

TOWARD FEDERALISM; A CONSTITUTIONAL SOLUTION FOR INDONESIA?

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Abstract

From the beginning history of modern Indonesia, federalism was mostly considered Dutch political design to preserve the fading power of colonial in the country. Most Indonesian viewed federalism as Dutch's political hidden agenda to maintain its influence. Therefore, the challenge was directly responded after the post-transfer of sovereignty and independence movement toward a Unitarian state as it exists today. In contrast, with the fall of the Soeharto's regime, some commentators view federalism as a new formula for tackling multi level crisis encountered. Despite fact that federalism seems to have long road to be adopted in Indonesia, this paper argues that federalism, as a system of government, would become best suited political system for Indonesia particularly in managing diversity and tackling multi crisis.

Keywords: *Federalism, Unitarian, State, Diversity and Constitution*

INTRODUCTION

In explaining federalism, it will be surely taking many words if it is presented in various perspectives from commentators and scholars. That is why this part will only outline the idea and scope of federalism particularly in deep societal divisions. It may not fully represent a complete theoretical framework of federalism but at least it can be viewed as an attempt to elaborate theoretical framework of federalism in general.

The idea of federalism primarily means protection of pluralism and the rights of the individual against an over-powerful government. Despite its popularity in Constitutional law subject, scholars seem to have a disagreement over the definition of the nature and the conceptualization of federalism. A constitutional expert, Duchacheck (1970 : 21) says that; *"the term itself is unclear and controversial. It is often used to describe a process of combining territorial communities that had previously not been directly joined... In addition, federalism is also a term used to describe the result or the tools of the federalizing process---a constitutional federal system and its institutions."*

Notwithstanding to the disagreement among scholars, federalism is primarily a concept which underlies the distribution of powers between central government and other constituent governments in order to protect the freedom and prosperity of citizens. So the next question is whether the countries should base their constitutions on federalism as a concept or just retain previous tradition which has been inherited since the colonial period. Another option is what Daniel Elazaar (1998 : 302) describes federalism as 'a particular kind of relationship among the participants in political life'. In this feature, federalism seems as covenant.

In relation to this issue, in her review of European experience, Cheryl Saunders as quoted by Joachim Jen Hesse and Vincent Wright (1996 : 378) argues that 'federalism is not created by federal institutions and rules alone, but depends also on attitudes towards the

process of government. Thus, some of the advantages of federalism may be obtained without traditional federal structures. Equally, they may be lost in a country which otherwise is federal in form.'

Another question might arise is why people choose federalism? Peter H. Schuck (2006: 5-12) outlines at least three significant contributions that can be devolved in a federal system. First, federal system allows the control of physical resources. Then, federal system enables governments to manage diversity, culture and ethnicity. Thirdly, federalism also allows the control of laws, politics and public functions.

As an example, Australia has at least there are two basic reasons to adopt the concept of federalism. Sarah Joseph and Melissa Castan (2006 : 12) argue that:

Why is Australia a federation? One reason is historical: a promise of federation was more likely to bring the self-governing colonies together than a pact to cede all power to a central government. There are also philosophical arguments in favor of federalism. Federalism, like the doctrine of the separation of powers, provides for the decentralization of power, and thus acts as a check against abuse of power and the development of unwieldy bureaucracy. Decentralization allows for more local participation in decision-making.

FEDERALISM AND MANAGING DIVERSITY: SOME LESSONS FROM SOUTH AFRICA AND AUSTRALIA

This part will concentrate on the question to what extent federalism would provide an effective constitutional solution. It will also come with analysis on how federalism potentially offers a valuable constitutional solution in a profoundly divided society with presenting examples from particular countries such as South Africa and Australia. As a comparator, Australia might be not as good as Africa. However, the similarity in managing diversity would be taken as an entry point to put Australia as a comparator.

It is often difficult to answer why countries choose federalism to cope with political crisis and ethnic conflicts. Nevertheless, in some countries, political crisis due to ethnic conflict is always the primary reason for choosing and implementing federalism. In relation to this issue, Peter H. Schuck (2006) says that among the principal reasons for establishing of federal systems, minority group demands and the management of diversity of civil society appears to be the most important.

Unlike South Africa where federal arrangement seems problematic from its beginning even tough in the 1996 Constitution, there is no word "federal" clearly mentioned). Australia can be uniquely viewed from the predominance of its federal form of government. From the historical view, Australia develops its federal system from imperial auspices. Australia retained the Westminster parliamentary tradition inherited from the United Kingdom. However, the Australian federation, which is often classified as "Parliamentary federalism", was influenced significantly by the United States.

Australia has developed the concept of federation significantly and has also shown its commitment to strong States and limited role of central governments in practice as Wolfgang Kasper (2007) comments in his article "*Australia's Hollow Federalism: Can We Revive Competitive Governance?*". However, some commentators such as Douglas V. Verney, Sarah Joseph and Melissa Castan (2006) argue that the development of Australian Federation still faces thread from the central government which persistently 'tries to centralize powers'.

In South Africa, federal system is relatively new. South Africa has just been launched after the proposal of government for a new constitution since 1994. It is undeniable that South

Africa is a country which exhibits cultural diversity. South Africa is also among countries that select federalism as well as decentralization because of ethnic conflicts.

As a consequence, South Africa needs to address many problems including political, historical and geographical challenges. In terms of historical challenge, South Africa, to some extents, may suffer the political impact of the colonizers to the constituent groups. Besides that, South Africa which is often categorized as a new young democratic country may also experiences inequalities among communities in terms of development, resource empowerment, territorial size, and population, not to mention conflicts among the communities over access to good public services.

More importantly, in relation to the geographical issue, South Africa has relatively a big task to manage various problems with the length and breadth of the country. Evidently, many studies show how the central government seems to lack infrastructural power to efficiently implement their authority. Besides that, in a deeply divided societies like South Africa, the most significant problem might arise is how to cope with the issue of majorities and minorities rights. In spite of models of organization for political states, whether they adopt federalism or not, the potential tendencies towards domination among majority groups in societies often comes as a big issue.

Indonesia, to some extents, has similarity with both previous instances in terms of diversity and demographical factors. Consequently, it may become relevant for Indonesia to adopt such system even though federal division of powers is potentially open to ambiguity. Nevertheless, with a constitutional promulgation, the division of power between central and regional governments can be considerably implemented.

FEDERALISME VERSUS UNITARIANISM: THE MANAGEMENT OF DIVERSITY ISSUES IN INDONESIAN CONTEXT

What makes federalism differs to other system such as a unitary system is that how constitution manages to regulate the division of political power. In a unitary system, division of authorities or political power only depends on legislation matter. In contrast, a federal system mainly set up the division of political power between local and central government in constitution.

According to Hans Antlov (1999), it is actually not simple to clarify the difference between a unitary and a federal state. He then questions: did anyone notice that Belgium or South Africa a few years ago gave up their unitary status in order to become federations? And do we think it strange that sovereign nations in Europe are willing to delegate some of their powers to the Council of Ministers and the Parliament of the European Union?

However, it is worth mentioning that generally the difference between federalism and a unitary system lies on how the division of power is constituted. While a unitary system tends to promulgate the division of power in some legislation, federalism seems to regulate it evidently in the Constitution over the division of powers between central and local governments.

It might be interesting to propose a description and analysis of a basic question; what is the political system best suited for a country with diversity like Indonesia? . Is federalism the political system best adaptable to handle deeply divided societies or just unitary system like implemented at the moment? Even though with this limited objective, it is still important to answer the question whether federalism, as a system of government

To begin with, it is important to note that the fundamental issue about diversity is how, in the midst of deeply divided societies within a state which seems to face difficulties in establishing and maintaining democratic government, dilemmas concerning a potential

clash between majority and minority will be managed as proposed by Arend Lijpart (2004). Before exploring the issue, it is important to feature benefits and contribution federalism and Unitarianism toward the management of diversity.

The unitary system where principally grounds sovereignty in the nation as a whole, would not provide an effective solution toward the management of diversity because central government representing a unitary nation has the right to delegate powers downward to regional governments but the regions have no right to any of these powers. The policy will be mainly influence by the political will of central government and it often ignores the local variable such as diversity in culture and ethnicity. On the other hand, a federal system which establishes the division of political power in constitution will allow more opportunity for local government to tackle local conflicts because usually local governments has more better understanding about the features and dominant factors in the communities.

It is undeniable that Indonesian political structure and institutions is massively influenced by facts of cultural diversity. Indonesia is a country which comprises a mixed picture of patterns, politics, language, cultural groups and religion. In terms of ethnicity, there are more than 490 ethnic groups in Indonesia. Besides that, it is also important to mention that the colonial regime, the Dutch, also influence the structure of administration and politics where authorities proceeded from the top downward.

From the beginning of Indonesian independence, political debate on ethnic conflict and institutional design falls into two fiction; supporters of federal state and those who favor integration. Integration and Unitarian supporters favour a single identity that is coterminous with the state. On the other hand, federalists lead to more flexible legal arrangements that recognize and empower ethnic diversity in a federal conception.

According to integrationists, a unitary Indonesian is final political decision which may lead to stability both in politics and economics. Moreover, the supporters of Unitarian system also present the possibility of disintegration when federalism would be adopted. The federalists reply that such strategies are more likely to produce instability because group differences, diversity, difference in natural resources. They suggest, instead in various strategies, to adopt a federal state that will accommodate multiculturalism, or pluralist federation.

Given the history of constitutional order and political journey, it was not surprising that fact of geography and the existence of pluralism and diversity have influenced an objective rational-choice option for deciding which system would be adopted. Within this framework, federalism and unitary system has been major debate since long time ago. At the beginning of independence period, federalism was considered common enemy because most Indonesian people believe that the creation of federal states which was designed by the Dutch only aimed to preserve the political power and the influence of the Netherlands.

Thus, a Unitarian state was more likely to be adopted rather than federalism. It is equally important to say that the Unitarianism has clearly been promulgated in the Article I, Section I, of the 1945 Constitution, "The Indonesian State is a unitary State". Until now, the Unitarian system is still maintained as promulgated in the new Indonesian Constitution.

However, Indonesia ever adopted the federal system as a Dutch imposition in 1949-1950. According to Charles (1963 : 317), federalism adopted in short period was not enough to prove its efficiency. Moreover, the practice of federalism was significantly influenced by the Dutch. This situation led to antipathy toward the federalism itself. Charles (1963 : 317) further notes that: *"....soon after the transfer of sovereignty in December 1949, a number of minor revolts broke out in different parts of the country, these were held to confirm the Republic's suspicions that Dutch interests were trying to subvert the new regime, and the opportunity*

was taken in August 1950 to replace the federal by a unitary constitution. Had the Indonesians instead introduced a more soundly based federal structure, it is possible that many of the country's subsequent difficulties might have been avoided. But, apart from the Government's conviction that the needs of security made a centralized constitution essential, the extreme economic dependence of Java upon the outer territories probably ruled out any serious possibility of Indonesia's willingly accepting a federal constitution in the years immediately following independence."

Nevertheless, it is equally clear that the briefly adoption of the federal system, which was constructed to prevent centralized structures of control, has marked the Indonesian political history. The constitution's federal framework has given an opportunity for local government to execute responsible autonomy. More importantly, the federal system was often viewed as an effective tool to manage diversity. It is not surprising many scholars who engage with political and constitutional theory argue that federalism can be utilized to prevent potential social and political conflicts in a society with diversity.

Eghosa E. Osaghae is one of commentators who take similar position. Osaghae (2004) notes that:

Not surprisingly, one of the more notable responses to the challenge, which doubled as a strategy of state reconstruction in view of the developments already outlined above, was the resurgence of federalism as a device for managing diversity—resurgence because federalism had featured prominently in the fragile transitions of the immediate post-independence period when issues of viability, stability and survival stared the newly independent states in the face. The nature of the articulation of the problematic of diversity in particular made federalism an appropriate contemplation.

In Indonesian context, federalism which is often viewed as most suitable for accommodating diversity has been always a topic of discussion particularly during the beginning of Reformation era. Unfortunately, as Jusuf Wanandi (2002) notes in his article entitled "Indonesia: A Failed State?", the issue and debate over federalism 'never seriously considered constructing one because of the overwhelming depth of diversity'. It seems to me that the attitude toward federalism debate and discussion is rather paradoxical. It is simply because if federalism may be considered as the most suitable for providing solution in diversity management, it must be explored and illuminated proportionally and responsibly.

In relation to this issue, Rizan Wrihatnolo (2007) says that:

Federalism is typified by the existence of regional autonomy towards the center. Although there is interdependency between the center and the regions, the center will never dissolve the regions. On the other hand, the regions cannot deny the importance of the center. In the unitary system, it does not mean that the regions do not have the rights at all to determine their policies. Then again, the central government has a very strong control on the regions' policies, and it also decides the share for regional development - how much the central government will get and how much will be left for regional development.

Amien Rais might be the only important political figure who openly advocates the concept of federalism. Having already established a political party in 1998, Amien Rais was likely impressed by the concept of federalism to tackle multi-crisis faced in Indonesia. With its great economic and cultural diversity, Amien Rais believes the particular form of federalism would contribute to good management of diversity itself. Additionally, with this in mind, he hopes by advocating federal system he will gain more voters in the 1999 general election.

Interestingly, support to the adoption of federalism in Indonesia was also openly voted by some local governments. With the new political framework after the fall of Soeharto's

regime, some local government has gained more courage to voice their aspiration to the central government. In fact, local legislators in South Sulawesi fully supported the proposal for a federal system after student demonstration demanded for independence (*Gatra*, November 6, 1998). In another region, the East Kalimantan even asserted that federalism must be put into consideration in order to maintain national integration.

Meanwhile, Ryas Rasyid and Andi Mallarangeng (1999) both agree to maintain the unitary system by explaining that federalism was almost impossible for Indonesia because federal nations could only be structured "by independent nations deciding to come together to form a federation." Similarly, prominent Governor of Yogyakarta, Sultan Hamengku Buwono X, has shown his resistant toward the implementation of federalism. He claimed that Indonesia would collapse as local governments declared its independence and formed a state based on ethnicity and religion.

At last, responding polemic between proponents and opponents of federalism, the Regional Representative of the People's Legislative Assembly (*Majelis Permusyawaratan Rakyat*) opened a forum to discuss federalism versus a unitary state in December 1999. The result of the forum was that the Aceh and West Papua province representatives doubted the stability of the unitary state if a federal system had been formally adopted. Other representatives visibly opposed federalism except representatives of Riau and East Kalimantan that urged a federal form.

The second amendment of the Indonesian Constitution also aims to accommodate the tendency to avoid federalism in one hand. On the other hand, the constitutional provision may provide sort of opportunities for some region to implement a quasi-federalist approach. National Democratic Institute in 2000 reported that the principle that regions may act on any subject that is not reserved by law to the central government. There is a constitutional provision for special legislation and/ or special status for particular provinces. There is a requirement for justice and equity and regard to local distinctiveness and diversity in the financial arrangements for regions. From the constitutional provision it can be concluded that, the movement toward a quasi-federalist set of institutions, in fact, has strengthened this integrationist core.

According to Alfred Stephen (2000), a state with a federal system is often considered a characteristic of a democratic nation. His thesis is that the federal state will develop the democracy environment of a country. Through democracy, the development will be distributed evenly. Then, if a country wants to adopt an ideal federal state, it must imitate the United States of America model of federal state.

Decentralization can be defined simply as a system where central governments disperse power to other agencies of government or local governments. According to Eghosa E. Osaghae (1990), decentralization can be classified into two types;

There are two kinds of decentralization. First, there is what may be called discretionary decentralization because decentralization is not constitutionally guaranteed. Rather, it depends wholly on the grace or convenience of the central authority. This is the prevalent kind of decentralization in unitary systems. Second, there is constitutionally guaranteed decentralization in which dispersal of power to constituent units is obligatory. This kind of decentralization falls within the ambit of federalism, the implication being that "the regional government's share of power in a federation is relatively large compared to that in unitary states.

However, it is must be admitted that the issue of political process of decentralization, to some extents, has not yet been comprehensively explored in the literature. In relation to this issue, Bernard (2000) claims that "one of the greatest challenges ahead of us as formal scholars of federalism is to synthesize the two branches of the literature, to consider how policy

efficiency and political feasibility are related...Question of when to decentralize, how, and to whom – questions regularly raised by the policy literatures – might not be best answered by examining policy efficiency, but instead ought to be informed by work on political feasibility.”

Historically, decentralization is not a new issue in Indonesia. Local governments have been formally created since the imperialism period. In the beginning of the century, the Dutch issued the Decentralization Act of 1903. The particular Act was only limited to regulate the creation of elected local council in order to balance the deconcentration. The Act of 1903 was then reformed to provide wider autonomy to local government such as opportunities for native figure to get involved in the local councils.

When Japanese occupied Indonesia in the 1940, the local government system inherited from the Dutch was still maintained. After almost three and a half years invaded Indonesia, Japanese was forced to leave after surrendered to the allied force. During that transition period, there have been regulations on local government. The included Law No. 1/1945, Law No. 5/1948, Law No. 1/1957, Presidential Edict 6/1959, Law No. 18/1965, Law No. 5/1974, Law No. 22/1999, and finally Law No. 32/2004.

While Law No. 1/1945 seemed to emphasize on deconcentration, Law No. 22/1948 wanted to put more emphasis on decentralization. This Law underlined the role of Head of the Region (*Kepala Daerah*) as a local representative and a representative of central government as well. Centralization gained its golden age when the Kepala Daerah was directly appointed by the Jakarta government. Based on these laws together with Presidential Edict No. 6/1959, all political power in local governments were vested in the hands of the Kepala Daerah/ Local council or local parliament was only the rubber stamp for all policies of the Kepala Daerah. The situation continued during Soeharto's presidency that clearly wanted to control all government level. By the Law No. 5/1974, central government easily controlled local government with military or armed forces as central players.

When Soeharto government collapsed in May 1998, Indonesia political and administrative system significantly changed. Of all significant changes, the shift of policy from a highly centralized system of government and administration for more than three decades to a decentralized one has occurred. Since that period, decentralization started to open its new chapter in Indonesian political history.

The remarkable Law No. 22/1999 which was then amended by Law No.32/2004, local government has limited the power of central government and extended the authority of local government. Backed by some academics and practitioners like Ryas Rasyid, Adi Sasono and Andi Mallarangeng, Habibie might be a very important figure behind the idea of decentralization. But in the beginning process of drafting and issuing the Law No. 22/1999 on Local Government, public reacted negatively to the decentralization framework.

For some developing countries like Indonesia, decentralization might be considered best constitutional solution. Political and economic crisis regarding ethnic conflicts has been taken by scholars to be the most credible justification for decentralization. As quoted by James Alm (2004) Anwar Shah and Theresa Thompson argue that 'in some countries such as Indonesia and Pakistan, decentralization processes which had been stuck in the mud for long time were given a big boost by political and fiscal crises.

This is why World Bank economists (2003) often label the governmental program of decentralization as a political '*Big Bang*' in Indonesian history. Yet, it seems to me that categorizing the decentralization process in Indonesia as quoted by many scholars is quite ambiguous and unclear. It is because '*Big Bang*' is often identical with two defining characteristics;

holistic or comprehensive and lightning speed implementation. The decentralization process that has colored Indonesian political history recently only exhibits one aspect of 'Big Bang' characteristic namely lightning speed implementation. Since the Reformation era, driven by an extra ordinary political situation in 1998, the call for democratization has triggered an approach to decentralization. And after that there is relatively massive and quick change of relationship between central government and regional or local governments. It is almost impossible to say that the decentralization process in Indonesia is implemented comprehensively.

TOWARD FEDERALISM: BETWEEN CONSTITUTIONAL AMENDMENT AND THE CONTRIBUTION OF FEDERAL SYSTEM IN ORGANIZING MULTICULTURAL INDONESIA

The implementation of federalism in Indonesia is still a big question among commentators and politicians after long debate since the independence of Indonesia. Thus, this sub-chapter will mainly examine the prospect of Indonesia to implement federalism as it may already meet all indicators for a federal state, for examples: the population, diversity in culture, language, ethnic and religions. This sub-chapter will also illuminate the best suited federal concept to be adopted in Indonesia by using examples for other countries all over the world that adopt federalism. This part will also examine what should be included and changed in the Constitution if Indonesia would adopt federalism.

So, what is the best response to answer a question whether there is any possibility for Indonesia to adopt federalism? If the question is responded by presenting George Kahin's view, federalism is unlikely to be implemented in Indonesia. Kahin (1952 : 450) notes that:

The great majority of Indonesians were profoundly dissatisfied with the federal system with which they had been saddled by the Hague Agreement. In all fifteen Dutch-created states, this discontent soon began to manifest itself in spontaneous and widely based popular demands for a scrapping of what was conceived to be an alien-imposed federalism and the liquidation of these states and their merger with the old Republic.

Additionally, for some group of society, the word of "federalism" is even a something taboo to be discussed. There is also kind of misunderstanding among some people to respond toward the proposal of federal government, even by parliament members and politicians. In a seminar held in Jakarta in 1999 when the debate over federalism was discussed, a member of House Representative of Indonesia claimed that the Republic of Indonesia would have to be dismantled if the unitary system adopted now were to become a federation system. Before that, there was a leading politician who commented that a person living in Java would be required to show passport if travelling to other Island such as Maluku or West Papua.

In spite of skeptical opinion and misunderstanding about the concept of federalism and its prospect to be adopted in Indonesia, federalism seems to have its place as Indonesia, in my opinion, has already met all indicators to practice a federal system.

In term of the contribution of federalism in organizing multicultural Indonesia, I believe that a concept of federal system will offer more effective constitutional solution to manage diversity compared to a unitary system. In order to provide a better explanation, some significant benefits of federalism will be reviewed. First, federalism will allow empowerment of local communities as well as motivating civil society for better living standard. Due to the importance of equality in a deep societal division in terms of financial policies, federalism seems to guarantee a degree of regional autonomy that allow more responsive and professional natural resources management.

Secondly, federalism can enhance accountability of local officials to provide better services. The federalism would allow provinces or sets of provinces together with regency

to have their own autonomy and to provide better public services which may minimize the potential of local conflict, with their own rights and duties, independent of (but in cooperation with) the central government.

In the future, when Indonesia is to substitute from a Unitarian system to a federal governance, there must be a fundamental constitutional change that promulgate the concept and practice of federalism. The only one paragraph of the Constitution of 1945 would need to be changed is recent Article 1 which mentions that "The Indonesian State is a unitary state in the form of a Republic." The word "unitary state" which establishes and highlights a Unitarian system would need to be restored with "a federation of states," like was during brief period of first decade after the independence of Indonesia (1949-1950).

A note must be emphasized, that if the federation is adopted, it is very important to form and recognize the constituent states. Hans Antlov (1999) says that the simplest way to do so is just by changing 'provinces or sets of provinces to have their own autonomy and to form new states, with their own rights and duties, independent of (but in cooperation with) the central government.' That will certainly prevent Indonesia from dissolving the identity of Republic of Indonesia.

It is clear that Indonesia's ethnic demography suggests that the ethnic management problem facing the government is not as severe as other countries such as India and Srilanka. Similarly, according to Michael L. Rose (2005 : 17), Indonesia, if viewed along religious line, can be categorized as a country which suffers from 'a second type of ethnic dominance. However, the drift towards decentralization in the decades from the independence until the reformation era has made the country increasingly prone to ethnic identities and demands namely liberal constitutionalism, state-backed secular nationalism, and social modernization and economic development. As a consequence, the Indonesian government has taken and counted on the promise of liberal constitutional practices, a state-propagated "accommodatives" nationalism, and at least some minimal level of social modernization and economic development to soften and even pre-empt ethnic disaffection.

Based on the Indonesian constitutionalism it can be resumed that there are at least four principle regarding the protection and management of diversity. First, constitutionalism promises to protect fundamental rights. And when it is necessary, the protection can be intervened by a Constitutional Court. That is why it is worth mentioning that the most important thing is that the judicial politics must be subjected to impartial, democratic and responsive. It is essential because from its establishment, the Constitutional Court has been widely regarded as one of the leading judicial agencies in Indonesian constitutional practice.

Second, constitutionalism in Indonesia seeks to ensure that governmental and private activity in all spheres will be rule-governed. Finally, if governmental and private actions breach the fundamental rights promulgated in the constitution, Indonesian constitutionalism, will offer ways for aggrieved parties to seek protection both from the Supreme Court and the Constitutional Court. Finally, Indonesian constitutionalism attempts to protect the instruments of political participation and public accountability. Political participations such as elections, political parties, and legislatures are ideally protected.

To sum up, Indonesian constitutionalism holds out the promise that members of any ethnic group can enjoy fundamental liberties, count on professionalism of government, seek compensation and protection, and organize themselves in parties to fight elections and get involved in the process of the making of laws and policies. It seems to me that there is nothing automatic about the effectiveness of this constitutional construction, but it really depends on the responsible implementation.

The second feature of the Indonesian political order is a conception of nationalism that is nationalist secular. In this conception, being Indonesian does not mean belong in to any particular religious, caste, tribal, or linguistic group or inhabiting a particular region to the exclusion of others; rather, being Indonesia means having been born within the boundaries of Indonesia or having become a responsible citizen and being loyal to its constitution. The message is actually simple: in a Unitarian concept, there will be no exclusivity in terms of ethnicity, community and religion.

Additionally, the third feature of the political order in Indonesian modern plural society is that the government has brought to bear on ethnic relations is the promise of decentralization, modernization and sustainable development. Consequently, the central government together with local governments need to improve access to higher education, public health facilities, housing, and jobs opportunities.

As mentioned before, managing diversity including religious and ethnic relations in Indonesia is a complex endeavour. In relation to this proposition, the central government is involved at two levels. According to the Article 7 of Law No. 22/1999 and its amendment the Law No. 32/2004, the functions of religion is one of the responsibilities of the central government. In other words, the central government has to manage its own relations with individual religious communities. The authorities of central government concerning religion in a diversity management can be categorized into three problem areas. First is the freedom of religion. The central government's intervention in religious matters is only allowed for the purpose of social reform. The central government at least has an obligation to make sure that communal violence or riots, and disputed religious matters are resolved fairly.

At the second level, the government has been preoccupied with maintaining law and order. In executing its authority, the central government has to fairly manage relations between religious communities.

Aceh might be a good example of how a 'weak' decentralization will not work properly to tackle local conflicts or civil wars. The journey of Acehnese to gain their independent government based on quasi-federalist approach illustrates it very well. After the resignation of Soeharto, an explosion of political activity in Aceh immediately occurred where a new independence movement emerged based largely on students and youth.

In terms of pluralism and diversity constellation, Arskal Salim (2007) argues that the issue of pluralism of values as well as plural legal constellations in Aceh has become an important issue since the independence of Indonesia. Arskal quoted Bowen's work who has explored Muslims struggle to reconcile different sets of social norms and laws, including those derived from Islam, local customs, and contemporary ideas about gender equality in Aceh in particular and in Indonesia in general.

Historically, this significant Law on special autonomy was emerged from a peace agreement with the Free Aceh Movement. After more than a decade civil war between the Free Aceh Movement and Indonesian military which has resulted in more than 1000 deaths since 1990, finally Aceh was given a special autonomy with Law No. 11/2006 on Acehnese government which marks a long way of Indonesia toward satisfying ethnic demands for accommodation.

The new law on Acehnese Government also determines several additional powers or authorities that were obviously absent in the original Special Autonomy Law (Law No. 22/1999 and No. 32/2004). According to the new law, local political parties in Aceh now can enjoy the right to organize, thereby creating an exception to the countrywide legal requirement that all political parties have a national outlook. This provision, which was one of the most sensitive points in the Helsinki peace negotiations, provide the Free Aceh Movement an opportunity to

configure itself as a political party in order to run for governor and Bupatis elections, as well as local legislative elections. As a result, candidates in the recent December 2006 local elections for governor and regency heads ran under the banner of the Free Aceh Movement, even though it had not constituted itself formally as a political party by that point. The political figure of the Free Aceh Movement at last won the local election for governor.

In an article entitled 'Indonesia's quasi-federalist approach: Accommodation amid strong integrationist tendencies', Jacques Bertrand (2007) notes that Indonesia is politically entering a new paradigm in terms of the relationship between central government and local government. He further notes that 'from a strong unitarist approach, the Indonesian state has moved toward a quasi-federal form, while resisting any tendency toward a pluralist federation.' In relation to this issue, Bertrand (2007) claims that:

"in just a few years, Indonesia has shifted from integrationist strategies that did not allow for regional representation to strategies that now permit more flexibility. The administrative and fiscal decentralization vis-à-vis provinces and regencies does not amount to a federalization of Indonesia but, certainly, it introduces elements that have created a quasi-federal system. The underlying principle of this reorganization, however, has retained the unitary state at its core; moreover, the autonomous units that it recognizes do not coincide with ethnic groups."

Until now, it can be concluded that there is no longer any significant tension or conflicts between military and the Acehnese who organize their movements through the Free Aceh Movement. Acehnese now enjoy a better life compared to previous circumstances before the special autonomy. As an example, in terms of financial independence and management, the fund of Aceh special autonomy budget year 2008 that reach Rp. 3, 5 quintillion which comes from oil and natural gas profit share. More specifically, the fund is not distributed directly to kabupatens or cities but it will be used depend on the project that agreed together between the Province and lower governments in Aceh. The circumstances have allowed local government to improve the development process, maintaining infrastructure, community economy development, health and social program, fighting against poverty, and education development.

Based on Bertrand's findings, it can be concluded that quasi-federalist approach in Aceh case has proved that forcing highly integrationist is not solving and providing significant contribution to reduce local conflicts. Bertrand (2007) notes that:

In both instances, conflict had been fueled in the past by highly integrationist strategies that were precursors to repression. Integrationist strategies generally were successful in the rest of Indonesia, but in the provinces of Aceh and Papua, where they included the adoption of repressive policies meant to preserve the integrationist whole, they proved counterproductive. By changing course to accommodate demands for autonomy, making special provisions for these regions, the Indonesian state has reduced group mobilization, military or otherwise..... special autonomy proposals or laws have aimed at accommodating the more forceful demands of the East Timorese, Acehnese, and Papuan ethnonationalists and clearly introduced accommodationist strategies along plural federalist lines.

Taking into account a clear example of the recent practice quasi-federalist approach implemented in Aceh, Indonesia has substantially entered a new paradigm of federal concept. Moreover, it seems to me that the spirit of the Indonesian Constitutional framework and many of its institutions which continue to support an integrationist approach would not be relevant to solve in an era of allegedly clashing civilizations in multicultural Indonesia. Thus, a federal system should be taken into account in order to provide a comprehensive constitutional solution as well as recognize and empower ethnic diversity.

Thus, it can be recommended that a constitutional changes need to be implemented alongside legislation which will significantly promulgate the architecture of state-region relations. Current legislations which provide much more specific autonomy to provinces as well as kabupatens or regency to tackle their own local complex problems in the Republic of Indonesia constitutional framework is not quite good enough.

All in all, the Indonesian Constitution was created to outline the goals and policies of the nation in addition to establishing the parameters of Indonesian's rights. In terms of constitutional amendment to accomodate federalism, current Indonesian Constitution has locked the possibility. It is simply because Article 37 Section 5 clearly mentions that the form of the Unitary State of the Republic of Indonesia can not be amended.

However, a constitution is political consensus which is potentially changed. Donald S. Lutz (1994) highlights that every political system needs to be modified over time as a result of some combination of (1) changes in the environment within which the political system operates (including economics, technology, foreign relations, demographics, etc.); (2) changes in the value system distributed across the population; (3) unwanted or unexpected institutional effects; and (4) the cumulative effect of decisions made by the legislature, executive, and judiciary.

CONCLUSION

The management of diversity in deeply divided society is not easy to envision, since it has not only such serious problems with local conflicts but also a problem regarding political matters as well as financial inequality. From Aceh case, Indonesia should learn how a quasi-federalist appears to be an effective constitutional solution in coping with diversity and local conflicts.

In spite of the system adopted in a country, the most important things to consider is that whether the system really works and it has to be more responsive to the concerns of democracy and people. More importantly, the potential benefits of either federalism or Unitarian systems which establish decentralization will crucially depend on governance. In a federal system where governments get closer to the community or people will allow the efforts to reduce monitoring costs of the electorate. Besides that, competition among local governments could help to tackle the possibility of corruption, collusion and nepotism. More importantly, as constitutions have a significant task to establish the rules for the allocation and exercise authorities or state powers, the adoption of the federal system must be clearly promulgated in constitutions.

All in all, based on analysis and descriptions presented in this paper, it can be concluded that the prospect of both federalism and unitary system is mainly influenced by all government level which must have political will to strengthen its commitment toward democracy and prosperity of the people. However, in the future Indonesia seems to adopt gradually a federal state when all government levels have the capacity to implement it.

Bibliography

- Bednar, Jennar (2000). "Formal Theory and Federalism", *APSA-CP Newsletter* Vol. (1) 11 Pp. 19-23.
- Erawan, I Ketut Putra, (1999). "Political Reform and Regional Politics in Indonesia", *Asian Survey*, Vol. 39 No. 4, August 592.
- Finklestein, Lawrence S. (1951). "The Indonesian Federal Problem", *Pacific Affairs*, 287.

- Fisher, Charles A. (1963) "The Malaysian Federation, Indonesia, and the Philipines: A Study in Political Geography", *The Geographical Journal*, 317.
- International Crisis Group, *Indonesia: Managing Decentralization in South Sulawesi* (2003). 23.
- Kasper, Wolfgang (2007). "Australia's Hollow Federalism: Can We Revive Competitive Governance?", *Institute of Public Affairs Review* Oct, Vol. 59 Issue 3, 35-38.
- Lijpart, Arend (2004). "Constitutional Design for Divided Societies", *Journal of Democracy* 96-97.
- Lutz, Donald S. (1994). "Toward A Theory of Constitutional Amendment", *The American Political Science Review*, Vol. 88, No. 2. June , pp. 355-370.
- Osaghae, Eghosa E., (2004). "Federalism and the Management of Diversity in Africa", *Identity, Culture and Politics* 167.
- _____, (1990). 'A Reassessment of Federalism as a Degree of Decentralization', *Publius*, Vol II No. 1, Pp. 83-88.
- Parikh, S and Weingast, BR, (1997). "A Comparative Theory of Federalism: India.", *Virginia Law Review*, Pp. 1593-1615.
- Rasyid, R and Mallarangeng, A, (1999). *Federalisme untuk Indonesia*, Jakarta: Kompas.
- Salim, Arskal, (2007). "Dynamic Legal Pluralism in Modern Indonesia: The State and the Sharia (Court) in the Changing Constellations of Aceh", *First International Conference of Aceh and Indian Ocean Studies, 24-27 February*.
- Schuck, Peter H., (2006). "Federalism", *Case Western Reserve Journal of International Law* Vol. 38 Issue 1, Pp. 5-12.
- Scott, J and Patience, A (ed.) (1983). *Australian Federalism; Future Tense*, Melbourne: Oxford University Press.
- Stephen, Alfred, (2000). 'Challenges and Opportunity in Regional Autonomy' Paper was presented in a seminar "National Dialogue of Regional Autonomy", Indonesia.
- Thomas-Woolley, B and Keller, EJ, (1994). "Majority Rule and Minority Rights: American Federalism and African Experience", *The Journal of Modern African Studies*, 416.
- Verney, Douglas V., (1995). "Federalism, Federative Systems, and Federations: The United States, Canada and India", *Publius*, Vol. 25 p. 83.
- Wanandi, Jusuf, (2002). "Indonesia: A Failed State?", *The Washington Quarterly* p. 136.
- World Bank, (2003) *Decentralizing Indonesia: a Regional Public Expenditure Review; Overview Report* p. 1