



Unitary V. Federalism: Constitutional Debates Concerning the Form of State in Indonesia's Post-independence (1945–1950)?

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Abstract. Generally, federalism is desirable in plural society while unitary state is preferable in a relatively homogenous society. However, in Indonesia unitary arrangement bind the diverse society, not federalism. Indonesia chose to adopt unitary state instead of a plural society. Through legal-historical analysis, this paper aims to understand the reasons why the framers of the constitutions choose to adopt unitary state instead of federalism. How did the framers of the constitutions formulate provisions on central-local government relations? What kind of unitary state adopted by Indonesia if the characteristics of its societies are so diverse? This paper is projected to fill the gap of the existing literatures by providing different explanation where unitary arrangement works well in diverse society like Indonesia.

Keywords: Constitutional Debate · Indonesia · Federalism

1 Introduction

Whether Indonesia would be unitary or federal state was intensively debated during the drafting of the first Constitution because Indonesia is an archipelagic country with significant diversities in ethnicity, customs, traditions, languages, religions and scripts. After its independence in 1945, Indonesia decided to adopt unitary state. It expressly mentioned in Article 1 sub article 1 of the first Constitution. It is important to understand why did the constitutional framers of the first constitution choose to implement a unitary arrangement over federalism, despite the fact that Indonesia's society is so diverse? This is because it is widely believed that in plural societies, federalism is favorable over a unitary arrangement since it may better in accommodating the diversity in the society. Four years after its independence, the unitary state of Indonesia shifted to federalism due to the shift of the constitution from the 1945 Constitution to the 1949 Federal Constitution. What explains such significant change? why did the Second Constitution adopt federalism instead of unitary state? The adoption of federalism, however, lasted less than one year. Since the enactment of the 1950 Provisional Constitution, Indonesia has consistently adopted unitary state. Within the unitary arrangement, how does the Indonesian government accommodate diversity?

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Existing literature [1–5] provides various explanations regarding central-local relations. In *Central-Local Relations in Asian Constitutional Systems* [1], nine constitutional law scholars analyze seven different countries in Asia, including China, Taiwan, Vietnam, Indonesia, Myanmar, Japan and Malaysia. They found that some Asian countries adopt decentralization or centralized state. They also found that some unitary countries tend to adopt a centralized state. While others prefer to implement decentralization. In different jurisdiction, a study by Haral Baldersheim & Krister Ståhlberg shows similar tendency that in the Nordic Countries, central-local relations are moving from Guided Democracy to Multi Level Governance [6]. These two studies are relatively different from the case of Indonesia. Jacques Bertrand in *Indonesia's quasi Federalist Approach: Accommodation Amid Strong Integrationist Tendencies* argues that Indonesia is moving from integrationist to accommodationist but with strong integrationist tendency [7]. Its tendency can be seen mainly post Soeharto era where decentralization is guaranteed in the updated constitution. Concerning decentralization, Endi Jaweng provides some significant criticisms on the implementation of asymmetrical decentralization, including the lack of grand design on asymmetrical decentralization [8]. Finally, a recent study by Sujit Choudhry elaborates concept between integrationists and accommodationists and explain how these two concepts laid in the constitution [9].

This present article is structured as follows: Part II will investigate how the drafters of the first constitution negotiated, debated, and finally formulated the form of state of Indonesia. Why did they prefer to adopt a unitary state rather than federalism? how did the constitutional drafters accept a unitary state in such diverse societies. What strategies did they utilize to keep Indonesians unified on the one hand and still recognize and respect the diversity of Indonesians on the other hand? Part III will analyze the shift: From Unitary to Federalism in the formulation of the 1949 Federal Constitution. The paper will finally concludes.

2 Drafting Over Form of State in the First Constitution: In Favor of Unitary State?

Debate concerning forms of state in drafting the first constitution can be seen in two events. First, when the founding fathers formulated the Preamble of the Constitution. Second, when they drafted articles concerning form and state sovereignty. The drafting of the constitutional preamble was conducted by a specific committee called Badan Penyelidikan Usaha-Usaha Persiapan Kemerdekaan (the BPUPK). This committee aims to investigate and prepare for the independence of Indonesia. The BPUPK consists of 63 members selected by the Japanese colonial government. The Committee composition however is somewhat diverse including their religions and ethnicities [10]. Concerning their ethnicities, the majority of the committee members are Javanese, they are 40 individuals and then 7 Sundanese, 4 Tionghoa, 3 Minangkabau, 2 Madurese, 1 Batakese, 1 Indo, 1 Arab, 1 Banten, 1 Lampung, 1 Ambon and 1 from Minahasa. Regarding their religion, most of committee members are Muslim only 8 out of 63 are Non-Muslim (Christian and Buddhist) [10].

Soekarno—Chief of the BPUPK formed a small committee consisting of nine individuals commonly called the Nine Committee (Panitia Sembilan). They are as follows:

Ir. Soekarno (Chief), Mr. A. A. Maramis (member), R. Otto Iskandardinata (member), B.P.H. Poeroebojo (member), Agoes Salim (member), Mr. Soebardjo (member), Prof. Mr. Dr. Soepomo (member), Ny. Maria Ulfah Santosa (member), K.H. Wachid Hasjim (member), Parada Harahap (member), Mr. J. Latuharhary (member), Soesanto (member), Sartono (member), Wongsonegoro (member), Woerjaningrat (member), Mr. R. Pandji Singgih (member), Tan Eng Hoa (member), Hoesein Djajadiningrat (member), and Dr. Soekiman (member).

The discussion of the form of state appeared when the drafters formulated the state foundation i.e. the Pancasila. The drafters of the constitution agreed that they would build Indonesia as a strong state which can be seen when Yamin, the member of the Nine Committee, conveyed his speech in four important points: (1) Nationhood (Peri Kebangsaan) (2) Humanity (3) Believe in one supreme God (4) Democracy. On Nationhood Yamin emphasized that Indonesia shall be a strong nation state. He further mentioned that, “the new nation we are going to build is the an Indonesian nation state or nationale state or etat national [11].” Indonesia today is a combination between peoples’ desires and the hundreds years of significant efforts to achieve independence (Naskah Komprehensiv, 2010). Peoples’ aspiration is originally from our nationalism that binds the people of Indonesia. Indonesia today cannot be conducted through the old model of nationalism like kingdoms in the past. In the end, Yamin concluded that Indonesia rejected the ideas of Federalism, (b) Feudalism, (c) Monarchy, (d) Liberalism (e) Autocracy, and (f) Western Democracy [11].

In similar vein, Soepomo provided ideas on state foundation i.e. the unity between people and their leaders, mutual works and communal spirit. He used the term integralistik state to describe such strong bonding people-leaders. Soepomo further argued that “...[I]n the system of family principle, the attitude of the citizen is not always asking “what is my right?” but asking what my duty as member of the big family is, that is, this Indonesian State” [12]. Both Soepomo and Soekarno believed that the integralistic state (integrated state) was the most appropriate ideology for Indonesia [12]. An integralistic state perceived “the inners spirit and spiritual structure of Indonesia people is characterized by the ideal of the unity of life, the unity kawulo Gusti, that is, of the outer and the inner world of the macro cosmos and the microcosmos of the people and their leaders” [13]. That said, there is no dichotomy between state and citizens. There is no conflict between these two entities. Soekarno believed that the country we build shall be a unitary state with people’s sovereignty, humanity and social justice. Haji Agus Salim concluded that there was no significant debate concerning unitary v. federalism. No one wanted provincialism or separatism. They agreed that there should be a division of authority between central and local government. In the end, voting decided whether Indonesia would adopt a unitary or federal government. Seventeen people agreed that Indonesia would adopt Unitary state and only two favored federalism: Latuharhary and Maria Ulfah. There are some other BPUPK members who also prefer federalism, they are Hatta, Rajiman, Sukiman, and Kusuma Atmaja. Close to Indonesian independence Soekarno persuaded Hatta to agree that Indonesia would adopt a unitary arrangement, not federalism. The problem is that they have not agreed on the model of unitary state whether Indonesia would adopt a unitary state with a federal like arrangement (the US system) or a federal like arrangement (the Canada model).

It can be said that even though the founding fathers they have different reasons, they largely agreed that Indonesia should be unitary not federalism. The two important reasons are the bitter experience of colonial periods and the integralist state which required the unity between state and people. The unitary state of Indonesia can be clearly seen in the first constitution. The Preamble of the first Constitution, particularly Paragraph Four indicated that Indonesia adopted a unitary state. It said, the Unity of Indonesia. Further Article 1 Sub Article (1) of the Constitution said, “The State of Indonesia is a unitary state in the form of a republic.”

How did the drafters of the first constitution accommodate the diversity of Indonesia if they chose to adopt a unitary state which may not sufficiently accommodate the huge diversity in Indonesia? While it is true that the drafters of the first constitution chose a unitary arrangement for Indonesia, it did not mean that when they drafted the constitution they disregarded the important fact that Indonesia is a plural society. To accommodate the diversity of Indonesia, the drafters of the first constitution inserted articles concerning decentralization. Decentralization is significant for Indonesia to respect the diversity of Indonesia and keep Indonesia unified.

When formulating Article 18 concerning central-local relations, the founding fathers inserted principles of decentralization. Article 18 stipulates that Indonesia is divided into smaller regions. These small regions will be further divided into smaller regions. This division is important for two reasons. First, Indonesia is a big country. To manage such a big country, the central government depends on local governments (smaller regions) to reach all people in all regions all over Indonesia. Second, Article 18 of the first constitution recognized and respected the huge diversity of regional governments. The drafters of the Constitution understood Indonesia’s factual situation on that day, reflected in the final version of Article 18 and its elucidation, which acknowledge and respect the existence of special regions and distinct regions in Indonesia.

Article 18

“The division of Indonesia into large and small areas, with the form of arrangement of government is determined by law, by observing and remembering the basis of deliberation in the state government system, and the rights of origin in special areas.”

Elucidation of Article 18

- i. “Since the State of Indonesia is an *eenheidsstaat*, Indonesia will not have areas within the environment that are state as well. The territory of Indonesia will be divided into provinces, and the provinces will be divided also in a smaller areas. In areas that are autonomous (*streek and locale rechtsgemeenschappen*) or is a mere administrative areas, everything is according to the rules that the constitution will set. In autonomous regions, regional representative bodies will be held because even in the regions, the government will be jointly based on deliberation.”
- ii. “In the territory of the State of Indonesia, approximately 250 *zelfbesturende landchapp and volksetneenschappen*, such as villages in Java and Bali, states in Minangkabau, hamlets and clans in Palembang and others. Those areas have the original arrangement; therefore, it can be considered special. The Republic of Indonesia

respects the position of these special regions and all state regulations will remember the area's rights of origin.”

Unfortunately, under the first Constitution, unitary state did not last long because four years after the independence, a constitutional renewal shifted Indonesia from a unitary state to a federal country.

3 The 1949 Federal Constitution: From Unitary to Federalism

Four year after Indonesia proclaimed its independence, a constitutional change from the 1945 Constitution to the 1949 Constitution. The subsequent constitution (the 1949 Constitution) differed significantly from the previous one. The 1949 Constitution shifted Indonesia from a unitary to a federal state. Why did this happen? What would be the contributing factors in shifting from unitary to federal state?

The drafting of the 1949 Federal Constitution involved the United Nations. The constitutional drafting was held during the Round Table Conference. This Conference was carried out to end the dispute between Indonesia and the Dutch after four years of armed conflict and protracted negotiations [14]. The revolutionary era continued after 1945 because the Dutch were not ready to hand over their interests in Indonesia unconditionally [14].

The discussion of formulating a new constitution continued in 1946 after the Dutch, with the assistance of the English, once again gained footing in Indonesia. Initially, there was the 1946 Linggarjati agreement between the Netherlands and the Indonesian government to establish a Netherlands—Indonesian Union [14]. This Union aimed to create a new sovereign state, the United States of Indonesia. This agreement then was followed up by the Round Table Conference held in The Hague from August 23 to November 2, 1949. This Conference produced three important results namely: the establishment of the United States of Indonesia (including the establishment of the 1949 Federal Constitution); the transfer of sovereignty to the United States of Indonesia; and the establishment of the United States of Indonesia–Dutch Union [15]. The Dutch Queen Juliana officially declared the result of this Conference before the delegations in December 27, 1949. With the Queen's declaration, the 1949 Federal Constitution and all the results of the Round Table Conference were formally applied.

Relevant articles concerning form of state are Article 1, 42, 43, 44 and 45.

Article 1 “The independent and sovereign United Republic of Indonesia is a democratic rule-of-law state in the form of a federation.”

“The sovereign power of the United States of Indonesia is exercised by the Government together with the People's Representative Council and the Senate.”

Article 42 “While waiting for the finalization of the composition of the Republic of the United States of Indonesia as a federation between states with mutual dignity and mutual rights, the territories mentioned in article 2 are mutually entitled.”

Article 43 “In finalizing the composition of the federation of the Republic of the United States of Indonesia, the guiding principles shall apply, that it is the will of the people in the regions concerned which is freely expressed according to the democratic

way, deciding on the status which will eventually be occupied by the regions that have the free will in the federation.”

Article 44 “Changes in the area of an area, as well as entering into or merging into an existing area, may only be carried out by a region even though it is not a division in itself—according to the rules established by federal law, by upholding the principles such as referred to in article 43, and it is simply about entering or joining, with the consent of the regions concerned.”

Article 45 “The order and method of administering the regional administrations must be in accordance with democratic methods, in accordance with the principles contained in this Constitution.”

The question of why the form of state shifted from unitary state to federalism in the 1949 Federal Constitution is significant. It is important to identify the drafters of the 1949 Constitution. Why did they introduce federalism which did not have strong root in Indonesia? Did the Indonesians create it, or was it dictated directly or indirectly by other external actors? It was agreed by the drafters that “this new Constitution was something that should be determined by Indonesia.” However, the Netherlands would have a say in the composition of the constitutional assembly. The new constitution would be based on principles of democracy, federalism, and respect for fundamental human rights. In 1948, an additional agreement was achieved with the assistance of a Committee of Good Offices provided by the United Nations. It can be said that the 1949 Constitution adopted federalism because the Indonesian government did not independently conduct the formulation of the Constitution. It involves international actors, namely the Dutch delegates and the UN delegates. Having two influential actors involved in the drafting of the 1949 Constitution, it is likely that they, to a certain extent, will color process of constitutional drafting which was reflected in *The Genesis of the Indonesian Constitution of 1949*. Written by Drooglever.

The influence of “western values” including provisions on human rights is apparent not only because of the Round Table Conference held in the Hague but also because in the end of 1948, there was an important event on human rights, namely the birth of the Universal Declaration of Human Rights (the UDHR). It is why the provisions on human rights in the 1949 Constitution are almost identical with the Universal Declaration of Human Rights. The UDHR inspired the constitutional drafters to insert articles on human rights.

4 Conclusion

The paper has explained the reasons why a diverse country like Indonesia did not adopt federalism which may be better fit to accommodate such plurality. Two significant factors determine why most of the drafters of the first Constitution agreed that Indonesia should be a unitary state not a federal country. The first is that Indonesia had bitter experiences in the past. Over three and half centuries, the Dutch colonized Indonesia. Such experience leads to a common feeling among Indonesians. They believed that Indonesia must be strong among other countries in the world so that the bitter experience would not happen in the future. Furthermore, to be strong, Indonesians need to be unified. As a result, a unitary state would be the common platform for Indonesia now and future. The second

factor is that the strong influence of Soepomo's negara integralistik which requires the unity between leaders and people. It is important to keep the state strong. The unitary state of Indonesia however shifted to federalism in 1949 with the introduction of the new 1949 Federal Constitution. Such change was not fully the intention of most Indonesians. It happened because the drafters of the new constitution were not only Indonesian delegates but also the UN and the Dutch delegates. The active involvement the UN and the Dutch delegates during the constitutional drafting significantly influenced the nature of the constitution, including the form of the state. The "western values" including federalism, were adopted in the new constitution.

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