



# *Understanding Decentralization Appliances In Special Region Of Yogyakarta In The Land Sector*

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**Abstract—** This study aims to explore and investigate the implementation of asymmetric decentralization in the land sector of the Special Region of Yogyakarta (DIY) from the perspective of justice. The research is driven by the diverse characteristics of various regions in Indonesia, which have led the government to recognize these differences through Article 18 of the 1945 Constitution of the Republic of Indonesia. This article grants special or unique authority to specific regions, including the Special Capital Region of Jakarta, the Province of Aceh, the Province of Papua, and the Special Region of Yogyakarta. This study will provide an in-depth analysis of how the special status of the Special Region of Yogyakarta (DIY) is applied in the land sector, serving as an example of asymmetric decentralization in Indonesia. It will also evaluate whether this implementation aligns with John Rawls' theory of justice.

**Keywords—** Asymmetric Decentralization; Land; Justice.

## I. INTRODUCTION

Article 18A in the *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* gives much more detail about the relationship between central government regional province government. In its detail, it is written that: (1) The authorities that related with central government, regional district government, and regional city government, regulated in laws by considering about unique characteristics and diversity of the territory; (2) The relationship of financial aspect, public services, the usage of natural resources, and another resources between central government and regional government has been regulated and implemented fairly and is compatible with the existing laws.

Declaration that says "*dengan mempertimbangkan karakteristik dan variasi yang unik di tiap daerah*" in Article 18A paragraph (1) *UUD NRI Tahun 1945* shows that constitution wanted to implement different laws based on the diversity and uniqueness of each region. Article 33 of Law No. 13 of 2013 addresses several important points: Paragraph (1) requires that ownership registration for Sultanate and Duchy lands, as described in Article 32, paragraphs (2) and (3), be carried out through the land agency. Paragraph (2) insists that the registration of rights to these lands must comply with existing legal regulations. Paragraph (3) specifies that any registration of Sultanate and Duchy lands by third parties must have written approval from the Sultanate for Sultanate lands and from the Duchy for Duchy lands. Paragraph (4) states that the management and use of these lands by third parties must also receive approval from the respective Sultanate or Duchy.

Therefore, the legal policy on decentralization as outlined in the 1945 Constitution of the Republic of Indonesia emphasizes the importance of implementing "asymmetric decentralization." This approach highlights the uniqueness, special status, and diversity of regions, as well as the recognition of customary law communities and their traditional rights, which will be further regulated through legislation.

According to C.F. Strong, a unitary state has two distinctive characteristics. [1] First, supremacy is held by the central representative body, which means it possesses the highest power in government. Second, no other institution has independent sovereignty outside of the central representative body. [2] In the context of *NRI*, the government can implement a centralization approach, where all matters within the state are consolidated centrally and under the control of the central government.

[3] In this approach, all government authority is exercised by a single central government entity, either directly by the central government or through agencies placed in the regions. [4] Bagir Manan explains that the deployment of organs that exercise central government authority in the regions is called deconcentration. In deconcentration, all authority within regional governance, including the formation of legislation, depends on or originates from the

central government. The central government also has the authority to delegate some of its powers to regions based on the principle of autonomy. This process is called decentralization, where the central government shares authority with the regions, although the highest authority remains with the central government. In the context of constitutional and democratic governance, the division of authority forms the basis for a civilized government. The division of authority can include the core distribution of powers among legislative, executive, and judicial bodies, as well as geographical distribution of authority, which can involve both special decentralization and deconcentration.

Asymmetric decentralization refers to granting special authority to specific regions within a country to address issues in the relationship between the central and regional governments. A methodological frame for the holistic sustenance of regions within the Indonesian Republic (NKRI) is Asymmetric Decentralization in Indonesia. It delves into several dimensions political, economic, fiscal, administrative yet it does not blanket all regions with uniformity. Instead, it tailors strategies based on individual region's distinctive traits. This policy stands as a tangible gesture to provide special care; it finds its place in the Indonesian governance through regions with special or autonomous statuses like Papua, West Papua, Aceh, Jakarta and Yogyakarta recognized by the state. Asymmetric decentralization breathes flexibility and creativity into these provinces for their governance: which are described broadly in Law Number 23 of 2014 on Regional Governance and other laws are general and non-general guidelines that are applicable to these individualized regions.

## II. LITERATURE REVIEW

### A. *Asymmetric Decentralization*

Asymmetric decentralization is about giving certain special powers to particular regions in a country that will handle the central and local relationships. The primary purpose of this approach is to sustain the unity of regions within NKRI. It involves transfer of political, economic, fiscal, and administrative powers to specific regions based on their peculiar characteristics instead of applying these powers universally among all regions. The introduction of asymmetric decentralization represents the aspiration to provide a special status for some territories. In Indonesia, this kind of practice can be observed among regions with unique or autonomous statuses like Papua and West Papua provinces, Aceh, Special Capital Region Jakarta (DKI), Yogyakarta Special Province.

### B. *Regional Autonomy*

Regional autonomy, as per Republic of Indonesia Law Number 5 of 1974, is the rights and obligations for the region to manage and govern their own affairs. It must be carried out according to law regulations and also has authority defined within it. Conversely, Republic of Indonesia Law Number 22 of 1999 has a different definition of regional autonomy: it refers to the authority that autonomous regions have over managing local community interests based on their own initiatives and according to people's aspirations in addition to legal provisions. Similarly, Laws No. 32 of 2004 and No. 23 of 2014 on Regional Government describe regional autonomy as the authority and obligation of autonomous regions to manage and govern their own governmental affairs and local community interests in accordance with prevailing laws and regulations.

### C. *Autonomous Region*

Article 1, paragraph (12) of Law Number 23 of 2014 defines an Autonomous Region as a legally recognized community with a specific territory that has the authority to manage and govern its own governmental affairs and local community interests based on its own initiatives and in line with the aspirations of the people, within the framework of the Republic of Indonesia

## III. METHODS

This research shall employ the Normative Juridical method since its focuses on the examination of principles or norms of positive law in effect shall be undertaken. This normative juridical method includes the study of various forms of legal provisions and standards, laws and regulations: This approach refers to theoretical concepts related to the discussed topic.. Normative juridical research is research that examines legal norms. The approach used in this research includes a statutory approach and a literature study. The statutory approach is used to investigate all laws and regulations related to the legal issues being analyzed. Meanwhile, the literature study involves a series of activities including data collection from library sources, reading, noting, and processing research materials. This approach involves the use of sources, and citation and reference to source in order to acquire a good understanding of the research area and to develop hypotheses or conclusions based on arguments and evidence from other sources.

## IV. RESULT AND DISCUSSION

### A. *Understanding Decentralization*

Another often used term is decentralisation which is defined as the devolving of power from the central or national government level down within a given country. The implementation of decentralization aims to enhance

governmental efficiency in providing services to the public. [5] The fundamental principles of decentralization regulate the relationship between the national government and lower levels in four key aspects: purposiveness, systems and procedures, funding and governance.

The 1945 Constitution of the Republic of Indonesia (*UUD 1945*) provides for a regional government system that accommodates the specificities and diversity of each region in Indonesia. The principle of "*Bhinneka Tunggal Ika*" (Unity in Diversity) underlies this, emphasizing that instead of dividing the nation, differences should unite it, thus not threatening national integrity. In the context of regional governance that considers diversity and recognizes the uniqueness of each region, the 1945 Constitution also provides for decentralization, which can manifest as either symmetric or asymmetric decentralization.

Regional governments hold extensive authority in exercising autonomy, except for governmental affairs regulated by statutory provisions as the authority of the Central Government, also known as Absolute Government Affairs. These affairs include Foreign Politics, Defense, Security, Justice, Monetary and Fiscal Policy, and Religion. Besides these six affairs, regional governments also have the right to formulate policies through regional regulations and other regulations as part of the implementation of autonomy and co-administration tasks. Detailed information regarding the structure and procedures of regional government administration is comprehensively explained in statutory regulations.

The concept of symmetric and asymmetric decentralization was first introduced by Charles Tarlton from the University of California, USA, in 1965. Symmetric decentralization is defined by uniformity and parallelism in the relationships between regions and the national political system, as well as among the regions themselves. [6] This symmetric pattern is characterized by "the level of conformity and generality in the relationship of each separate political unit within the system with the system as a whole and with its own component units," meaning that each local unit has an equal amount and level of power in relation to the central government. In contrast, asymmetric decentralization, derived from the concept of asymmetric federalism, involves one or more local governments or political units having different levels of autonomy and power.

Tarlton provides a more detailed explanation of the asymmetric decentralization model by stating that "in an asymmetric system, each component unit will have unique characteristics or a set of characteristics that significantly separate its interests from other states or the system as a whole." From this explanation, there is an important point in the asymmetric decentralization model, namely its content, including the type and level of authority, as well as the pattern of relationships between government units. In the asymmetric decentralization model, there are elements of uniqueness and differing relationships between asymmetric regions and the national government, and also among subnational units, both at the local level and overall. The main basis for these uniqueness and differences is the varying levels of autonomy and power possessed by these asymmetric regions.

The asymmetric decentralization model introduces the concept of positive differentiation as a response to the challenge of how the central government can effectively distribute optimal policies. Positive differentiation acknowledges the diversity, uniqueness, or special characteristics of a region, allowing national and sub-national institutions to manage their domestic affairs in accordance with their potential. In implementing asymmetric decentralization, the forms and patterns used are adjusted to the unique conditions of each region. This is due to the differences or characteristics of each region or area within a country. [7] Therefore, in implementing asymmetric decentralization, it is crucial to consider various factors, including political, economic, geographical, social, governance management, and historical aspects.

Considering these aspects is essential because each region has its own characteristics and strengths, especially in Indonesia, which has significant regional potential diversity. Therefore, forcibly applying symmetric decentralization across the entire country is considered ineffective. From the explanation above, it is clear that the application of asymmetric decentralization in Indonesia can be a middle-ground solution to address existing diversity. On one hand, regional communities can express their aspirations to determine policies that meet their needs, utilizing the political space provided, and taking into account specific aspects that have been regulated to receive special treatment without threatening national unity. On the other hand, the central government need not worry that the implementation of asymmetric decentralization will lead to disintegration. This refers to the concept of "internal self-determination."

#### *B. Implementation of Asymmetric Decentralization in the Special Region of Yogyakarta in Land Affairs*

According to Law No. 13/2012, there are authorities related to the special status of the Special Region of Yogyakarta (DIY), which include several aspects, such as:

- 1) Establishing procedures for filling positions, duties, authorities, and the status of the governor and deputy governor.
- 2) Regulating the institutional structure of the DIY Regional Government.
- 3) Managing and preserving culture.
- 4) Regulating land affairs.
- 5) Regulating spatial planning.

Further discussion on the special status in land affairs can begin by exploring the special authority in land affairs according to Law No. 13 of 2012. This law emphasizes the recognition and respect for the existence of the Yogyakarta Sultanate (*Kasultanan Ngayogyakarta Hadiningrat*) and the Pakualaman Duchy as legal entities that have rights to Sultanate land (Sultan Ground) or Duchy land (Paku Alam Ground) (Article 32). Sultanate and Duchy lands include royal and non-royal lands across all districts/cities within the *DIY* region. The Sultanate and Duchy have the authority to manage and utilize these lands for the development of culture, social interests, and the maximum welfare of the community (Article 32, paragraph (5)). These regulations are detailed in Special Regional Regulation (*Perdais*) *DIY* No. 1 of 2013 on Authority in Special Affairs of *DIY*, established on October 7, 2013. Article 46 of the *Perdais* states that "the Sultanate and the Duchy have authority in the management and utilization of Sultanate and Duchy lands." The ownership rights of the Sultanate and Pakualaman over the land must be registered with the land agency according to applicable laws (Article 33, paragraphs (1) and (2) of the *DIY* Special Law).

In exercising this authority, the Sultan Hamengku Buwono and Paku Alam, as leaders, have the responsibility to regulate, maintain, release, and supervise the land (Article 48 of *Perdais* No. 1 of 2013). In managing and utilizing Sultanate and Duchy lands, Sultan Hamengku Buwono and Duke Paku Alam collaborate with the government, the *DIY* government, district/city governments, and village governments (Article 49 of *Perdais* No. 1 of 2013).

The involvement of local governments in the regulation and utilization of Sultanate and Duchy lands, as outlined in Article 45 of *Perdais* No. 1 of 2013, includes:

- 1) Providing support in terms of administration, maintenance, preservation, release, and supervision of Sultanate and Duchy lands; and
- 2) Assisting in the formation of regulations related to Sultanate and Duchy lands

Currently, the lands associated with the Sultanate and Duchy, managed by Sultan Hamengku Buwono and Duke Paku Alam, are practically overseen by the "Kawedanan Hageng Wahana Sarto Kriyo." On the other hand, the local government's authority is exercised by the Governance Bureau of the *DIY* Regional Secretariat, as stated in Governor Regulation No. 5 of 2014, Article 3, paragraph (1), letter a.

Third parties or communities that previously utilized Sultanate and/or Duchy lands are guaranteed to continue their use, provided that the use complies with regulations stipulated in the legislation (according to *Perdais* No. 1 of 2013, Article 51). Additionally, those who use the land are not allowed to place liens on the right to use Sultanate and/or Duchy land, except with written permission from Kawedanan Hageng Punokawan Sarto Kriyo or Kawedanan Keprajan.

Several program activities implemented during the 2014-2015 period as part of the implementation of special land affairs policies include:

- 1) Conducting coordination through a series of meetings with relevant parties and preparatory steps for drafting a Special Land Management Planning Plan.
- 2) Implementing identification and detailed recording of Sultanate and Duchy lands in several regions of Bantul Regency, focusing on 974 parcels out of 1000 parcels, and facilitating the recording of 2000 parcels in Gunung Kidul Regency.
- 3) Registering Sultanate and Duchy lands with the National Land Agency (BPN) for 740 out of 1000 parcels.
- 4) Establishing and operating 2 land agencies, namely Keraton and Puro Pakualaman.
- 5) Preparing academic manuscripts and draft Special Regional Regulations (*Perdais*) on Land Affairs.
- 6) Preparing the registration of Sultanate and Duchy lands with BPN for 400 parcels in Bantul Regency, 150 parcels for Yogyakarta City, and 252 parcels for Sleman Regency.
- 7) Recording and reviewing Sultanate and Duchy lands, along with recording village lands in 75 villages in Bantul Regency, 45 urban villages in Yogyakarta City, and 86 villages in Sleman Regency.

The issue of land settlement, along with the positions of Governor and Deputy Governor, is a central and crucial concern in the context of Law No. 13 of 2012. The regulations related to the special status of the Special Region of Yogyakarta, both administratively and legally, will provide clarity on the ownership status of land by the Sultanate of Ngayogyakarta Hadiningrat (Sultanate Ground) and Pakualaman (Pakualaman Ground).

Article 32, paragraph (1) of Law No. 13 of 2012 states that the land authority of the Sultanate and Duchy is recognized as a legal entity. Consequently, the Sultanate and Duchy, as legal entities, have the right to own Sultanate and Duchy lands. According to the explanation in Article 22, paragraph (1), a legal entity refers to a specific legal entity established for the Sultanate and Duchy based on the provisions of Law No. 13 of 2012. [8] Article 32, paragraphs (2) and (3) clarify that "Sultanate land (Sultanate Ground)," commonly known as *kagungan dalem*, is land owned by the Sultanate, while "Duchy land (Pakualaman Ground)," also known as *kagungan dalem*, is land owned by the Duchy.

In Hadiwijoyo (2009), Sujito explains that the use of the term "kagungan dalem land," as described in the Explanation of Article 32, paragraphs (2) and (3), has various interpretations, including.

First, exploring the meaning of recognition and belief of the people in the authority of the king. This belief is not imposed but is closely related to deeply rooted cultural values. The title of the Sultan, such as "Ngarsa Dalem

Sampeyan Dalem Ingkang Sinuwun Kanjeng Sultan Hamengku Buwono Sanapati Ing Ngalaga Ngabdurrakhman Sayidin Panatagama Kalifatullah," reflects three dimensions of leadership: cultural, religious, and political leadership. This title signifies a leadership responsibility that prioritizes kalifatullah. The people believe that the king has the capacity to manage and utilize kagungan dalem land to advance culture, uphold social interests, and improve community welfare.

Second, the ethical aspect in the relationship between citizens and the king is reflected in the spirit of "manungaling kawula lan gusti" (the unity of the people and the ruler). This aspect encompasses obligations, morality, commands, prohibitions, and mutual respect and care. In this ethical dimension, the relationship is comprehensive, involving both physical and spiritual aspects. Granting land to citizens not only strengthens the bond physically and spiritually but also aims to enhance the welfare of the community. Disloyalty is evident when ethical violations occur, such as illegal land appropriation, which should be addressed by law enforcement agencies considering ethics as the legal basis.

Third, there is also an aesthetic dimension described as an analogy of the "rainbow," where the diversity of different colors becomes beautiful when united. In the life of the Special Region of Yogyakarta, the diversity of ethnicities, groups, and interests creates a picturesque scene. This diversity has been managed with a friendly and professional attitude. For example, the Chinese ethnic group involved in trade was given land in commercial areas such as Malioboro, Lojikecil, and Pecinan. Meanwhile, Arabs were placed in Sayidan to be close to the grand mosque. In the Taman Sari area, royal servants were positioned to serve the king more effectively. However, it would be inappropriate if Taman Sari were turned into a commercial or industrial center, just as it would be unsuitable if Malioboro were transformed into a residential area. This aesthetic dimension is considered an integral part of the cosmic unity and is regarded as something that needs to be preserved.

According to Sujito in Hadiwijoyo, the urgency of regulating the special authority in the land sector is very pressing because it encompasses various values, particularly those related to social, cultural, and economic aspects. It is essential to clarify the status and position of Sultanate and Duchy lands to ensure the ongoing existence of the Sultanate and Duchy and to benefit the Yogyakarta community.

The existence of Law No. 13 of 2012 is essential because several lands, although physically occupied by the community, still lack administrative evidence of ownership rights. This confirms that the ownership of land by the Sultanate and Pakualaman remains valid without intending to reclaim the land already used by the community. The aim is to clearly classify state land, Sultanate land, and Pakualaman land through an inventory process.

This provision is further explained in Article 47 of Law No. 13 of 2012, which states that the community or third parties can continue to manage and/or utilize Sultanate and Duchy lands, provided they comply with the provisions stipulated in this law. The establishment of legal status as outlined in Law No. 13 of 2012 on the special status of the Special Region of Yogyakarta reflects the government's recognition of the existence of the Sultanate and Duchy. Even since colonial times, the Kraton has had regulations recognized by the Dutch government, including those concerning the transfer of land ownership to the community.

Article 47 of Law No. 13 of 2012 states that the management and/or utilization of Sultanate and Duchy lands by the community or third parties can continue, provided it is in accordance with the provisions stipulated in this law. The recognition of legal status as outlined in Law No. 13 of 2012 regarding the special status of the Special Region of Yogyakarta is a form of government acknowledgment of the existence of the Sultanate and Duchy. Since colonial times, the Kraton has had legal regulations recognized by the Dutch government, including provisions related to the transfer of land ownership rights to the community.

Article 32 of Law No. 13 of 2012 provides further details on the land aspect. According to this article, the Sultanate and Duchy are recognized as legal entities in land affairs, as outlined in Article 7, paragraph (2) letter d. The Sultanate, as a legal entity according to paragraph 2, has ownership rights to Sultanate land. On the other hand, the Duchy, recognized as a legal entity according to paragraph 3, has ownership rights to Duchy land. The article states that Sultanate land and Duchy land, as described in paragraphs 2 and 3, include both royal and non-royal lands spread across the districts/cities within the Special Region of Yogyakarta. The Sultanate and Duchy, according to paragraph 5, have the responsibility to manage and utilize these lands with the aim of developing culture, considering social interests, and improving community welfare.

Article 33 of Law No. 13 of 2013 regulates several key aspects: Paragraph (1) stipulates that the registration of ownership for Sultanate and Duchy lands, as outlined in Article 32, paragraphs (2) and (3), must be conducted through the land agency. Paragraph (2) mandates that the registration of rights to Sultanate and Duchy lands must adhere to the applicable legal provisions. Paragraph (3) specifies that any registration of Sultanate and Duchy lands by other parties must receive written approval from the Sultanate for Sultanate land and from the Duchy for Duchy land. Paragraph (4) states that the management and utilization of Sultanate and Duchy lands by other parties require approval from the Sultanate for Sultanate land and from the Duchy for Duchy land.

## V. CONCLUSION

Symmetric decentralization is different from asymmetric decentralization in that it involves sharing of a common national power authority. By lawing, asymmetric decentralization gives local authorities the freedom to answer the needs of their communities. This practice is consistent with Indonesia's commitment to its plural society and thereby considered reasonable under democratic practice. Through establishing special regions of decentralization, the regional history can be recognized and its self-development intention may also be met considering provision for uneven economic growth and disparities in human development indices.

The special status of the Special Region of Yogyakarta in regard to land is externally evident in some aspects concerned with the legal personality of the Sultanate and the Principality, difference between Keprabon and non-Keprabon areas, responsibility for management and utilization of surrounding environment, registration ownership rights over land and permits for licenses. These provisions bestow exceptional privileges on Yogyakarta for managing land use as well as recognize its unique cultural and historical values that are recognized under law.

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