

## Acknowledging the Constitutional Rights in Indonesian Special Autonomous Regions: The Case of Aceh and Yogyakarta

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### Abstract

This article examines the central government's policy towards Aceh and Yogyakarta in relation to constitutional rights. Aceh and Yogyakarta become special autonomous regions after decades of conflict and longtime aspirations from citizens. The Indonesian constitutions grant the rights for citizens to govern autonomously based on aspiration and indigenous law. This research will use legal comparative research based on the national law, customary law, and general principles of constitutional rights. This research shows that autonomous region in Indonesia is implemented based on the aspirations of the people and in accordance with national law. However, recognition of customary

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law is not entirely fulfilled by the central government. This article promotes central government to recognize local democracy system in Indonesia for gain trust and peace in the relationship between central and local government.

**Keywords:** *Constitutional Rights, Special Autonomous Regions, Special Autonomy, Aceh, Yogyakarta.*

## Introduction

The Indonesian Constitution provides a comprehensive framework for the implementation of regional autonomy, covering the regulation, distribution, and equitable use of national resources, as well as the balance of central and regional finances - all of which must be upheld within the legal structure of the Unitary State of the Republic of Indonesia. (Arinanto, 2005).

The framework of the Republic of Indonesia must be organized with the guarantee of the widest possible autonomy to the regions to develop according to the potential and wealth of the region, with encouragement and assistance from the central government (Asshiddiqie, 2011).

An inclusive political system and government formulated a new constitution that aimed to recognize constitutional rights that were relevant to the development of society. Classic constitutional formulas were no longer valid as a basis for societal inclusion. After the Second World War in 1945, constitutional rights were considered more capable of combining the various social sectors of society to formulate a national political system (Somek, 2008).

The political system internalizes the nation, not as a collection of people, but as an authority that has rights and is entitled to legal protection in a limited set of practices and validates the function of the people aspiration. Fundamentally, governments in many countries around the world are thought to grant privileges

and exceptions to individuals or selected classes. Constitutional rights create an inclusive structure for the national political system that emerges as a positive promotion of societal integration governed by the constitutional system (Luhmann, 1965).

There are at least eight concepts of constitutional rights. The first is the constitution as a contract, the second is the choice of voting rules, the third is the choice of collective rules of rights, the election of constitutional rights, the Relative Nature of Constitutional Rights, the Change or Evolution of Rights, the Nature of Rights, Constitutional Rights, Moral Rights, and Unanimity (Mueller, 1991).

Constitutional rights in the United States establish the principles of liberty, equality, justice, and humanity contained in the Declaration of Independence. This provides a new understanding of three fundamental and great ideals: Government exists for the benefit of all the people; Power is derived from and vested in the people; All members of a social group are equal in the eyes of the law and entitled to the same opportunities in life (Williams, 1946).

According to the Indonesian Constitution, the constitutional rights of the Indonesian citizens can be categorized into 1) Individual Rights 2) Collective Rights, and 3) Rights of Vulnerable Communities. The right to recognition and respect for state-regulated customary law communities and their traditional rights shall be upheld, provided these communities remain active and align with societal development and the principles of the Republic of Indonesia.

Article 18 of Constitution of the Republic of Indonesia stated that “...with due regard to the specificity and diversity of the region...” and “...the relationship between the central government and local governments shall be regulated and implemented in a fair and harmonious manner based on laws...”. This indicates that the state requires tailored arrangements for each region, reflecting their unique and diverse characteristics, while remaining within the framework of the Unitary State.

In addition, article 18B the constitution affirms that 1) the State recognizes and respects units of regional government that are special or special in nature which are regulated by law 2) the State recognizes and respects the unity of customary law communities along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia.

The Aceh Special Autonomous Region has been shaped by a history of conflict spanning from 1976 to 2004, largely rooted in the Government of Indonesia’s (GOI) implementation of centralized policies, economic inequities, and underdevelopment at the provincial level. The people of Aceh have shown strong support for the liberation movement, driven by aspirations for a better quality of life, greater autonomy, and lasting peace. (Novianto, 2022).

Yogyakarta’s autonomy began in 1755 during the period of the Dutch colonial rule. After Indonesia gained independence,

Yogyakarta government declared its integration with the Indonesian government. The Sultan played a significant role in preserving Javanese cultural values and customs to unify communities in Yogyakarta (Sidiq, 2021).

However, as provinces with special autonomy status, Aceh and Yogyakarta face differential treatment in areas such as local democracy, land rights, and customary law. The new institutional systems established under the autonomy framework cannot be fully implemented, as certain provisions are not clearly regulated in their respective special autonomy laws. This research focuses on how special autonomy has been applied differently in Aceh and Yogyakarta, particularly regarding constitutional rights that recognize and respect customary law. In a constitutional state, no law or regulation should contradict the Constitution, which serves as the highest legal authority. (Harman & Hendaridi, 1991).

### **Research Objectives**

1. To examine the recognition of the constitutional rights in Indonesian Special Autonomy.
2. To compare Aceh and Yogyakarta Autonomous Regions in terms of local democracy, land rights, and customary law.

## Research Question

What were the Central Government strategic policies to ensure constitutional rights in Aceh and Yogyakarta as Special Autonomy Regions of Indonesia?

## Research Methodology

This research uses a legal comparative research approach. The main sources of this research are national law in related to the region, customary law, and general principles of law related to constitutional rights. The secondary sources are from articles and journals which were written during the special autonomy era. The research focuses on the implementation of the Special Autonomy already applied in Aceh and Yogyakarta for politics and democracy. The area of this research is on how the local government has developed throughout the special autonomy/post-conflict period. Special Autonomy implementation such as organized customary law, local elections, and political authority. The Secondary sources attempted to explain the implementation of Special Autonomy in Aceh and Yogyakarta. In general, special autonomy and theories were used for actual situations about Aceh and Yogyakarta.

## Discussion

### 1. Indonesian Election System

The political system in Indonesia places political parties as the main pillar of democracy (Kuswanto, 2016). Indonesia has the principle of people sovereignty and is implemented through general elections. The President and Vice President are elected through general elections, while members of Parliament and members of regional Parliament are from political parties based on Article 22E of the Indonesian Constitution. Thus, political parties are expected to play a significant role both in the selection of election candidates and in shaping policy once those candidates are elected. (MacIver, 1955).

In Indonesia, a Political Party is an organization that is national in nature and formed by a group of Indonesian citizens voluntarily on the basis of common will and ideals to fight for and defend the political interests of members, society, nation, and state, as well as maintaining the integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

However, it fundamentally differs from the organizational characteristics of special autonomous regions. The existence of local political parties in Aceh, and the Sultanate's role in recommending representatives to the local parliament in Yogyakarta are distinctive methods of selecting local leaders. These findings reflect the diversity of democratic systems in Indonesia, shaped by the reconstruction of

political, social, and economic structures at the local government level. (Novianto, 2024).

## 2. Yogyakarta Local Election System

The Javanese political system today comes from the Mataram Kingdom (1586) is still alive as the political culture of the Central Java area and Yogyakarta, the areas which are now a special autonomous state of Yogyakarta (Pigeaud & Graaf, 1976). The Javanese political concept is an absolute power that must be used for the welfare of the people. According to Moedjanto (1994), between the king and the people applied the principle of *jumbuhing kawula-gusti* (unity of the people and the king).

In relation to the theory of power and sovereignty, Sujamto (1988) put forward his theory of Javanese power which was later known as the concept of *Keagungbinatataan*.

The bureaucracy is managed under the authority of the Sultan, who oversees its organization. The Mataram bureaucracy coordinates both central and regional affairs, with its central administration led by the Patih (also known as Papatih Dalem). The Patih is supported by officials called *nayaka* or *wedana*, who hold authority over military matters and may act as regents when necessary. (Soehino, 2010).

The central government accommodates many Javanese political concepts in the special autonomy of Yogyakarta based on the Law Number 13 of 2012. There is a recognition of the

*Ngayogyakarta Sultanate* and the *Pakualaman Kadipaten* that had territory, government, and state before Indonesia was founded in 1945, and contribution greatly to the Republic of Indonesia.

Modern democratic mechanisms are implemented through the appointment of the Governor by a local parliament nominated by the sultanate of Yogyakarta. Moreover, the sultan's tenure is limited to a five-year duration and is not subject to any restrictions concerning the number of consecutive terms.

Local elections in Yogyakarta show that the state recognizes the collective rights of the citizens. Despite the sultanate system, the appointment of the sultan of Yogyakarta is adjusted within the framework of modern democracy (Blaug & Schwarzman 2016). This step by the government should be a reference so that other regions can have the same constitutional rights to be able to determine attitudes and choose leaders in accordance with the aspirations of the community.

The state should still make space for diverse systems of society. Even though it may not align with national electoral regulations, respecting and recognizing customary institutions is something that can unite the country (Somek, 2008).

### **3. Aceh Local Election System**

In Aceh, a government of the people of Aceh is allowed to be established through fair and democratic process under the Constitution of the Republic of Indonesia. After the signing of the

Helsinki MoU, Gerakan Aceh Merdeka (GAM)<sup>2</sup> faced the challenges of transitioning as the MoU called for the dissolution of GAM. In response, the former GAM rebels transformed the movement into a democratic political organization called the Aceh Party (Brancanti & Snyder, 2011).

The former GAM members felt that peace would come at too high a cost if they were excluded from the future government. In other words, their elimination from the political process would pose serious challenges to the implementation of post-conflict local elections (Novianto, 2024). Nonetheless, the former GAM elite members were offered many political positions in the post-conflict period (Aspinall, 2007).

The principles of the Law of Governing Aceh (LoGA) have established new legislation with authority over all sectors of public affairs. This legislation is administered in conjunction with its civil and judicial administration, except for the fields of foreign affairs, external defense, national security, monetary, fiscal matters, and justice and freedom of religion. The policies in these areas are the responsibility of the Government of the Republic of Indonesia in accordance with the Constitution.

In political participation, Government of Indonesia (GoI) agrees to facilitate the establishment of Aceh-based political parties that meet national criteria. The people of Aceh will have the right

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<sup>2</sup> Free Aceh Movement

to nominate candidates to contest the Aceh local elections. Free and fair local elections will be organized under the new Law on the Governing Aceh.

Aceh Special Autonomy has recognized a new governance model in the democratic transition from an authoritarian system to a democratic system (Fong, 2017). While other regional elections do not regulate local political parties and independent candidates, Aceh has its own mechanism. The state endeavors to provide constitutional rights that guarantee freedoms under the constitutional system (Movsesian, 1999).

Since the Helsinki MoU and the LoGA, four elections have been held in Aceh, in which the new political parties gave former GAM elements entry into several prestigious and strategic political and social positions. Last election in 2024, the former commander of GAM, Muzakir Manaf alias *Mualem*, officially became the Governor of Aceh. This indicates that GAM influence is still strong in Aceh.

After that, the Governor of Aceh was inaugurated by Wali Nanggroe Aceh Paduka Yang Mulia Teungku Malik Mahmud Al-Haythar who also performed a traditional ceremony to honour the new leader of Aceh based on the Article 96 of LoGA.

Mualem is supported by Partai Aceh, the largest local party made up of former GAM combatants. In addition, they also have the support of the Aceh Nanggroe Party, and national parties such as Gerindra, Democrat, PKB, PKS, PPP, and PDI-P. These elections

consolidated peace by allowing former leaders and adherents of GAM to dominate the organs of local government (Aspinall, 2018).

GAM increasingly adopted an ethno-nationalist vision, which, while emphasizing the cultural and linguistic identity of the Acehese people, also acknowledged the region's ethnic diversity. (Aspinall, 2008). The people of Aceh are composed of 12 distinct ethnic groups, namely: Aceh, Aneuk Jamee, Alas, Batak Pak-Pak, Devayan, Gayo, Haloban, Kluet, Lekon, Singkil, Sigulai, and Tamiang. Each of these groups maintains its own unique traditions, social patterns, and customary institutional structures. These customary systems are overseen by the Lembaga Wali Nanggroe and the Aceh Customary Law Institution.

Wali Nanggroe Institution is an independent customary leadership institution that act as a community unifier. It has the authority to foster and supervise the customary institutions, customs, language, and the granting of titles/degrees, and other traditional ceremonies.

The recognition of 13 customary institutions in Acehese society is regulated through the Aceh Special Autonomy Regulations, known as Qanun. The people of Aceh exercise their constitutional rights by establishing customary institutions and legal frameworks to ensure the continued existence and protection of Acehese customary law communities (Razali, 2017).

This is important to ensure that customary law is

enforceable and not replaced by national law. If the customary law community is deemed to have ceased to exist, then customary law will no longer be applied in that region. Therefore, public authority requires a dedicated institution or agent to unify and represent the general will, serving as a channel of communication between the State and the sovereign, and acting on behalf of the collective entity. (Blaug & Schwarzmantel, 2016).

As an agent of public power in Aceh, GAM has integrated customary law and Islamic law within the framework of Indonesia's constitutional rights. Furthermore, the existence of democratic policies in Aceh that prioritize local elements in leadership represents a significant breakthrough - one that has been emulated by other regions. Government regulation has played a central role in driving special autonomy and decentralization in Indonesia, in accordance with Article 18B of the Indonesian Constitution.

Special autonomy signifies the authority wielded by autonomous regions to organize and manage the interests of local communities according to their own initiatives, grounded in community aspirations and in accordance with established laws and regulations (Novianto, 2024).

In response to the demands of government reform, the nation has swiftly undertaken a fundamental transformation of its political laws, shifting from a centralist-authoritarian to an autonomous-democratic framework (Sidiq, 2021).

**Table 1** Special Autonomy and other local government

No.	Aspects	Other Regions	Yogyakarta	Aceh
1	Legislative Authority	National authority	Land, spatial, customary, Governance	Islamic, customary, Governance
2	Party	National	National (legislative)	National and local party
3	Election	National election commission	Recommend by Kraton (executive)	Special / independent commission
4	Land Rights	National system	Sultanes Ground	National system
5	Financial Support	Based on GOI policy	Special autonomy fund	Special autonomy fund
6	Judicial Authority	National law	National law	Islamic law
7	Term of Governor	2 period (10 years)	Every period (5 years)	2 period (10 years)

#### 4. Land Rights under Customary Law

Ensuring secure land tenure is a crucial component of sustainable development, as both agribusiness operators and small-scale farmers require stable land rights to make investments in their land holdings (ter Haar, 1948). Property rights are often tenuous or ambiguous in numerous global regions, as they are frequently eroded by overlapping claims to land and fierce competition.

Across the African continent, land legislation is founded on

European legal principles that bear limited significance to land dealings on the ground, where land is typically owned by clans or families and utilized through intricate systems of multiple rights. In contrast, customary and continually evolving land tenure systems are often used, even though they may not match the laws, as they are more accessible to rural communities. In consequence, multiple legal systems; statutory, customary, and hybrids thereof, operate within the same territory, giving rise to intersecting rights, conflicting regulations, and contending jurisdictions (legal pluralism') (Cotula, 2006).

Indonesia constitution mandates prosperity aspect policy, emphasizing the state as the steward of land, water, and other natural resources (Astriani et. al., 2020).

The concept of land ownership is inspired by customary law. However, community land ownership often face challenge with written certificate issued by Land Government Institution and corporate interests that hold permissions to manage land near community-owned land. This situation has given rise to agrarian conflicts, often resulting loose of community land rights based on customary law because of national land law.

In general, the state has the authority to control and regulate land rights in Indonesia. The right to control for implementation may be delegated to Swatantra or Special Autonomy regions and customary law communities, as necessary and not in conflict with the national interest, in accordance with

the provisions of a Government Regulation.

Special Autonomy in Yogyakarta has land authority governance. The concept of Javanese includes territory, bureaucracy, and a code of conduct for rulers and subjects. The concept of state territory in Javanese doctrine of power includes: 1) at the central level, there is a palace, state or *kuthagara*, which is an area where the king and his family live 2) *Negara agung*, which is the area where the *Lungguh* land of the nobles of the *Mataram* family is located. 3) *Mancanegara*, which is the land outside the great state, extending approximately from Ponorogo Regency in the east to Purworejo Regency in the west. (Hadiwijoyo, 2009).

The idea, rooted in historical facts, was later implemented in the formation of the Yogyakarta Special Region. This constitutional right was granted by the state based on the *autochthonous rights* that existed prior to Yogyakarta becoming part of the Republic of Indonesia.

The DIY government then issued several regulations regarding governing land management. The Sultanate's control/ownership (domein) over land because they contain provisions for granting hereditary individual property rights to community members who previously controlled land with hereditary land with hereditary *angango* rights.

Thus, on the one hand, the Sultan is the Governor of Yogyakarta, carrying out the orders of the law, and also culturally a

king in Yogyakarta who has power over the territory, including the land rights based on Regulation of Special Autonomy Yogyakarta Number 1 Year 2017 on the Management and Utilization of Sultanate Land and Duchy Land.

However, the privileges granted to Yogyakarta have become a source of polemic, particularly in relation to the legal politics surrounding Sultan Ground (SG) and Duchy Ground. Several land conflicts have surfaced as national investor prefer national land law to the Special Autonomy Law.

The case involving Sultan's land in the Dagen area created reluctance among both landowners (residents) and investors to proceed with land transactions. In September 2015, a group calling itself the Action Committee for Agrarian Reform (KARA) staged a protest against efforts by the Yogyakarta Regional Government and the Palace to inventory and legalize all land categorized as Sultan Ground (SG) and Duchy Ground (PAG) in the Special Region of Yogyakarta (DIY). The demonstrators also demanded the enforcement of national land law across all areas of Yogyakarta (Sugiarto & Barthos, 2024).

National regulations related to land have proven difficult to implement, as both central and local governments prioritize regional autonomy provision. Special Autonomy of Aceh does not have any special provisions related to land management. Whereas the Helsinki MoU agreed to allocate farmland and funds to the Aceh

Government for ex-GAM combatants and Aceh civilian.

The government of Aceh is granted authority to manage natural resources on Aceh's land and sea, according to article 160 of LoGA. The government of Aceh is authorized to regulate and administer existing land rights including customary rights in accordance with national norms, standards, and procedures based on national land rights based on article 213 of LoGA.

Land conflicts occur due to overlapping regulations from the central and Aceh government. Dispossession occurs on land owned by local communities due to unclear land ownership boundaries in an area. Tenurial natural resource management practices carried out by the government with national investors have finally led to conflict with the community.

Land conflicts - such as the expansion of palm oil plantations and gold mining into customary lands in Aceh Besar and Pidie districts - are part of broader agrarian disputes occurring across Aceh and throughout Indonesia. These conflicts often stem from unclear permitting processes for plantation areas, coupled with weak government oversight and insufficient legal enforcement. This lack of action has fueled public frustration and prolonged tensions. As noted by Fahrimal (2018), the government's lack of seriousness in addressing these agrarian issues further exacerbates the situation. Therefore, there is an urgent need for a new framework of legitimacy and governance that formally recognizes communities' customary

land rights, as existing national land laws remain inadequate to accommodate these traditional claims. (Thornill, 2016).

Aceh needs to own regulation like in Yogyakarta. In Yogyakarta, many lands belonging to the Sultanate and Pakualaman that have been occupied by the community, but do not have administrative evidence, thus administratively have the right to give authority to the community. Special autonomous authority should be able to protect the customary land rights of indigenous peoples.

## **Conclusion**

The recognition of constitutional rights in autonomous regions in Indonesia is implemented based on the aspirations of the people, and in accordance with national law. Sensitive issues such as local elections, local government, and land rights that have been the root of conflicts which both central and local governments have been trying to resolve.

The presence of the Sultan in Yogyakarta and local political parties in Aceh are key factors underpinning the uniqueness of these special autonomous regions. This dynamic reflects a broader perception that excessive governmental interference can hinder local development. Therefore, the recognition of constitutional rights is essential for preserving regional diversity and ensuring long-term peace and stability.

Nevertheless, regulating land-related authority in Aceh is imperative, given the region's deeply rooted social, cultural, and economic values. The establishment of autonomous regions - such as Sultanate and Kadipaten lands - requires a clear and precise delineation of their legal status and position. Such clarity is essential to ensuring the effective exercise of regional autonomy, as demonstrated by the case of Yogyakarta.

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