was also financially weakened, were decisive in the decision to allow a referendum.

government. As a result, low-level conflict continues to plague Papua and a more successful negotiated solution still elusive.

Background

Indonesia was conceived as a unitary state, in spite of its vast diversity. The world's largest Muslim country, Indonesia's population of 242 million people is divided along a large number of ethnic groups, scattered across a vast archipelago. Major ethnic groups include the Javanese (42%), Sundanese (15.4%), Malay (3.5%), Madurese (3.4%) and Bataks (3%), all of the other fifty or so ethnic groups represent less than 3% of the population.⁵ More than three hundred languages are spoken. A large majority of the population is Muslim (87%), while 9.9% are Christian, 1.7% are Hindu, and others follow Buddhism and Confucianism.⁶ Indonesia's diversity has been a perpetual challenge for crafters of the country's constitution and democratic institutions.

Revolution and political instability marked Indonesia's early experience with ethnic minority accommodation, and set a path that supported strong, centralist tendencies. The Indonesian nation is a classic 'imagined community' that was crafted out of a diverse population, whose main commonality was a shared experience of Dutch colonial rule. An anti-colonial nationalist movement emerged in the first decades of the twentieth century and coalesced around the promotion of a national language, Bahasa Indonesia, which was a dialect of Malay used as a lingua franca in large parts of the archipelago. Nationalist leaders Soekarno and Mohammad Hatta promoted unity among all peoples of the Dutch East Indies and shunned potentially divisive tools of mobilization, such as religion. Their views clashed with competing groups, such as the political party Masyumi, which espoused Islam to create a unifying movement against the Dutch.

Nationalists under Soekarno and Hatta prevailed at the time of drafting a constitution as the Japanese retreated in 1945 from occupying Indonesia for three years. In the brief window of opportunity before the Dutch returned, nationalist leaders, supported by Islamists and other political parties, declared independence. The 1945 Constitution enshrined a unitary state, and an institutional structure that created a strong and centralised presidential system. Its preamble recognised 'Belief in One God', the first of five principles (Pancasila) that affirmed the basis of the state.⁷ This principle constituted a rejection of an Islamic state, but while recognizing the primary importance of religion in Indonesia. Furthermore, the original constitution contained only one article devoted to regional governments, which that were defined without reference to any ethnic group. An amended version of the 1945 Constitution remains in force today.⁸

Indonesia's leaders rejected federalism, which they considered divisive and destructive. When the Dutch returned in 1945, they slowly regained control over the archipelago. The Indonesian Revolution, as nationalists called it, fostered increasing unity among diverse populations that joined the fight against the returning Dutch. As they regained territorial control, the Dutch sought local support by creating several states that coincided with major concentrations of particular ethnic groups. From 1945-1949, the small army of the Indonesian Republic resisted Dutch advances but failed to

⁵ Republic of Indonesia, Badan Pusat Statistik, *Kewarganegaraan, Suku Bangsa, Agama dan Bahasa Sehari-hari Penduduk Indonesia - Hasil Sensus Penduduk 2010* (Badan Pusat Statistik, 2011).

⁶ Republic of Indonesia, Badan Pusat Statistik, 'Penduduk Menurut Wilayah dan Agama yang Dianut' [Population by Region and Religion] in *Sensus Penduduk 2010* (Badan Pusat Statistik, 2010).

⁷ The five principles, as stated in the constitution are: belief in the One and Only God; just and civilised humanity; the unity of Indonesia; democratic life through deliberation amongst representatives of the people and achieving social justice for all the people of Indonesia. See Kahin (n 1).

⁸ The original one only came into force in the late 1950s, when Soekarno suspended the Constituent Assembly mandated to draft a new constitution and declared a 'return' to the 1945 Constitution.

gain the upper hand. Under international pressure from the United Nations, the Dutch finally agreed to grant independence to Indonesia but negotiated a constitution for the United States of Indonesia (1949), which was based on a federation of the Dutch-created states with the Republic of Indonesia as one of its constituent parts. The constitution was short-lived as a unitarist movement swept the newly independent country and, within eight months, virtually all federal states voluntarily disbanded and joined the Republic.⁹

From this brief experience, federalism was subsequently shunned and virtually banished as a possible option to accommodate Indonesia's diversity. Instead, with a motto of 'unity in diversity', Indonesia's political leaders strengthened the unitary state and the primacy of integrative policies over accommodating diversity.¹⁰

Indonesia's political leaders developed an almost obsessive emphasis on unity and centralisation as the first decade of Indonesia's independence witnessed regional rebellions and deep divisions over the fundamental nature of the state. The first was an early secessionist attempt from South Makuku after the fall of the Dutch-sponsored federal state in 1950. The second blended regionalist rebellion with an Islamist agenda. The Darul Islam movement, which lasted until the early 1960s, rejected the Pancasila-based Indonesian state and sought to create an Islamic one. Yet, it found its roots in regions with very devout Islamic populations and strong regionalist resentment against the Indonesian state's centralising tendencies. Its strongest supporters were based in South Sulawesi, West Java, and Aceh. Other regions also rebelled although not under the banner of the Darul Islam. The instability of the 1950s, and fears of secessionist activities, drove President Soekarno and part of Indonesia's political élite to favour strong state centralisation and increasing repression to maintain unity.¹¹

Under authoritarian rule, these tendencies were reinforced. Soekarno suspended in 1959 the Constituent Assembly that had been elected in 1955 to draft a new constitution. Although this measure came primarily from a deadlock between nationalist (pro-Pancasila) and Islamist visions for the future, regional rebellions loomed large and, in particular, those associated with the Darul Islam and the declaration of a Revolutionary Government of the Republic of Indonesia (PRRI) in 1958, which was the culmination of regional resentment at over-centralisation --particularly in parts of Aceh, Sumatra, and Sulawesi-- and an attempt to create an alternative Islamic state.¹² Its defeat strengthened the Indonesian armed forces' resolve to dissolve rebellions, and bolstered Soekarno's decision to establish authoritarian rule under his proclaimed Guided Democracy. As he decreed a 'return' to the 1945 Constitution, Indonesia became firmly entrenched as a unitary state, with Pancasila as its foundation.¹³

The New Order regime of President Suharto, from 1965-1998, deepened state centralisation. The new authoritarian regime resulted from a dramatic end to rising rivalry between the Communist Party and the armed forces under Guided Democracy. The armed forces won the upper hand and seized power directly under Suharto's leadership, while brutally eliminating its communist rival. Nevertheless, the 1945 Constitution was again upheld but used to strengthen even more the powers of the President and state institutions that supported authoritarian rule. The regime consequently repressed perceived threats to the state's integrity and unity even more forcefully.

⁹ Arthur Schiller, *The Formation of Federal Indonesia, 1945-1949* (W Van Hoeve 1955).

¹⁰ Kahin (n 1) 464; JD Legge, *Sukarno: A Political Biography* (first published 1972, 2nd edn, Allen & Unwin 1985) 223, 38-39; Hans Antlöv, 'Federations-of-Intent in Indonesia, 1945-49' in R William Liddle (ed), *Crafting Indonesian Democracy: International Conference toward Structural Reforms for Democratization in Indonesia* (Penerbat Mizan 2001).

¹¹ Cornelis van Dijk, *Rebellion under the Banner of Islam: The Darul Islam in Indonesia* (Martinus Nijhoff 1981).

¹² Barbara S Harvey, *Permesta: Half a Rebellion* (Cornell Modern Indonesia Project 1977).

¹³ This implied a definite rejection of the Islamic state option, and the adoption of Pancasila's first principle, 'Belief in One God'.

Against this backdrop, the regime banned mobilisation along ethnic, religious, or regional lines. Expressions of political demands relating to SARA (Suku, Agama, Ras, Antar Golongan meaning ethnic, religious, race or intergroup identity) were frowned upon, censored in the press, and generally prohibited. Political parties using Islam as a basis of organisation were initially forced to amalgamate in 1973 into a party with no Islamic identifier (Unity Development Party, PPP). When the regime adopted regional law no. 5, 1974, it reaffirmed a division of the country into provinces and districts with no reference to ethnic groups. It recognised cultural diversity and celebrated different traditions, but it reinvented cultural references to support the central Indonesian nation and Pancasila.¹⁴

Mobilisation in Aceh and Papua arose against this strong centralising regime. Yet, there were some important differences at the outset. Acehnese had fought with the Republic against the Dutch and rejected Dutch attempts to create a federal state. Acehnese political leaders had supported Indonesian nationalism and adhered to the idea of a united Indonesia. By contrast, Papuans were integrated into Indonesia only twenty years after the Revolution, because the Dutch retained West New Guinea at Indonesia's independence in 1949; therefore, they never shared the common struggle that united many ethnic groups against the Dutch.

Late integration to Indonesia added a significant layer to grievances, since groups did not share the 'myths' of revolutionary struggle against the Dutch. Papuans instead shared with East Timorese an experience of forced integration, repression, and assimilationist policies.¹⁵ Soekarno made claims to West New Guinea throughout the first decade of independence. In response, the Dutch educated and prepared a small Papuan elite for independence. Yet, as tensions rose with Indonesia, the United Nations brokered an agreement in 1962 to cede the territory to Indonesia while a plebiscite was organised on its future. From 1963 to 1969, Papuans waited as part of Indonesia for the opportunity to choose whether to formally integrate it or become independent. East Timor was integrated even more forcibly. Soon after the Portuguese announced in 1975 plans for decolonisation, Indonesia invaded the territory ostensibly at the invitation of one of the political parties struggling for power. Against the backdrop of a declaration of independence by one of the parties, Fretilin, the Indonesian armed forces intervened and brutally repressed subsequent resistance from Fretilin and its armed wing Falintil.¹⁶

Papuans were formally integrated through a United Nations sponsored process, the 1969 Act of Free Choice.¹⁷ It constitutes Papuans' primary source of grievance. From 1963 to 1969, the New Order government repressed Papuans and implemented assimilationist policies. Then in 1969 it organised a process to meet the provision for a plebiscite that the UN had mandated. Instead of a referendum, however, it selected a little more than a hundred representatives that voted unanimously in favour of joining Indonesia. There is little doubt that the regime not only hand-picked these representatives but also intimidated them. Shortly after 1969, resistance began mostly with the creation of the Free Papua Movement (Organisasi Papua Merdeka).

Aside from this significant difference, Acehnese and Papuans shared a number of common grievances. First, they were both rich in natural resources, which began to be exploited under authoritarianism and whose benefits accrued primarily to the central government and large corporations. Second, against the backdrop of several decades of repressive and assimilationist

¹⁴ Law No 5, 1974 on the Basic Principles of Administration in the Regions [*Undang-Undang No. 5, Tahun 1974 Tentang Pokok-Pokok Pemerintahan Di Daerah*] (Republic of Indonesia).

¹⁵ Bertrand, *Nationalism and Ethnic Conflict in Indonesia* (n 2).

¹⁶ Fretilin (Frente Revolucionária de Timor-Leste Independente—the Revolutionary Front for the independence of East Timor) and Falintil (Forças Armadas de Libertação Nacional Timor-Leste—Armed forces for the National Liberation of East Timor).

¹⁷ Pieter Drooglever, *An Act of Free Choice: Decolonization and the Right to Self-Determination in West Papua* (Oneworld Publications 2009).

policies, both regions were declared Military Operations Zones for the last decade of the New Order regime. Third and related to the previous point, human rights abuses were frequent.

Structurally, both groups are also similar but there are some important differences. Acehnese and Papuans are concentrated in defined territories, each at the western and eastern ends of the Indonesian archipelago respectively. Their populations are small, as they each constitute less than 2% of Indonesia's population. Yet, two characteristics differentiate them. The Acehnese are a much more cohesive and integrated group, as they share a single Acehnese language and view themselves as one ethnic group, while indigenous Papuans are divided between their overarching identity as Papuans and more localised identities. They speak a large number of local dialects, have strong tribal identities, and are politically divided among highlanders and coastal Papuans. Furthermore, they have become increasingly marginalised in their own land, after years of state-sponsored and spontaneous migration. Indigenous Papuans now constitute only a slight majority, whereas the Acehnese still constitute an overwhelming majority in their region, which has seen very little migration from other areas of Indonesia. Finally, the Acehnese are generally more highly educated, and their average incomes are much higher than Papuans, who rank among the poorest and least educated in Indonesia.

Before democratisation in 1998, there were three significant phases to the conflict in Aceh. All of them arose partly out of the constitutional and institutional structures. As mentioned above, in the first phase Acehnese joined the Darul Islam rebellion against the Indonesian state. Aceh's leaders, mostly Islamic scholars, joined the rebellion and its broader objectives of an Islamic state for Indonesia. But they also resented the initial inclusion of Aceh within a much larger province of North Sumatra. The Darul Islam and the objective of an Islamic state were defeated, although Aceh regained its provincial status.

The next two phases were precursors to the more recent, violent conflict. The Free Aceh Movement (Gerakan Aceh Merdeka, GAM) first rose in 1976 when oil and gas were discovered offshore. The rebels resented that the central government and corporations extracted Aceh's resources with few local benefits.¹⁸ The movement failed but rose again in 1989. At this point, its prime objective was clearly independence. Although it drew greater support, it was not entirely clear how broad its support actually might be. The armed forces brutally repressed the movement and attempted to weed out potential supporters by harshly repressing the Acehnese population over the following decade, during the period that it was declared a Military Operations Zone.

Papuans, for their part, remained divided and only mobilised sporadically. The Free Papua Organisation (Organisasi Papua Merdeka, OPM) was mostly an umbrella organisation of several more localised resistance groups, organized sometimes around local, tribal identities and loyalties, and other times around rival personalities. They were poorly armed and none of the groups ever mounted a significant armed rebellion. Their activities were limited to occasional attacks on soldiers, mines, or government offices. Even so, the armed forces strongly repressed Papuans, and conducted regular military operations to weed out suspected separatists. Only rarely did Papuans dare express their desire for independence, through the occasional flag raising. Periodic demonstrations in major cities often included demands for independence but were mostly focused on human rights abuses. Much of the violence was localised, particularly around Freeport-McMoran's large mining activities near Timika. With growing migration from other areas of Indonesia, indigenous Papuans became increasingly marginalised and displaced, while they remained poor, uneducated, and subjected to repressive state policies.¹⁹

¹⁸ Tim Kell, *The Roots of Acehnese Rebellion, 1989-1992* (Cornell Modern Indonesia Project, 1995).

¹⁹ Octovianus Mote and Danilyn Rutherford, 'From Irian Jaya to Papua: The Limits of Primordialism in Indonesia's Troubled East' (2001) 72 *Indonesia* 115; Richard Chauvel, *Constructing Papuan Nationalism: History, Ethnicity, and Adaption*

The period of constitutional engagement

The period of constitutional change began with the demise of authoritarian rule in 1998 and ended in 2006. After thirty-three years, the New Order regime of President Suharto collapsed, as a result of pressures to reform the regime, a leadership succession crisis, and the final catalyst of the Asian financial crisis of 1997. Under the leadership of the transitional president, Habibie, Indonesia began to democratise. During the period from 1999 to 2002, the People's Consultative Assembly (Majelis Permusyawaratan Rakyat, MPR)²⁰, the country's highest legislative body, adopted four amendments to the 1945 Constitution. Through this evolutionary mechanism, the MPR transformed Indonesia's constitution to support democratic change. Many of the major debates concerned direct presidential elections, the changing role of the MPR, and the changing role of the military.²¹ Yet, in combination with several pieces of legislation culminating in the Law on Aceh (2006), these amendments altered Indonesia's relations between the centre and regions. It transformed Indonesia from a centralized, unitary state to one still officially unitary but highly decentralized.

Prior to the 1999 elections, a consensus emerged within the MPR to preserve the constitution instead of opening up negotiations for an entirely new one. The MPR represented the main political and military elite of the late New Order regime, as its members remained in place until the 1999 elections. This elite found a natural ally even among democratic reformers from political parties that had been opposed to the New Order regime, such as the Democratic Party of Indonesia for the Struggle (PDI-P) of Megawati Soekarnoputri, daughter of Indonesia's first president, Soekarno. They shared a strong commitment to preserving Pancasila and the principle of a unitary state. They resisted demands from street demonstrators demanding for deep reforms, including constitutional change. They feared that it might lead to deep divisions that could threaten Indonesia's unity and reopen the wounds of the past, particularly violence related to ideological challenges from the left and from Islamists. They passed the first amendment, the most important aspect of which was to impose a two-term limit on the presidency and strengthen the role of the legislature (Dewan Perwakilan Rakyat, DPR). By doing so, they sought to rebalance power toward the legislature, and curb the strong executive powers of the original constitution of 1945 that enabled authoritarian rule. The MPR held the power to amend the constitution by 2/3 of its representatives, with at least 2/3 of its members present. The formula was subsequently changed to allow amendments by 50% plus one with 2/3 of its members present.

After the 1999 elections and the formation of the new MPR, the crafting of constitutional amendments was delegated to a special ad hoc committee of the MPR (Panitia Ad Hoc I), composed of members of various political parties. Two parties dominated the committee and the new MPR, namely the PDI-P of Megawati Soekarnoputri and Golkar, the old party of the New Order regime. The committee's work proceeded openly and with some public consultations, but was not a full-fledged, broadly advertised, consultative process. It proceeded through informal, interpersonal negotiations rather than truly open debate. Partly by design and partly by coincidence, the committee was able accomplish its work without broad awareness of the implications of the constitutional amendments, while public debate was more focused on the elections, the role of the military, a rising movement to oust President Wahid until 2000 and his replacement by Vice-President Megawati. It

(East-West Center Washington 2005); Robin Osborne, *Indonesia's Secret War: The Guerilla Struggle in Irian Jaya* (Allen & Unwin 1985).

²⁰ Under the New Order regime, the MPR was composed of members of the Indonesian parliament, representatives from the armed forces, and appointed members representing regions and a number of functional organizations.

²¹ Ellis (n 3).

retained strong control over the process and proceeded mostly by consensual agreement among all major political parties. As the President ruled with a multiparty cabinet and broad coalition within parliament, there were strong incentives to proceed by consensus. Despite the turmoil over President Wahid, its impact had little effect on this approach in the constitutional amendment process.²²

The second and third amendments altered the structure of central-regional relations. Indonesia had several, hierarchically organized levels of administrative territorial organization: provinces, regencies/municipalities, districts, and villages.²³ Using a principle of 'deconcentration', each level of government was responsible for implementing directives and policy from the central government. The Ministry of Interior appointed provincial and regency heads. Although provinces and regencies had their own parliaments, they essentially rubber-stamped central government policy.

The second amendment changed the basic principle of regional organization by providing wide-ranging autonomy to the 292 regencies (regions) and municipalities rather than to the 26 provinces.²⁴ They were given wide-ranging autonomy in all jurisdictions except those that, by law, were attributed to the central government. In combination with laws on administrative and fiscal decentralization, this constitutional change was designed to bypass the provinces and give more powers to regencies and municipalities. While the Jakarta elite supported the need for decentralisation, it also feared that giving more powers to the provinces might revive regional tensions and demands for secession that haunted Indonesia's past and continued to challenge the central government in East Timor, Papua and Aceh.

One clause also required that the "diversity of regions" be respected in adopting laws to regulate regional administration, while creating special units for "regional authorities that are special and distinct". This clause was a vague and hesitant attempt to introduce some asymmetry and allow for different governance structures or a different set of powers to regions that have specific needs. The clause departed from the Indonesian government's previous insistence on homogenous structures and allocations of powers across regional units.²⁵ By accepting some asymmetry, it introduced more flexibility, and would make the constitution consistent with the introduction of "special autonomy" laws to address specific conflicts in Aceh and Papua, while maintaining an across-the-board symmetrical, decentralized system at the regency level in the rest of Indonesia

The second amendment did not create much controversy, in large part because legislation had already been adopted. In the late New Order, the central government had begun to think about decentralization as a possible solution for conflict in East Timor and Papua, but also as a necessary reform of the administrative system. When Habibie acceded to power, the 'Team of Seven', mostly academics who were mandated to look into reforms of the political system convinced him to proceed with it. Most parliamentarians agreed with the radical decentralisation, as they saw it as necessary to reduce (or prevent) regional discontent. Furthermore, many bureaucrats, supported by foreign advisers, often hailed the advantages of decentralisation to improve efficiency and accountability.

²² Donald L Horowitz, *Constitutional Change and Democracy in Indonesia, Problems of International Politics* (Cambridge University Press 2013) 74-76.

²³ For clarity, I use 'regencies' to identify the territorial region below the province (*kabupaten*) and districts (*kecamatan*) for those below regencies. Other scholars use 'districts' and 'sub-districts' for *kabupaten* and *kecamatan* respectively.

²⁴ Krisztina Kis-Katos, and Bambang Suharnoko Sjahrir, 'The Impact of Fiscal and Political Decentralization on Local Public Investments in Indonesia' (Discussion Paper no 7884, The Institute for the Study of Labor (IZA) 2014) 7. Because of the new resources available to this level of government, there was an explosion of requests to create new regencies and municipalities. As of November 2017, there were 514 regencies and municipalities. *Rekapitulasi Jumlah Ppid Provinsi, Kabupaten Dan Kota Update 29 November 2017* (<http://www.kemendagri.go.id/media/filemanager/2017/12/04/f/i/file.pdf>, accessed December 15, 2017).

²⁵ *Undang-Undang Dasar Republik Indonesia, 1945* (2006) (Constitution of the Republic of Indonesia 1945 (2006)).

The constitution itself did not specify the jurisdictions but the 1999 laws did. Laws no. 22 and 25, 1999 on regional governance and fiscal decentralisation respectively gave vast new powers to regencies. They obtained powers in all jurisdictions except foreign policy, defense, security, justice, and monetary and fiscal policy. In addition to these powers, new formulas redistributed much more fiscal resources to regencies, and provided them with new taxation powers.²⁶

Some backlash occurred once the laws were introduced. Members of the armed forces, as well as PDI-P and Golkar began to oppose the changes. As Smith notes, the armed forces realized that it would no longer dominate regional government once regency heads became elected. PDI-P and Golkar realized that they might lose control over their patronage networks and regional candidates. Nevertheless, the laws were upheld, as President Habibie and his cabinet emphasized the gains from “transparency” and “public participation”, while downplaying the shift in power. In the end, Golkar members supported the laws and other parties accepted them reluctantly.²⁷

Provincial governors were the strongest opponents of the 1999 laws, as they resented being by-passed while being expected to continue implementing central government directives. While the central government maintained a firm commitment to autonomy at the regency level, it made compromises by strengthening the position of provincial governors. In 2004, laws no. 32 and 33 replaced the 1999 laws.²⁸ Law no. 33 provided detailed modifications to the fiscal allocations previously specified in Law no. 25, 1999. The previous law was very ambiguous with respect to distributions between central, provincial and regency governments of tax revenues, royalties and other revenues from natural resources, which were to be determined by regulation. The law added many more details regarding the formulas for revenue allocation. Law no. 32, 2004 introduced direct elections for governors and regency heads. This change gave more independent voice to governors and regency heads who could claim direct popular support. The law replaced law no. 22, 1999, which was deemed to be confusing. Nevertheless, in terms of allocation of powers between the central government, provinces and regencies, the net effect of the law was unclear and ambiguous. While it appeared to retain general principles of wide-ranging autonomy at the level of regencies, its wording also suggested more central and provincial government oversight to curtail some of those autonomous powers. Since much of the detail was relegated to regulations, and these were still being implemented several years thereafter, the final allocation of powers was unclear. More recently, there have been renewed debates to revisit once again these regional laws.

The third amendment created a Chamber of Regional Representatives (Dewan Perwakilan Daerah, DPD). As Horowitz has noted, it is an anomalous chamber as its members represent provinces, yet autonomous regions are at the municipal and district level. “A radical devolution is thus offset by a weak regional house that does not represent the principal units to which power is devolved.”²⁹ As the military and the PDI-P continued to strongly prefer a unitary and centralized state, they were most opposed to the DPD. Golkar and other parties with more support in regions outside of dominant Java sought a more genuine bicameral parliamentary system but they failed. The DPD was meant to represent regions equally, in spite of the fact that the island of Java, with only 5 provinces, holds about 60% of the total population. In the end, the DPD was formed out of a compromise. It is composed of three representatives from each province, but its total membership should not exceed a third of the total membership of the Indonesian parliament (DPR). More importantly, its powers

²⁶ Bertrand, *Nationalism and Ethnic Conflict in Indonesia* (n 2).

²⁷ Benjamin Smith, ‘The Origins of Regional Autonomy in Indonesia: Experts and the Marketing of Political Interests’ (2008) 8 (2) *Journal of East Asian Studies* 211, 225-27.

²⁸ *Undang-Undang Republik Indonesia Nomor 32 Tahun 2004 Tentang Pemerintahan Daerah* (Law No 32, 2004 of the Republic of Indonesia on Regional Government) (Republic of Indonesia).

²⁹ Horowitz (n 22) 127.

were strongly diluted. It obtained no legislative powers; its role was to propose to the DPR bills that related to regions and their fiscal relationship to the centre.

The process of adopting four amendments moved Indonesia decisively away from a unitary state. Its net effects, however, were uneven. It constitutionalised the principle of regional autonomy but at the same time decentralisation laws undermined provincial power in favour of regencies.

For most of the regions of Indonesia, these changes responded to past grievances and were generally well received. Although the initial devolution in 1999 was designed in part to address deeper grievances in East Timor, Aceh, and Papua, the new laws had no effect on demands and mobilisation in those regions. East Timor was offered early in 1999 a referendum on wide-ranging autonomy, which gave broad new powers at the provincial level. Although East Timorese rejected this option in the August referendum that led to independence, their experience created the strong precedent of allowing a referendum and, as well, of offering wide-ranging autonomy at the provincial level. These benchmarks became new bases for Acehnese and Papuans to claim similar options.

Aceh

The central government's limited attempts to address deep grievances in Aceh stimulated a new, unprecedented round of violent mobilisation. In addition to decentralisation toward regencies, many Acehnese resented the government's resistance to allowing a referendum, subsequent attempts to implement its own version of 'special autonomy,' as well as failure to address past human rights abuses.

In the initial phase, Acehnese were only marginally involved in changes affecting them. Their numbers were too small to be significant in the constitutional changes being discussed in Jakarta. Furthermore, after promises were made to East Timor, large masses demonstrated in the provincial capital, Banda Aceh, to ask for a referendum.³⁰ Instead, the government refused and supported an initiative from the governor of Aceh.³¹ With a local team, governor Syamsuddin Mahmud drafted a special autonomy bill that was subsequently modified and passed in the Indonesian legislature. Although Acehnese local academics and government bureaucrats participated in this process, a much larger set of organisations and groups outside of the government wanted more extensive autonomy and a better consultative process.³² Given Aceh's small population and number of representatives, Acehnese did not have opportunity to debate the bill in the Indonesian parliament, but even at the local level they had few opportunities to articulate demands within the existing local institutions, which were still dominated by representatives tied to the interests of Indonesia-wide political parties.

Meanwhile, the Free Aceh Movement (GAM) responded to the government's unwillingness to hold a referendum by escalating its violent mobilisation. After the brutal repression of 1989, the government had declared Aceh a 'Special Operations Zone'. Armed forces personnel frequently abused human rights in the search to weed out possible GAM supporters. Meanwhile, GAM quietly reorganized, both in Aceh and abroad, and reached a much greater degree of organizational strength than in the past. Beginning in early 2000, GAM increased its activities and the state responded with similarly stronger military force, so that the level of casualties, displacement, and disruption were high already by 2001.

³⁰ Bertrand, *Nationalism and Ethnic Conflict in Indonesia*, 179

³¹ Governors under the New Order regime were all members of the government party Golkar, or members of the armed forces. They were appointed by the President, sometimes with consultation from the local provincial parliament. Governor Syamsuddin Mahmud was appointed in 1993 and remained in place after the democratic transition, until 2000.

³² Rodd McGibbon, *Secessionist challenges in Aceh and Papua: Is Special Autonomy the Solution?* (East-West Center 2004); Bertrand *Nationalism and Ethnic Conflict in Indonesia* (n 2).

Under these circumstances, moderate leaders in Aceh were powerless. The governor and his entourage could not credibly claim to represent the Acehnese as, by law, they represented and were appointed by the central government. As GAM escalated its violence, moderates outside of the government were crowded out. GAM enjoyed a fair amount of popular support, but resentment grew from the destruction, displacement, and violence of the conflict.

The special autonomy law for Aceh of 2001 therefore was passed and came into force in 2002, just as the violent conflict was in full force.³³ It significantly increased autonomy and fiscal resources for Aceh as a province—in contrast to the weaker arrangements for provinces elsewhere—and it recognised autonomy on all matters under the province's jurisdiction, including provisions for the election of the governor and district heads, and created institutions that, at least in name, reflected local traditions. In fiscal matters, it provided more resources than the decentralisation laws had for regencies: an 80% share of tax revenues from forestry, mining, and fisheries to accrue to the provincial government, and 55% of revenues from oil, and 40% from gas, for 8 years.³⁴ Afterwards, these allocations were to be reduced to 35% on oil and 20% on gas. It also increased the provincial government's share of total tax revenues relative to what was retained by the central government. Overall, it gave new powers and resources that were well above what had been granted under the 1999 decentralisation laws.

Yet, the law was insufficient to reduce the conflict because it was imposed rather than negotiated, and it was vague. GAM rejected the law and continued its insurgency, as it accused the government of failing to address grievances, hold a referendum, or negotiate the terms of more significant autonomy. The law was vague with respect to the autonomy that was promised. For instance, it was imprecise about the specific powers and jurisdictions that the provincial government obtained. Moreover, the governor and district heads were to be elected but the governor was also in charge of implementing central government policies, which created ambiguity over accountability. The central government also retained substantial powers of appointment and oversight in security matters and the judiciary, with no provincial oversight on military operations in the province, as well as primary control over the management of tax revenues. As a result of the sustained conflict, the law was never implemented.³⁵

The failure was therefore a problem of substance but also of credible commitment. The Indonesian government showed little interest in negotiating and certainly refused to offer options to consult the population by referendum on the future status of Aceh. The state's reluctance to respond to demands for justice for the decade of human rights abuses contributed to raising suspicions as well. Overall, it left the impression that offers of autonomy were not genuine, and could easily be reversed.

Four factors finally combined to allow a peace agreement to succeed.³⁶ First, after four years of violent conflict, both sides began to experience combat fatigue, as casualties mounted but neither GAM nor the Indonesian armed forces gained the upper hand. Second, with presidential support, vice-president Jusuf Kalla played an active role in finding a solution to the conflict. Third, the involvement of a neutral mediator, former President Martti Ahtisaari of Finland, contributed to building confidence and reaching a mutually acceptable agreement. Finally, the tsunami in December

³³ See *Undang-Undang Republik Indonesia Nomor 18 Tahun 2001 Tentang Otonomi Khusus Bagi Provinsi Daerah Istimewa Aceh Sebagai Provinsi Nangroe Aceh Darussalam* (Law No 18, 2001 of the Republic of Indonesia on Special Autonomy for the Province of Aceh)(Republic of Indonesia).

³⁴ As with all of the other laws on fiscal allocations, the wording in the law remained very ambiguous, with regulations meant to specify exact amounts and calculations. Revenue from royalties and other non-tax revenue were even less clearly allocated.

³⁵ Bertrand *Nationalism and Ethnic Conflict in Indonesia* (n 2).

³⁶ This section is also based on interviews conducted in Banda Aceh, March-April 2008.

2004 destroyed most of Aceh's capital, Banda Aceh, and devastated a large area along the coastline. It provided a catalyst for both parties to reach an agreement in order to focus on rebuilding the province.

The combination of strong commitment from the president and vice-president, as well as accepting third party mediation, considerably augmented the chances of achieving a negotiated agreement. Mediation was not new in the Aceh conflict. Previously, the Henry Dunant Centre had brokered two cease-fires. Its role was unprecedented in a country with strong aversion to 'foreign interference,' but President Abdurrahman Wahid, who believed in accommodation to achieve peaceful solutions, opened the door for the Centre's crucial role. Negotiations in Helsinki, brokered by the Finnish former president, overcame problems with past externally-mediated cease-fires, including the failure to narrow the gap in claims from both sides, the underestimation of the ability of 'spoilers' to undermine the agreement, the lack of proper external monitoring of the cease-fire, and the fact that the cease-fire agreements were being implemented at the same time as the central government adopted a unilateral, top-down autonomy law.³⁷ With lessons-learned from past mistakes, the 'Helsinki process' better succeeded when it became clear that no side had gained any advantage from past resumption of violence. As Aspinall notes, key points included the external mediator's insistence on having a full settlement before disarming, agreeing on a detailed template for Aceh's governance rather than only a framework toward reaching such an agreement, and obtaining GAM's abandonment of independence and acceptance of autonomy within Indonesia as a basis for peace.³⁸ The 2005 peace agreement led to the 2006 Law on Aceh, which was much more detailed and broad than the previous special autonomy law. It had 210 articles, which far surpassed either Aceh or Papua's special autonomy laws. This level of detail and breadth, obtained out of negotiated process, had better chances of being broadly accepted. With strong monitoring mechanisms, it also increased the chances that the Law on Aceh would be implemented and that autonomy provisions would not be undermined by the regulatory process.

The crafting of the law, based on the extensive peace agreement, showed the importance of detailed legislation. Laws in Indonesia, particularly those relating to autonomy and regional administration, are often vague. Such an approach delegates much of the law's substance to the executive, which then decides on the effective reach of the law through subsequent regulations. This process removes the issue from public debate and scrutiny, as it is relegated to the 'mundane' task of implementation and administration. Yet, these regulations, more often than not, significantly strengthen or vastly dilute the intentions of the law. With a much more detailed law, GAM could hope that promises made in the peace agreement would be fulfilled.

The Aceh government obtained authority over all sectors except foreign relations, defence, national security, monetary and fiscal policy, and justice.³⁹ The Law also allowed the Aceh government to implement and enforce Islamic law but the central government retained the power to appoint judges to the Islamic court. Even though security and defence remained under the jurisdiction of the central government, the Aceh government gained more oversight over security organisations. The governor and the Aceh legislature would be consulted on the appointment of the Aceh chief of police and before military troops were stationed in Aceh for defensive purposes. Restrictions were placed on the deployment of 'special' forces, which were most involved in military operations in the past.

³⁷ Edward Aspinall, *Islam and Nation: Separatist Rebellion in Aceh, Indonesia* (Studies in Asian Security series, Stanford University Press 2009); Edward Aspinall, *The Helsinki Agreement: A More Promising Basis for Peace in Aceh?* (East-West Center 2005) 5-6.

³⁸ Aspinall *The Helsinki Agreement* (n 37) 6.

³⁹ *Undang-Undang Republik Indonesia Nomor 11 Tahun 2006 Tentang Pemerintahan Aceh* (Law No. 11, 2006 of the Republic of Indonesia on Aceh Government) (Republic of Indonesia), art 6.

Furthermore, the law spelled out specific requirements for the armed forces to respect human rights and local customs.⁴⁰

The most controversial article was the right to organise local political parties, thereby creating an exception to national legislation requiring all political parties to have a national outlook. This article, which was one of the most sensitive points in the Helsinki peace negotiations, allowed the Free Aceh Movement to turn itself into a political party to run for gubernatorial and local legislative elections.

In fiscal matters, the Law on Aceh provided even greater resources than the previous Special Autonomy Law. It obtained 70% from oil and gas revenues and 80% from all other resources in the province, which is a much greater proportion than in the previous law. In addition, the Aceh government gained the authority to calculate these relative allocations and to administer natural resource exploitation in its territory. No such powers were ever granted to any other provincial or local government.

The Law on Aceh created many new precedents in Indonesia. It provided new autonomous powers and fiscal resources to the provincial government, whereas the 1999 autonomy laws targeted regencies. It allowed local political parties, where they are still banned elsewhere.

Papua

The gap between the Indonesian state and Papuans' aspirations is wide and almost unbridgeable. Despite some initial consultations after democratisation, the Special Autonomy Law that the Indonesian parliament passed in 2001 left out important aspects that Papuans had raised. As a result, 'Special Autonomy' (Otonomi Khusus) has been weak and many groups have rejected it.

Papuan groups seized on the democratic opening to make claims to revisit the 1969 Act of Free Choice, demand redress for past injustices, and a referendum on independence. As with the Acehnese, shortly after Suharto's downfall, demonstrators voiced these claims both in major cities of Papua, and in Jakarta. When President Habibie met with a delegation of 100 Papuans community leaders in 1999, he was shocked by their frank demand for independence in response to his query regarding their claims. From that moment, attempts for a dialogue were closed off.

Papuans used extra-institutional means and peaceful mobilisation to advance their claims. In an unprecedented show of unity of purpose, representatives of all sectors of Papuan society gathered in two large congresses that adopted a set of demands on the Indonesian state and elected a Presidium of the People's Congress (Presidium Dewan Papua, PDP) to represent them formally. This process by-passed formal institutional channels, which included the provincial parliament and government, as well as representation in the Indonesian parliament. In the latter, Papuans very few representatives, and their representation in the Indonesian cabinet was often non-existent or limited to one member. The provincial government was largely seen as serving the interests of the central government, being corrupt and ineffective. Papuans therefore embraced an alternative leadership to advance their claims.

In response, the Indonesian government repressed the PDP and instead adopted a special autonomy law to counter demands for independence. In 1999-2000, President Abdurrahman Wahid had shown openness and accommodation toward Papuans. He had allowed them on several occasions to raise the Morning Star flag, a symbol of independence that the armed forces had previously repressed. Wahid also supported the organisation of the Congress. By October 2000, however, the MPR reprimanded him for his openness during his accountability report, and security forces began to crack down on flag raisings. Leaders of the PDP were also charged with secessionist activities, prosecuted and some were imprisoned for a few months. After Wahid was forced to resign, his

⁴⁰ On the police, see *ibid* art 99; On military forces, see *ibid* art 162.

successor Megawati Soekarnoputri continued the repressive approach toward the PDP and any activity deemed to be separatist.

It was under these circumstances that the Special Autonomy Law of 2001 was adopted. Under the sponsorship of the central government, the appointed governor appointed a local team to draft the bill. After broad consultation, it was submitted to the national parliament (DPR) and passed as Law no. 21, 2001 on Special Autonomy (OTSUS) for Papua. While the law provided wide-ranging autonomy, it fell short of many of the clauses included in the original draft, such as provisions for a referendum on independence after five years and provisions to revisit the 1969 Act of Free Choice.

The Special Autonomy Law actually provided many new powers and resources to Papua. The Papuan provincial government obtained jurisdiction over all matters except foreign policy, defence, monetary and fiscal policy, religion, and justice, which is similar to what Acehnese obtained under their own special autonomy law and the subsequent Law on Aceh. The law also created a special assembly, the Papuan People's Assembly (*Majelis Rakyat Papua*, MRP), to represent *indigenous* Papuan groups. It included representatives from all sectors of Papuan society, such as religious groups, women, customary groups, and many others. While representatives came from different regions of Papua, the assembly was not organized along territorial lines. Its mandate was to promote and protect the rights and customs of *indigenous* Papuan people. Most of its powers, however, were consultative as the legislative powers resided with the Papua provincial legislature (DPRP), organized along a territorial basis. There were obligations to consult the MRP over candidates for the position of governor and over decisions and regulations relating to the basic rights of Papuans. In order to address past human rights abuses, the law provided for the creation of a Truth and Reconciliation Commission to investigate past abuses. Finally, Papua received vast new fiscal resources, including 80% of non-tax revenues from mining, forestry and fisheries, and 70% from oil and gas exploitation. In addition, a greater proportion of tax revenues were to accrue to the province and it obtained special autonomy funds for a limited number of years.⁴¹

Papuans therefore obtained a special autonomy law that the central government imposed. Although the drafting committee consulted several groups, the law was neither a product of negotiation nor of broad consultation, and it was not a faithful reflection of the original draft. Some of the most important issues for Papuans were left out. Papuans once again failed to be consulted, and their demands for a referendum on their future status within Indonesia was ignored. So were their demands for redress for past human rights abuses, more control over the armed forces in their territory, as well as better control over migration. Moreover, the PDP, and other representative groups were largely sidelined in the process of drafting special autonomy. From the outset therefore it had a very narrow basis of local support, restricted mainly to some officials within the Papuan government.

Outcome of the process

The period of constitutional engagement produced significant change in Indonesia. While overall it contributed to a reduction of conflict around territorial cleavages, some important points of contention remain particularly in Papua.

Decentralisation has reconfigured the Indonesian state. It is no longer a strong unitary and centralised state. Autonomous powers in most jurisdictions followed by significantly larger fiscal

⁴¹ Jacques Bertrand, 'Indonesia's Quasi-Federalist Approach: Accommodation Amid Strong Integrationist Tendencies' (2007) 5 (4) *International Journal of Constitutional Law* 576; Law no 33/2004 gave similar percentages to regions for mining, fisheries, and forestry, but less for oil and gas (15.5% and 30.5 respectively). Law no 33/2004 and subsequent regulations, however, were much more specific about fiscal categories, their definition, and precise methods of redistribution than the Special Autonomy Law for Papua.

resources for districts, the Indonesian state has given important powers to districts to manage their own affairs. While there was some pressure at the outset for such significant decentralisation, it was by no means a strong set of claims across the archipelago. In part a response to more significant conflicts in Aceh and Papua, decentralisation laws ironically reconfigured all of Indonesia without resolving its deepest cleavages.

There are certainly some pressures to reverse some of the current decentralisation. Before the 2014 elections, there were discussions inside and outside of parliament to revise the 2004 decentralisation laws which, in turn, had replaced the 1999 laws. The opposition leader, Prabowo Subianto, either to undermine his rival and newly-elected President Joko Widodo (Jokowi), used his 60% control over parliament to pass in October 2014 a law that cancels direct elections for provincial governors and regency heads (Law no. 22, 2014 on Regional Elections). It returns to the previous formula of provincial and regency parliaments electing governors and regents. By many accounts, he was attempting to prevent the rise of non-traditional politicians, such as President Jokowi who benefitted from such elections as governor before rising to become an outsider in presidential elections, but it was also to recapture central party control over the process.⁴² Yet, this tendency has not succeeded. The new parliament once again reversed the October law and passed legislation on January 20, 2015 to scrap law no. 22, 2014 and return to direct elections for governors and regency heads.⁴³

The effect of decentralisation has been mixed. The most significant consequence was a movement for the creation of new regencies. Decentralisation laws were intended to prevent mobilisation along ethnic lines. While bypassing provinces in favour regencies, it could arguably have been successful in this respect. Yet, many of the new regencies were created precisely to make their boundaries correspond more closely with concentrations of particular ethnic groups. As a result, not only has the number of regencies and municipalities multiplied (from 292 in 1998 to 508 in 2013) but they now also coincide more strongly with territories defined along ethnic lines. This outcome creates a de facto, quasi-ethnically based territorial division of Indonesia. There have been no significant conflicts resulting from these re-divisions in recent years (except in Maluku, where other factors overlapped)⁴⁴, but there were few conflicts as well at the outset.

Most of the problems arising from decentralisation involve its implementation. Local elections provided more legitimacy to district heads but became fierce contests for local resources. Larger fiscal pies became prime prizes for electoral winners. Since 2005, revenues for local governments (mainly regencies) have grown at a compound rate of 17% annually. Transfers to local governments accounted for 31% of the central government revenues in 2013 and they constituted about 80% of local revenues. In a system with poor judicial oversight and limited accountability arrangements, the new resources became sources of personal enrichment. While some local governments used the funds to stimulate new programmes, infrastructure and development, many others have taken advantage of this system of 'decentralised corruption.'

Against this backdrop, territorial cleavages in Aceh and Papua show contrasting outcomes. As the Law on Aceh was implemented, GAM disbanded, its members reintegrated into Acehnese society, and its leaders entered formal politics. In Papua, by contrast, OTSUS failed to be properly

⁴² See Stefanus Hendrianto, 'Indonesia's Constitutional Conundrum: The Weak Presidency, the Strong Opposition and the Regional Elections Law' (*International Journal of Constitutional Law Blog*, 4 October 2014) <www.iconnectblog.com/2014/10/indonesias-constitutional-conundrum-the-weak-presidency-the-strong-opposition-and-the-regional-elections-law/>

⁴³ Indri Maulidar, 'Parliament passes new law on direct elections for regional government heads' (*DPR Sabkan Undang-Undang Pilkada Langsung*) *Tempo On-line* (20 January 2015) <www.tempo.co/read/news/2015/01/20/078636244/DPR-Sahkan-Undang-Undang-Pilkada-Langsung> accessed 20 March 2015.

⁴⁴ See Gerry van Klinken, 'The Maluku Wars: Bringing Society Back In' (2001) 71 *Indonesia* 1.

implemented, many Papuans remained disillusioned, and the conflict, while low in violence, remained deep.

The implementation of the Law on Aceh reduced conflict, even though some problems remained. Most importantly, GAM disbanded and elections allowed its former members to run for office. Two elections were held for the position of governor, first in 2006 and then in 2012. GAM turned itself into a political party (Partai Aceh) and was able to win a majority of seats in the local parliament in the legislative elections of 2009. GAM's ability to transform itself into a dominant local party and its leaders to become governor has been the greatest achievement of the Law on Aceh.

Yet, some significant problems have developed. Most significantly, the former movement split, largely because of rivalry between candidates for governor. Irwandi Jusuf, elected governor in 2006 as an independent, became a controversial figure as he took his distance from Partai Aceh and the former GAM. He even went so far as to create an alternative political party (Partai Nasional Aceh). This division, and tight competition for the position of governor in 2012 led to violent clashes, intimidation, and vote rigging. In the end, the Partai Aceh candidate Zaini Abdullah won as governor, but the results were marred with accusations of unfair elections, including intimidation and vote-buying. The former movement has continued to divide, and popular support for the Partai Aceh has waned, as its showing in the 2014 legislative elections have shown; it lost a significant share of the Aceh provincial legislature to national parties, while the Partai Nasional Aceh failed to gain much support.

The regulatory framework for the implementation of the Law on Aceh has been partially put into place. Some important regulations relating to such issues as the establishment of local political parties, the appointment of the Regional Secretary, or consultations regarding policies affecting Aceh were passed. Other aspects of the LOGA were delayed, or postponed indefinitely. Provisions for a Human Rights Court and a Truth and Reconciliation Commission were not implemented. Regulations were still lacking on the management of land, forestry, and oil and gas management.⁴⁵

Finally, on the socio-economic front the Aceh government delivered on some of the promises of the peace agreement. Hopes were high that former GAM members would be fully integrated. The Badan Rehabilitasi dan Rekonstruksi (BRR, Agency for Rehabilitation and Reconstruction) became the main institution charged with reconstructing Aceh after the destruction and devastation of the 2004 tsunami. It helped the local government rebuild Banda Aceh, and many of the villages and infrastructure that had been destroyed. The local government also put into place some compensation packages for former GAM members, better health and education services, as well as skills development. However, the large transfer of fiscal resources has yet to be used to stimulate new industries, strengthen existing ones, and generate new employment. As with decentralisation more broadly, new fiscal resources have created new opportunities for personal enrichment. In an environment where former GAM leaders expected some dividends from peace, the potential for graft has been an easy route.

Overall, the constitutional settlement in Aceh has been positive. It has created peace, by allowing GAM to disarm and enter the political process. It has enjoyed strong popular support as gains in elections have shown. In this respect, many grievances were addressed and, in particular, through more powers locally, better representation, autonomy and fiscal resources. A lack of consistent implementation, slow motivation to seize opportunities provided, and divisions among former GAM members, however, remain shadows over the peace process.

In Papua, many local representatives and organisations have repeatedly denounced and "rejected" OTSUS. From the officially recognised Dewan Adat Papua (DAP, Papuan Customary

⁴⁵ Crisis Management Initiative, 'Aceh Peace Process Follow-Up Project: Final Report' (Crisis Management Initiative 2012).

Council) to various Papuan churches, a broad array of Papuans criticised OTSUS for failing to represent, empower, or improve Papuans' livelihoods. Even President Susilo Bambang Yudhoyono admitted in 2013 that significant changes were required to make special autonomy effective in the region.⁴⁶

From the outset, the Indonesian government derailed OTSUS' implementation by dividing up the province. Only months after acceding to power, President Megawati issued decree no. 1, 2003 splitting the province into two: Papua and West Papua. Ostensibly done on the basis of creating more efficient governance over a very large territory, most Papuans rightly believed that the measure was also designed to divide Papuans in order to prevent secessionist tendencies. The division interfered directly with the implementation of OTSUS, as many groups as well as the governor of Papua strongly objected to the unilateral measure, while different levels of government and the courts debated whether and how special autonomy would be extended to both provinces under the existing law. Finally, the central government drew even more criticism when it divided the Papuan People's Assembly (MRP) into two, on the basis that there should be one for each of the provinces rather than a single body. By doing so, it weakened the voice of the single MRP to represent all Papuans, while gaining support from West Papuans to obtain their own assembly. This action contributed to further dividing Papuans.

OTSUS was also poorly implemented. It took four years before the MRP was created, only after criticism and pressures from local groups. Most of the regulations required to properly implement the law were not in place, more than a decade after the law came into effect. In fiscal matters, the central government retained control over the management and disbursement of fiscal resources despite the law's provisions for provincial management. Finally, while the law provided for a Truth and Reconciliation Commission, it was never implemented.

Against the backdrop of controversies surrounding the implementation of special autonomy, the central government's overall policies toward Papuans contributed to perpetuating their suspicion of the central government. Security forces regularly used repressive tactics, such as repressing flag raisings, and continued to arrest Papuans deemed to be involved in secessionist activities, such as the head of DAP after a Congress organised in 2012 that declared a new republic of West Papua. In November 2001, *Kopassus* (the armed forces special forces) assassinated the leader of the PDP. The armed forces and Mobile Brigades (Brimob), a special paramilitary force with the police, continued to conduct operations in remote areas and regularly overstepped their powers, as the Indonesian Human Rights Commission has noted on several occasions. Moreover, the central government managed to undermine the MRP when the latter gained visibility and credibility as three of its respected leaders regularly criticized the failings of OTSUS and the government's overall policy. At the end of the MRP's mandate in 2011, the central government interfered with the election of members so that its most vocal critics were sidelined and replaced by less competent members who were indebted to the central government.

There was very little indication, therefore, that the central government was strongly committed to finding a resolution to the territorial cleavage in Papua. Papuan groups, including the DAP, churches, and a number of non-governmental organisations, have been calling for "dialogue", by which they mean a reopening of OTSUS, a negotiated autonomy, a discussion of the Act of Free Choice, and a more legitimate process of continued relationship to Indonesia. The central government, by fear of secessionism, refuses to revisit the Act of Free Choice and appears reluctant to open discussions on autonomy and its final form.⁴⁷

⁴⁶ Jacques Bertrand, 'Autonomy and Stability: The Perils of Implementation and "Divide-and-Rule" Tactics in Papua' (2014) 20 (2) Nationalism and Ethnic Politics 174.

⁴⁷ *ibid.*

As a result, special autonomy continues to be implemented in Papua, but fails to produce expected outcomes. Instead, the large fiscal transfers since 2002 have not produced developmental outcomes. While some of the funds were invested into ad hoc programmes and infrastructure, most have disappeared in wasteful spending and corruption. Poverty rates remain among the highest in Indonesia, at 36.8% in 2010, only marginally less than in 2003, at 38.7%, whereas the national average stood at 17.4% in 2010.⁴⁸ With little legitimacy to the framework, opportunists have seized positions in the local government and profited from revenues. The Papuan and West Papuan governments have been unwilling, or unable, to use the full extent of newly obtained powers under special autonomy to generate beneficial outcomes for Papuans.

Lessons Learned

Indonesia has been radically transformed since the beginning of democratisation in 1998. Today it resembles more a highly asymmetrical form of federalism than the highly unitary and centralised state that characterised the previous decades. Decentralisation and different forms of special autonomy have alleviated some of the more important sources of conflict but their implementation has created some significant problems as well.

A gradual and flexible process of constitutional change can produce deep change and greatly alleviate territorial cleavages. Had Indonesia gone the route of a formal constitutional negotiation, it would likely have created more conflict rather than reduce it, as shadows of the past, including deep ideological divisions and stalled constitutional negotiations, still hung over the transition. Indonesians avoided a constituent assembly to adopt a new constitution and worked instead through several amendments. Within this discussion, they could constitutionalise the principle of autonomy for regions, but delegate to the legislature what form such autonomy should take. While not the central reason for this process of constitutional change in Indonesia, the gradual approach allowed different types of conflicts to be addressed through different institutional mechanisms

Decentralisation had mixed effects but was an effective tool to provide more powers and resources to ethnic groups, while not necessarily defining boundaries in ethnic terms. It was also useful, although largely coincidental, to have implemented a decentralisation law while amendments were being introduced to the constitution; it created a climate that was already favourable to principles of regional autonomy.

Decentralisation allows for some flexible arrangements that do not congeal ethnic identities within administrative boundaries. Ironically, in Indonesia, groups have taken advantage of the opportunity to redraw regency boundaries precisely to coincide more greatly with the 'homeland' of particular groups. They have gained more powers and fiscal resources without being given an explicit, ethnically defined territory.

Furthermore, bypassing provinces enabled the government to avoid a larger territory to obtain new powers and resources that could be used as a basis for secessionist demands. While tensions had been rising in various regions to loosen up the centralised state, they had not yet degenerated into open conflict and certainly not secessionism.

There have been opponents of decentralisation but, so far, they have been unable to reverse the trend. Some members of large parties such as PDI-P and Golkar initially resented the potential loss of power from the parties, as well as looser control over their patronage networks. With the rise of new politicians, such as Jokowi, that are products of decentralisation and direct elections for regency

⁴⁸ By comparison, there was a reduction in Aceh from 29.6% in 2003 to 21% in 2010. See Cut Dian RD Agustina, Wolfgang Fengler, & Günther G Schulze 'The regional effects of Indonesia's oil and gas policy: options for reform' (2012) 48 (3) Bulletin of Indonesian Economic Studies 369.

heads and governors, they attempted to reverse at least direct elections to regain some control. Yet, as discussed, such tendencies are in the minority and new parliament quickly reversed the law that had eliminated direct elections for these positions, even if it is controlled by the opposition coalition led by Jokowi's opponent, Prabowo Subianto. As a result, decentralisation has been strengthened.

Decentralisation was less successful at addressing deep cleavages, and it created new problems. One of its initial objectives was to defuse deep conflicts in Aceh, Papua and East Timor but it had no impact. Instead, Acehnese, Papuans and Timorese considered decentralisation as a strategy to avoid addressing their claims. They continued to mobilize and demand for independence or much broader autonomy at the provincial level. At the same time, decentralisation had the unintended consequence of stimulating demands for the creation of new regencies. While some of these new divisions coincided with ethnic groups, and might have preventively defused potential conflicts, many others were promoted by opportunists seeking access to resources, in a system of decentralised corruption that has led to very high leakage of government revenues. Despite attempts to claw back some of the powers devolved, the problems have remained.

The creation of a second chamber to represent regions, the DPD, did not respond to specific cleavages but recognised the need for regional representation in a diverse society. In theory, it was useful to preserve a strong common identity by not explicitly aligning regional representation with ethnic groups. At the same time, it responded to a desire to represent regions in the central government. Yet, the fear of giving more power to provinces ended up creating a chamber with few powers and with little use. By avoiding a true bicameral parliament that would have given more power to provincial representatives, the Indonesian government preserved its unitary character but created an institution that does not effectively represent regions.

Autonomy can be a useful institutional tool to manage territorial cleavages but is meaningless if not accompanied by a number of accompanying conditions, such as the symbolic recognition of ethno-territorial identities to address deep cleavages, a willingness to negotiate its content, clear and detailed legislation, and a credible commitment to implement it. There is no doubt that the Law on Aceh of 2006, and the very extensive autonomy that it gave the province, contributed most significantly to the elimination of violent conflict in Aceh and peace between GAM and the Indonesian state. The newly transferred powers to almost all jurisdictions in the province, vast new fiscal resources, and rights to establish political institutions that are different from other regions, including the right to create local political parties, were key to a settlement.

Yet, the granting of certain forms of autonomy failed to resolve conflict. In Aceh, the special autonomy law of 2001 barely had any effect on the escalating conflict between GAM and the Indonesian government. While in Papua, special autonomy has provided new resources and new powers at the provincial level, but it has not resolved the conflict. Instead, it has contributed to dividing Papuans, and perpetuating their impoverishment and marginalisation even though, ironically, the powers obtained, the degree of autonomy, as well as fiscal resources were very significant. While less than what Aceh obtained, they were still a radical departure from past centralization, and gave significant powers and resources at the provincial level, as in Aceh, in contrast to practice elsewhere in the country where autonomous powers and resources were largely granted to districts.

Three conditions were key in making Aceh a more successful case than Papua. First, the Law on Aceh of 2006 was a result of negotiations. Neither the special autonomy laws of 2001 in Aceh nor Papua were negotiated. There were some consultations locally, but the national parliament significantly altered the draft laws before passing them. As a result, representative groups in Aceh and Papua felt by-passed, whereas the Law on Aceh, negotiated between GAM and the Indonesian state, legitimised the new institutional arrangements and invested the local government with strong popular support.

Second, the Law on Aceh was a much more precise and detailed than the previous special autonomy law, or the special autonomy law in Papua. Despite this, there have still been some areas

where implementing regulations have diverged from the original intent of the negotiated peace. In the case of Papua, however, the central government has been able to significantly dilute aspects of local autonomy, particularly the powers and unity of the Papuan People's Assembly (MRP) and election of its members, and the management of fiscal resources. Implementation, while less in the public eye, is vital for making autonomy real, so having negotiations bring more precision and detail into the law can reduce the risk that implementation will dilute or erase the original intent.

Finally, external mediation was key to obtain a negotiated solution in Aceh. The involvement of the Dunant Centre and the former president of Finland helped to achieve a negotiated solution. Papuans have sought such external support but the Indonesian government considers it an internal affair, and does not welcome foreign intervention, whereas in the case of Aceh it was forced to accept such mediation to resolve violent conflict. Obviously, the unity of the Acehnese and the capacity to sustain an insurgency created intense pressure on the Indonesian government. With much less unity and no sustained insurgency, Papuans' mobilization has been much weaker and more disparate. They achieved their strongest moment of political pressure under the leadership of the PDP in the early 2000s, but state repression and internal division prevented them from sustained mobilization. The Indonesian government is much less willing to involve external parties, as several groups in Papua continue to view independence as the only solution and there is a risk for the Indonesian state that calls for a historical revision of the Act of Free Choice might find a sympathetic ear among some external actors.

After more than a decade of reforms, Indonesia has departed very significantly from its homogenous approach to diversity and adopted, instead, an asymmetric model that has proven to be stable. Asymmetry was shaped out of responsiveness to deep conflict in Aceh and Papua. Other regions have accepted the greater compromises made in these cases to reduce conflict. None have demanded similar powers and fiscal resources at the provincial level, as those obtained in Aceh and Papua. The Indonesian government has been willing to stand by decentralisation at the regency level, but they likely understand that making similar claims at the provincial level would be rejected and, possibly, lead to recentralisation all together. There are still relatively strong advocates of a strong, unitary and centralized state within all political parties and the armed forces. Should current arrangements be challenged, they would be given the political space to press for a reversal of decentralisation.

Constitutional processes focusing on autonomy and decentralisation can effectively manage territorial cleavages. Where they are negotiated, precise, and sometimes helped through mediation, they can help eliminate violent conflict. Nevertheless, there is a vast gap between autonomy in law and its implementation. The Indonesian case also shows how much implementation matters, and how it can very significantly alter and dilute autonomy. Conflict can become stalled under those circumstances, as the case of Papua shows.

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CONTRIBUTING ORGANIZATIONS

Forum of Federations

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Our headquarters is located in Stockholm, and we have regional and country offices in Africa, the Asia-Pacific, Europe, and Latin America and the Caribbean. International IDEA is a Permanent Observer to the United Nations and is accredited to European Union institutions. <<http://idea.int>>

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The Foundation Manuel Giménez Abad for Parliamentary Studies and the Spanish State of Autonomies

The Foundation Manuel Giménez Abad for Parliamentary Studies and the Spanish State of Autonomies is a Foundation with a seat at the regional Parliament of Aragon in Zaragoza. Pluralism is one of the main features of the work of the Foundation. In fact, all activities are supported by all parliamentary groups with representation at the Parliament of Aragon. The main objective of the Foundation is to contribute to the research, knowledge dissemination and better understanding of parliamentary studies and models of territorial distribution of power. In general terms, the activities of the Foundation are concentrated in four key areas: political and parliamentary studies; territorial organization; Latin America; and studies on terrorism. <<http://www.fundacionmgimenezabad.es/>>

Cover design by Olakunle Adeniran

ISSN: 1922-558X (online ISSN 1922-5598)



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