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DECENTRALIZATION IN INDONESIA: LEGISLATIVE ASPECTS

GERALD S. MARYANOV

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LEGISLATIVE ASPECTS

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INTERIM REPORTS SERIES

Modern Indonesia Project
Southeast Asia Program
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1957

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FOREWORD

(A note concerning the Interim Reports Series)

One of the distressing aspects of contemporary scholarship is the substantial interval that often intervenes between the completion of field research and the first appearance of writings descriptive of its findings. American scholarship relating to Indonesia has been no exception, and here this delay has been particulary regrettable inasmuch as the extent of research being undertaken is so limited. With respect to much of the research carried out in post-revolutionary Indonesia there has been a lag of two to three or more years between the termination of field work and the first publication describing its results. From this situation stem a number of unfortunate consequences. Scholars and others having a serious interest in the country, Indonesians as well as Americans, are sometimes required to wait so long before seeing the results of such research that when finally available its importance to them has appreciably diminished. Moreover, because they are kept for so long in the dark as to the course and character of this earlier but as yet unreported work, they frequently are obliged to spend time in unnecessarily laying foundations their predecessors have laid but not yet divulged and in undertaking analysis of data similar to that already collected and analyzed or largely analyzed. Thus all too often contemporary students of Indonesia waste much precious time and effort in duplicating or roughtly duplicating what has already been done or is in the process of being completed, instead of utilizing such materials, building on them, and possibly refining them. Parenthetically it might be observed that some of those perfectionists who insist that their name appear in print only when attached to a body of material wherein each word has been given its final polich are deprived of what might well have been healthy and useful criticism by those who would have been interested in reading their work at some earlier stage of its processing. Also this reluctance to publish findings sooner sometimes puzzles Indonesians, because frequently for several years they look in vain for some published account of research for which they smoothed the way or in which they actually participated. Consequently some of them tend to doubt the usefulness of American scholars undertaking research in their country.

The object of the Cornell Modern Indonesia Project's Interim Reports Series is to avoid insofar as possible the situation described above. Wherever feasible those undertaking research in connection with our project will prepare preliminary reports concerning salient aspects of their study well before publication of their relatively finished monographs or articles. Our object, then, is to make available in provisional form what we believe to be some of the more important of our findings soon enough to

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be of maximum usefulness to others engaging in studies relating to Indonesia or having a serious interest in the topics with which our work is concerned. It is our hope that by doing so we will be of help both to interested Indonesians and to students of Indonesia in the United States and other countries. In thus submitting Interim Reports for early publication the members of our group will generally be doing so prior to command of all relevant data or before this data has been completely analyzed. Certainly they will be submitting them without having had an opportunity to cast them in finished written form. It should therefore be emphasized that these preliminary reports are to be considered as explicitly tentaive and provisional in character. It is our expectation that most of them will be followed by later publications bearing on the same subject of a less tentative and more solid character. We hope that our Interim Reports will elicit candid and open criticism from interested persons reading them. For we believe that thereby we will benefit, and that in many cases such criticisms will point the way to better analysis of the data in hand and/or to further research on facets of the subject so far not adequately covered. Thus we cordially invite wnd welcome such criticism. We would appreciate it if those inclined to offer it would write to the author in question, c/o Cornell Modern Indonesia Project, Southeast Asia Program, Department of Far Eastern Studies, Cornell University, Ithaca, New York.

George McT. Kahin
Director

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PREFACE

Recent developments in Indonesia have underscored and dramatized the strength and wide extent of regional demands for greater autonomy from the central government and the pressing need for a more effective system of governmental decentralization.

The need for a system of decentralization providing for more substantial regional roles in government has been a major problem in Indonesia ever since its independence. With the subsequent growth in regional dissatisfaction with the central government's actions, or lack of action, this problem has become progressively more acute; today it is probably the most pressing and challenging problem confronting the Jakarta government.

With Indonesia's 83,000,000 culturally heterogeneous people divided among a multitude of large and small islands stretching across the equator the distance of New York to San Francisco, federalism might seem to be the appropriate answer to this dilemma. And it may well be that some kind of federal answer will emerge. Unfortunately, but understandably, among most politically conscious Indonesians the idea of "federalism" evokes a negative reaction, a response often carrying strong emotional overtones. For they associate this concept with Netherlands colonial rule. They are convinced that the effort of the Dutch during 1945-1949 to create a federal order in Indonesia was primarily a refined and skilled attempt at divide and rule, one designed to insure an indirect, but ultimately decisive, Netherlands control. This is the primary reason (there are, of course, others) why in confronting the problem of political decentralization Indonesians have so far eschewed a solution along federal lines. From the outset, this has imposed a formidable limitation on the possible range of formulas available for solving the problem, any solution having to conform to the rather rigid context of a basically unitary political order. Thus, the program originally adopted by the Indonesian government to solve this problem was framed in terms of this unitary context and found its expression in a law passed by the government of the revolutionary Republic in 1948. This law was taken over by the post-revolutionary governments and, along with subsequent subsidiary elucidative regulations, provided the basis for the country's decentralization program until the beginning of this year (1957).

This Interim Report was written in the last quarter of 1956. Subsequently, in mid-January 1957, the Indonesian Government passed a new law governing decentralization.

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In its basic features this departs only slightly from the 1948 legislation, that which is analyzed in the body of this report. A brief analysis of this recent legislation may be found in the appendix. It should be emphasized that this new legislation has just been passed and for the most part has not yet gone into effect. Indeed, most of the new provisions were not scheduled to be implemented for from six to twelve months. Thus, the regional problems now confronting the government are to be seen against the background provided by this earlier legislation.

It is our hope that this Interim Report will prove helpful to an understanding of the system of governmental decentralization in independent Indonesia as it had evolved until a few months ago, and that at the same time it may provide a background useful to an interpretation of the developments which have taken place subsequently. This introductory and as yet tentative study by Mr. Gerald Maryanov will be followed by reports relating to other aspects of the problem of decentralization in Indonesia.

Mr. Maryanov, after completing his M.A. in Political Science at the University of Indiana, spent the period September 1953 to August 1955 in Indonesia as a teacher in courses for secondary-school teachers in Sumatra and Java. During the past year he has been at Cornell University as a research assistant in its Modern Indonesia Project.

Ithaca, N. Y.
March 10, 1957

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PART I

INTRODUCTORY

On August 17, 1945, the Declaration of Independence of Indonesia was proclaimed. What was meant by Indonesia was a juridical unit--that area, formerly under the control of the Netherlands, known as the Dutch East Indies. Following the declaration came efforts to establish a working Indonesian system of government--and this was to be done for the whole area.

Under the best of circumstances changing governments while trying to minimize disruption is a difficult task. And, the Indonesians were certainly not meeting with the best of circumstances. In the face first of the Japanese, then the British, then the Dutch, bringing two police actions and blockade, it wasn't until five years later that Indonesia was more or less left alone by outside powers. It wasn't until late in 1949 that Indonesian government was allowed to be relatively unmolested in running the country.

Independence was claimed for a unit, but the Netherlands finally surrendered sovereignty to a federal structure created by the Dutch themselves during that 1945-1949 period. Further, this structure was forced upon those Indonesians who had issued and fought for the original declaration. Whatever logicality there might have been for the federal structure (and it is by no means a foregone conclusion that this particular federal structure or any federal structure should have been the logical choice of wise statesmen) it was ruined by the evident pressures in its creation. Immediately upon its establishment, it started collapsing in a movement of the member states to give up their federated independent existence. (1) Most of the sixteen states joined themselves directly to the State of the Republic of Indonesia, which, while a member state of the federation, was the continuation much diminished in size of the Republic of 1945. On August 17, 1950, exactly five years after the original declaration, the unitary Republic of Indonesia was proclaimed. The four remaining states of the federation became one. This was brought about by a change in the Constitution of the United States of Indonesia based on an agreement between the federal government representing the

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(1) See George McT. Kahin, Nationalism and Revolution in Indonesia, Ithaca, N. Y., Cornell University Press, 1952, especially Ch. XIV, for an account of this development.

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remaining member states, and the Republic of Indonesia of Jogjakarta. (2) The juridical unit which is the concern of this paper could start functioning at last.

The Unitary State

The logic of the choice of a unitary structure cannot be satisfactorily discussed without including the factor of attitudes. And, there are at least grounds for believing that the prevailing sentiment in Indonesia was for "kesatuan"--unity. Whether this was originally an anti-Dutch weapon, or an empty idealistic phrase, or whether, on the other hand, it was a realistic appraisal of the domestic situation and needs, need not be deeply considered here. Whatever the source, articulate opinion favored it. And, whatever solutions to the problem of extending authority over the whole archipelago is proposed, the factor of attachment to the principle of kesatuan must be taken into account.

There are other factors, however, which are equally demanding of attention in this matter. There are technical difficulties which stand as obstacles to any solution--difficulties which perhaps for a long time to come will influence the direction proposed solutions could take, and dictate the speed as well as the course of development. One of these is the shortage of trained personnel to operate government. The story of inexperienced and untrained officials taking over high and responsible offices in Indonesia has been reported many times. Those that formed the Indonesian government have taken this shortage to mean the necessity of close supervision and control of government until such time as there is a sufficient amount of sufficiently trained personnel to permit independent decision making. Rightly or wrongly, this has been used as an argument against any federal structure.

In addition to the lack of manpower resources, there is the problem of a limited amount of financial resources to be considered in setting up the government structure. Here again the intent is to conserve and carefully channel available supplies into uses that would benefit the whole country. To do this, it was felt, a general view and control of the total needs and resources was essential, which could be assured best by centralized authority.

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(2) This name is used to designate the member state of the federation, as well as the originally declared independent Indonesia. This is to differentiate it from the unitary Republic of Indonesia which came into being in 1950.

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There is an obvious connection between the two shortages. What financial resources are at hand can be used most effectively only by a capable administrator. And, the most capable administrator would find it difficult to operate without sufficient funds. Lacking an adequate supply of either one complicates the problem, and often makes the best of intentions seem like nothing more than pious wishes to the unsuspecting. And, it was suspected by many thinking Indonesians that the multiplication of state governments with the concomitant formalization of the separation would not only aggrevate the shortages, but also hinder and greatly complicate efforts to overcome them.

The notion that a federal structure would be "logical" for Indonesia is usually based on the diversity to be found in the area. It is certainly true that there are a plethora of cultural forms varying among themselves to a greater or lesser degree obtaining in the archipelago. Further, the level of economic development, the sophistication of political form, the degree of political awareness, and the level of educational progress differs from area to area. This very diversity, together with a consciousness that transcending these differences is Indonesia, is used to strengthen the demand for unity rather than federalism.

It is felt that there are sufficient divisive tendencies in the country; what are needed are unifying tendencies to bring the people subject to those varieties of forms together in the common effort of shaping an Indonesian future. Divisions and diversity institutionalized in a federal structure would weaken the attempts to equalize and advance the whole population, and would stand in the way of overcoming regional or ethnic prejudices.

"Uniformity" is a term often found in Indonesian discussions of their problems. By this is not meant the complete eradication of differences, but rather a balanced recognition that in some matters they share the same fate. A legal system, for example, could be made uniform for the whole country while preserving the desirable elements of the diversity of adat law. (3) This does not assume that all elements of the adat are of themselves desirable, or that because of their diversity they should be preserved.

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(3) The traditional customary rules of behavior, which vary among the different groups in Indonesia. See B. ter Haar, Adat Law in Indonesia, New York, International Secretariat, Institute of Pacific Relations 1948, for a fairly comprehensive treatment of the subject in English (translated from the Dutch).

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It does mean that the adat, as other aspects of Indonesian life must be made dynamic and adapted to present conditions. The more backward groups must be helped in catching up with their more advanced countrymen, not stagnated in their own backwardness.

Such a demand for uniform development, of course, meets with opposition, and runs into objections rising from regional loyalties and prejudices, and voices are raised charging one group or another with unfair domination. That such attitudes exist is obvious; to articulate Indonesians they signify the need to solve problems within the context of the unitary state for fear that otherwise they will run out of control. When they are too extreme, as does happen, they are to be deplored.

Constitutional Basis

The decision was made for the unitary state. From the beginning Indonesians realized they would have to face the problem of establishing government in the various parts that make up the country. In other words, they realized the probable need to divide the country administratively and/or politically. And, this would have to be done in the presence of the difficulties mentioned above. The program adopted to accomplish this is called decentralization.

The concept is not entirely a new one to the area. The Dutch had made some attempts in that direction earlier in the century. How meaningful that earlier practice--dating from the decisions of 1903, and more particularly from the reforms of 1922 and 1925--has been, is not our concern here. Nor will we make any attempt in this Interim Report to establish the extent to which pre-war forms and experience has been drawn upon. Such questions, while interesting, can safely be set aside for the time being.

The provisional Constitution of the unitary Republic of Indonesia provides that: (4)

> 1) The division of Indonesia into large and small areas with the right to govern their own affairs, together with the form of government for these areas, shall be established by law, keeping in mind the basis of consultation and representation as in the system of government of the State.

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(4) Article 131, provisional Constitution, Republic of Indonesia, dated August 15, 1950.

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2) These divisions shall be given the largest possible measure of freedom to manage their own affairs.

The original Constitution of the Republic of 1945 was not as specific as to the status of the divisions, providing only that it be established by law. (5)

Based on the 1945 document, a decentralization law was passed in 1948 by the Republic of Indonesia of Jogjakarta, (6) designed to constitute a basis for autonomous units of government below the national level. (7) Implementation of the law was hindered by the seriousness of the political and military relations with the Dutch, and it was not until after sovereignty was formally transferred that the law could be put into effect. That it need be put into effect was due to the return of the component states of the federation to the original Republic. Republican law was made applicable insofar as possible to these "homecomers."

The State of East Indonesia, a member of the federation, did not join directly with the now widely expanded State of the Republic of Indonesia; the Decentralization Law never came to apply to it. But, in anticipation of the coming unification, East Indonesia in 1950 passed a law of its own on the question, (8) which in essence and in much

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(5) Article 18. The text of that Constitution together with the texts of the Constitutions of the United States of Indonesia (dated December 14, 1949) and of the unitary Republic of Indonesia (August 15, 1950) can be found in Mr. A. K. Pringgodigdo, Tiga Undang-Undang Dasar (Three Constitutions), Djakarta, P. T. Pembangunan, 1954. For a commentary on the latest form, R. Supomo, Undang-Undang Dasar Sementara Republik Indonesia (The Temporary Constitution of the Republic of Indonesia), 4th revised printing, Djakarta, Noordhoff-Kolff N. V.

(6) Law No. 22 dated July 10, 1948, Undang-Undang Pokok Tentang Pemerintahan Daerah (Basic Law on Regional Government). Referred to hereafter as the Decentralization Law, the text can be found in a book of the same title published in Djakarta by Noordhoff-Kolff N. V.

(7) The terms "autonomy" and "autonomous" are used here consistent with Indonesian practice. Their implications should not be prejudged. The specific functional definitions will, it is hoped, be made clear by the body of this paper.

(8) Undang-Undang No. 44 Negara Indonesia Timur dated June 15, 1950.

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of the detail is quite similar to the Jogjakarta law. For the purposes of this paper, only the 1948 Jogjakarta basic law will be used for the basic description of the program, except where major differences in the East Indonesia law demand attention.

The Regional Unit

The entity established to fulfill the intentions of the decentralization program is called a "Swatantra," which is a generic term meaning self-government. Some attempts have been made to restrict the term to those units established on the basis of the decentralization laws, (9) and that is the practice followed in this paper.

We here must distinguish three types of area in order to understand the various divisions of the country as it stands in the period of our concern. There is a distinction between a swatantra (thus autonomous in the meaning of the constitution) and an Administrative Area. This latter is a territorial division which has not yet been given the right to manage its own affairs. The Administrative Area has been called the first step in acquiring autonomous status, (10) to be followed by the delegation of autonomy for the same extent of territory. This would seem to be accurate in that the intent is clearly that the whole territory of the country is ultimately to be divided into some autonomous form. (11) But, the sequence of steps seems more to be a logical than an historical conclusion. The whole country has been divided into large administrative units since the last days of the United States of Indonesia. (12) There is not much concern for establishing new administrative areas, but for transforming existing ones into swatantras.

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(9) See, for example, R. Soenarko, Susunan Negara Kita (The Organization of Our State), Vol. IV, Djakarta, Djambatan, 1955, p. 4. Prof. Soenarko teaches constitutional law in Malang, East Java.

(10) G. J. Wolhoff, Pengantar Ilmu Hukum Tata Negara Republik Indonesia (Introduction to the Study of the Constitutional Law of the Republic of Indonesia), Timun Mas N. V., 1955, p. 265.

(11) This is explicitly stated in the official clarification attached to the Decentralization Law. See Decentralization Law, Law No. 22, 1948, op. cit., p. 26: "There will be only autonomous regions (with the right to manage their own affairs) in the territory of the Republic of Indonesia. Aside from them, there will be no area with a different status."

(12) By Government Regulation 21, 1950.

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In any case, the Administrative Area has only a temporary existence, to be replaced by a structure with the formal attributes of autonomy. Many of the still present areas of that type have developed characteristics and forms which closely resemble those of a swatantra, but such developments remain informal rather than legal. The major examples of Administrative Areas are the three provinces that made up the former State of East Indonesia: Sulawesi (the Celebes), Nusa Tenggara (the Lesser Sundas), and Maluku (the Moluccas).

Special consideration had to be given to those areas which in the former Netherlands Indies were governed according to special agreements, or contracts. These were the principalities which theoretically had some measure of self-government, exercised by inherited rights by royal chiefs of state. These sultanates and so forth are grouped together under the term "Swapradja." (13)

The constitution provides (14) that the position of swapradjas is to be regulated by law, with the proviso that the consultative and representative basis of the State must be followed, and that the provisions for autonomy are to be applied. Further, the elimination or reduction in size of a swapradja is prohibited, except by a law specifying that the public interest demands it. It is interesting to note that the federal system provided for the position of these units to be arranged by contract between the principality and the component state containing it. (15) This recalls the Dutch legal fiction of the contractual relationship. The constitution of the unitary state substitutes law for contract, and brings the swapradjas integrally into the State system, and further demands the democratization of their governments, and their inclusion in the system of autonomy. (16)

For our purposes, the status of the swapradja will not be a major concern. Those swapradjas given autonomy based on the decentralization laws will be treated as swatantras (which they thus become), except to note formal differences where they exist. There is however, one terminological distinction which should be mentioned now.

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(13) This is also a generic term meaning self-government, but its use is fairly well restricted now to the principalities only.

(14) Article 132.

(15) Article 65, constitution of the United States of Indonesia.

(16) Supomo, op. cit., p. 144.

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A swapradja becoming a swatantra is usually given the name Daerah Istimewa (Special Region)--though this need not be the case.

The purpose of this paper is to examine the decentralization program in its formal structure and realization. Its proper subject, then, is the basic decentralization law, and the subsequent laws and regulations in implementation of it. The time period covered is roughly 1950 to 1956. It is my hope that in this paper a picture will be given of what Indonesia has described for itself as a solution to its problem of regional government. It is not necessarily the final solution, nor is it immutable, but it is the one that has been in operation since the unitary state was formed. This picture, it is felt, must be available as a basis for comparison before any consideration of regional practices and activity can be made meaningful; discussion of regional activity and attitudes and the political problem known as "regional autonomy" without reference to this picture would be largely out of context, and misleading.

This is not the place to discuss the importance of the decentralization program in the development of a stable and viable Indonesian political system. The experiences met in the functioning of the program have not been entirely satisfactory, and there have been many complaints in Indonesia about the slowness of the project, with resultant dissatisfaction in the regions. But, before the experiences can be evaluated, and the importance measured, and the dissatisfaction understood, we must know what it is that is being discussed.

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PART II

STRUCTURE OF DECENTRALIZATION

In keeping with the unitary character of the state, the creation of autonomous units of government within the state takes the form of an authorization, a delegation of authority on the part of the central government. The Constitution speaks of a division of territory, but it has been pointed out (17) that what is involved is the creation of legal institutions, the setting up of political divisions. It might be said that the Law No. 22 of 1948 is the incomplete constitution of these divisions.

Each division must be created by law, passed specifically for that purpose, (18) thus requiring the agreement of the central Parliament. Such a law would complete the "constitution" of the swatantra. And, the law creating the region further endows it with a name, territorial limits, and right and responsibilities. (19) It is endowed by implication with legal personality, subject to the courts. These attributes are cast in the mold provided by the basic law, which authorizes the framework for the delegation of the rights and responsibilities, and outlines the structure and organs that will carry them out.

Hierarchy of Forms

The swatantra is also invested by the law creating it with a place in a hierarchy of forms. While the Constitution specified division into large and small areas, the law of 1948 makes it explicit (20) that there are to be three levels below the central government. The East

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(17) J. H. A. Logemann, Het Staatsrecht Van Indonesie (The Constitutional Law of Indonesia), 's-Gravenhage, Bandung, W. Van Hoeve, 1954, p. 158.

(18) Article 1, Law No. 22, 1948. It might be pointed out here that there are three important types of central government regulation that will be mentioned: laws, emergency laws, and government regulations. Emergency laws can be issued before the agreement of parliament is secured. Government regulations, which cannot supersede laws, do not need the approval of parliament. Of still lower order are the decisions of individual ministers.

(19) Article 1, paragraph 3, law No. 22, 1948.

(20) Article 1, paragraph 1.

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Indonesia law, on the other hand, provided for two levels, with the possibility of a third. Since these would all come below the present administrative first level, in effect there are four. This may be one of the obstacles in obtaining one uniform law for the whole country.

That the arrangement is hierarchic is clear from several provisions of the basic law which mention supervisory or other relations between a region and those under it. There is the expectation already mentioned that the whole territory of Indonesia will be divided into first level swatantras, and then the further sub-divisions would be subject to that higher unit encompassing it. This expectation has already been put into effect by the division of the country early in 1950 into ten administrative provinces, (21) most of which have subsequently been made into first level swatantras. Thus, each village would be included in a regency, which in turn would be included in a province. Still, while there is no indication of any area being left out of this arrangement, (22) this would not be impossible under the present terms of the basic law.

The three levels are specified as Province (Propinsi), Kabupaten, and Village (Desa). Cities which are given the juridical title of Kota Besar (large city) are equated with kabupatens, at the second level. Towns, legally named Kota Ketjil (small city) are put at the third level. And, since "desa" is not known throughout Indonesia, it is pointed out that the third level includes the equivalent units in the various parts of the country, such as nagari and marga in Sumatra.

The Province as a self-contained or autonomous political form was unknown in the Netherlands Indies until the 1920's. It is a modern construct rather than a traditional form. In the short time the Dutch had to effect their decentralization program (1925-1942) only three provinces were created, in Java. The provinces were abolished during the Japanese occupation, and were not immediately revived by the new Indonesian government. Provinces established under the authority of the Decentralization Law of 1948 are not considered the continuations of the pre-war units.

The usefulness of this level in present Indonesian practice seems to be to bring coordination efforts down

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(21) By Government Regulation 21, 1950.

(22) With the exception of the municipality of Greater Djakarta. This city, given separate status under the federation, was kept separate after the creation of the unitary state.

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to a manageable size. Here is to be the highest locus of regional decision making. Here is to be a unit small enough to understand and manage purely local affairs, yet large enough to present a somewhat more unified view, and mature leadership. Here, presumably, is the balance between local interests and national needs.

The kabupaten (23) (also known as regency) in the Netherlands Indies existed in Java, with somewhat equivalent units in a few other places. In Java they constituted the highest "native" level of administration, ruled by the native aristocracy, and their domain was primarily rural. The governance of cities, both large and small, were primarily the preserves of the Europeans. This level begins to bring the problems of government into direct contact with the bulk of the population who live in villages. The kabupaten, perhaps more than any other locus, has the responsibility of translating "modern" government into terms understandable to the individual, or at least to the basic unit of the village.

The village was eminently the locus of "native Indonesia," isolated, backward in terms of modern political life, and the key to the problems of Indonesian aspirations. Ruled according to special ordinances, and tied to adat law, the village was to all intents and purposes outside the stream of national politics.

One of the major purposes of the Indonesian Republic's decentralization program is to revise this characterization. "...The Desa is placed within the circle of modern government, not drawn out of it as was the case in the past" explains the official clarification of the Decentralization Law. (24) It further comments that the village had been bound, under Dutch practice, by adat rules which were in reality already dead, and that it often happened that dead rules were brought to life again. It is perhaps appropriate to observe here that the struggle in Indonesian life for an adjustment between tradition and innovation

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(23) Before the Second World War, Java, except for the principalities of Jogjakarta and Surakarta, was divided into 76 kabupatens. On the average, a kabupaten would cover about 670 square miles, and include somewhat less than a half million people--though there was (and is) great variation in this, with some ranging over a million. At present, there are 80 kabupatens in Java, including the former principalities. The same unit in other areas of Indonesia at the present time would, with a few exceptions, cover more territory and less people.

(24) Law No. 22, 1948, op. cit., p. 29.

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is probably not going to be resolved by a clear cut victory of one or the other. It does seem self-evident, however, that if Indonesian aspirations for a "just and prosperous" state are to be fulfilled, the village cannot be allowed to stand still. Whatever the values of the adat system and the village community to a colonial structure, some of them may have to be sacrificed in the building of a self-reliant state.

It was not envisaged that the villages as they exist or existed could automatically or immediately be transposed into the legal institutions proposed by the Decentralization Law. The designers of the law evidently had in mind a broadened, more viable village, brought about by the possible joining together of two or more of the existing ones. (25) And, it was acknowledged that this would be no easy task, and one which would demand considerable time. Nor could the establishment of these reorganized villages take place all at once because of the need for careful investigation of the conditions in each one. (26)

In line with the consideration that the whole territory of the state constitutes a single unit, thus eliminating the pre-war practice of distinguishing between directly and indirectly governed lands, swapradjas, too, are to be brought into the hierarchy. (27) Investigation is felt to be necessary first, to determine the capacities of each one in order to determine at which level it is to be placed. If given a position lower than province, it comes under the jurisdiction of the next higher level containing it, as would be the case with any swatantra. (28) A swapradja thus brought into the system is given the name "Daerah Istimewa" (Special Region). There is, however, no necessity that a swapradja be given the status of Daerah Istimewa, and it may be made into a regular swatantra. (29)

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(25) See the official clarification of the law. Ibid., p. 35.

(26) Ibid., p. 39.

(27) Article 1, paragraph 2, Decentralization Law.

(28) Official clarification, Law No. 22, 1948, op. cit., p. 35.

(29) Ibid., p. 41.

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Framework of Authority: Autonomy

The Constitution has stated that the regions are to have the right to manage their own affairs. This is essentially the definition of autonomy to be used, and care must be exercised in using it. It must be left to the Decentralization Law to start outlining the limits of the intention of the definition, and to political practice to give it any kind of finality. It must be remembered that Indonesia is a unitary state with the central government ultimately responsible for all affairs. A system of controls is included in the law which reserves for the central government powers of supervision and interference over any act of a region. Thus, while "autonomous" implies the possiblity of variation in administration, and even in law, based on the exigencies of local situations, and permits a (still undefined) measure of local determination of decisions, it is not a guaranteed locus of jurisdiction as is the case with an American state.

This constitutional prescription, of course, gives immediate rise to the question of what is to be considered as the "affairs" of a region. In general, this kind of term does not lend itself to an immutable definition, but rather it is subject to continual growth and interpretation. It can be approached, however, from different directions. The "affairs" of a region could be considered as including only explicitly enumerated functions or powers, thus restricting the authority of a region to those matters specifically assigned to it. Or, "affairs" can be interpreted in a wider sense of implying the right to govern all matters necessary for the welfare or development of the region (usually limited, however, by the activities of higher authorities). In either case, some method of differentiating the jurisdictions of the different levels of government is necessary.

The Decentralization Law does not clearly decide which direction it will follow, and seems to leave the possibility of development open to both of them. The need for enumeration of regional powers and authority is implied in the provision that "matters to be considered in the affairs (of a region) are determined by the law creating each region." (30) Yet, in the official clarification, it is stated that the regional legislature (which is given authority over these autonomous affairs) "has the right (because of that authority) to attend to all interests and activities in its region, provided only that it not conflict with the general interest of the

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(30) Article 23, paragraph 2.

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state, nor a central government regulation," (31) which is a much broader concept of the function of the region. This broader answer is further supported in other places in the law (32) where the concept of regional affairs seems to be equated with the general term, "regional interests."

Actually, the seeming contradiction between a specific listing of regional authority as implied in article 23 of the law, and the broad concept of "regional interests" implied elsewhere, is only apparent at the level of generalization. There is nothing to prevent the inclusion, in a law creating a swatantra, of a provision granting a broad delegation of unspecified power such as might be suggested by the concept of "interests." (33) Further, since each swatantra can be created separately, it is possible to have varying compasses of power from region to region. Such a development perhaps ought to be considered desirable in view of the varying levels of capacity from region to region.

Framework of Authority: Medebewind

In addition to the right to manage their own affairs, the Constitution (34) goes on to provide the regions with another framework of authority. Functions and activities maintained by the central government as part of its own domain will need to be carried out in the territory of the region. The swatantra government can be given the responsibility of executing these activities, though they are not included within the scope of the regions "affairs." The definition of the program, or the determination of the general policy is made by the central government. The execution of the policy is shared with the region. This sharing in the fulfillment of a central government function

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(31) Law No. 22, op. cit., p. 51.

(32) Article 23, paragraph 1.

(33) As will be seen later, this is what actually happened in several of the laws.

(34) Article 131, paragraph 3.

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is called "medebewind." (35)

More specifically, the official clarification of the Decentralization Law makes the distinction as follows: (36)

> "(Autonomy is) the complete assignment of a function; that is, both in regards to the principles and the methods of fulfilling it, the function is given over totally to the region.
>
> "(Medebewind is) the incomplete assignment of a function, whereby only the methods of execution are given over to the region, while the principles are determined by the central government itself."

Thus, while the region can act on its own initiative in regards to autonomous activities, it must wait for a central government regulation determining principles, in regards to any medebewind activities. (37)

The field of regional activity in medebewind will effectively be determined only by a growing body of experience. But, in principle, the clarification of the law claims that "it is not intended that the right of medebewind be given the narrow meaning of only carrying out orders from above...for the regional government has the right to arrange the executive procedures according to its own considerations, thus still having autonomy, although only in methods." (38) Notwithstanding this clear statement of expectation, the possibility exists of a reverse situation, whereby all meaningful decisions relating to the effectuation of these functions would remain with the central government, through its attaching of conditions and restrictions to the part assigned to the regions. (39)

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(35) There is no good analogous English term for this Dutch word which literally means "joint government," or "cooperating government." The concept itself comes from Dutch practice. In older Dutch literature, the English term "self-government" is often used. But, this, as a translation, would be misleading. For a general discussion of the concept in relation to Indonesia, see Logemann, op. cit., pp. 173 ff. and Soenarko, op. cit., pp. 36 ff.

(36) Decentralization Law, op. cit., p. 27.

(37) See Soenarko, op. cit., pp. 37-38.

(38) Decentralization Law, op. cit., p. 27. Italics in original.

(39) Soenarko, op. cit., p. 41, expresses concern over the possibility of the region being treated, through this practice, as an "unpaid 'employee of the central government'."

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It is inevitable that for some time to come conflicts will have to be adjusted between central reluctance to grant much scope for regional action, based perhaps on fears of regional technical shortcomings, and regional demands for a wider scope.

In this area of activity, as with the autonomous, the expectation is that time will cure many of the present shortcomings, so that as regional capacities increase, more functions could be fulfilled by the region, and with a freer hand. Nevertheless, in the scheme of the distribution of authority, there will always be an area reserved exclusively for the central government, and an area for the cooperative activities in medebewind.

As will be discussed later, the central government retains, even in regards to autonomous activities, what might be called the right of review, and the right to reverse regional activity. Further, it seems clear that the government would be able to attach any condition it wants to a grant of autonomous authority. A question might well arise as to what useful purpose is served other than formal description in the distinction between autonomy and medebewind. As has been hinted, a range of possibilities exists, from no effective difference in scope of activity, when the central government carefully controls with detailed instructions the performance of both types of function, to clear distinction between the actual exercising of regional judgment in designing autonomous programs, and sharing in the execution of a program designed by higher authority.

In the present condition of the country--with the need to build up a pattern of practice and a body of experience, as well as material supports, in almost every field of endeavor--it might be expected that the central government will not quickly give much room for regional technical activity. It will rather hold tight rein over the limited resources. Thus, for some time to come, perhaps more reional work will be done in medebewind than is ideally desired. Whether this, rather than autonomy, will satisfy regional aspiration--well grounded or otherwise--is a question outside the realm of this discussion.

To complete the picture of the basis of regional activity, mention whould be made of a type that lies outside the two basic frameworks. Although not specifically provided for in the Decentralization Law, the possibility is suggested (40) of the central government asking for

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(40) By the official clarification, Decentralization Law, op. cit., p. 23.

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assistance from a region in carrying out a central government task. This is not medebewind, in that the region is not given scope for independent judgment, but the line between the two may be dim. A possible danger has been noted (41) that it might be misused by requesting assistance in cases where there should properly be some assignment of authority.

Organs of Regional Government

The extent to which the Decentralization Law serves as a "constitution" for regional government is indicated by the organizational frameowrk it authorizes. The skeletal structure is determined here, leaving only some details to be filled in by the laws creating the units, and, inevitably, leaving to practice the development of the shape of their lives.

The intent of the lawmakers was to establish a structure of authority based on popular participation. (42) It had to be so organized that it could function as a government for the region concerned--with all the corresponding commitments of responding to local interests, leading local development, and utilizing local energies--and, at the same time be integrated in the unitary state system. The implications of this balance for the structure of government devised for the swatantras must emerge from an examination of the organs of government and their functions as established by the law.

The law provides specifically for two organs, and assumes the presence of a third institution, which, by lack of explicit statement, is not considered an organ of regional government. It is stated that "the regional government consists of a Regional Legislature and a Regional Executive Board." (43) The presence of the institution of the Kepala Daerah (44) is acknowledged by giving him the ex officio position of "Chairman and member

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(41) Soenarko, op. cit., p. 43.

(42) See, Decentralization Law, Official clarification, op. cit., p. 24.

(43) Article 2, paragraph 1, Decentralization Law. The terms literally translated would be Board of Public Representation, and Government Board.

(44) The term literally means Regional Head. To avoid confusion--the American term "Chief Executive" would be misleading--the Indonesian term will be used.

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of the Regional Executive Board." (45)

Before discussing the relations of these bodies to the frameworks of authority, a word or two describing them might be desirable. The size of each Regional Legislature is determined for the swatantra by the law creating it, thus by the central government. And, the central authority is to arrange by law the method of electing it. (46) Incumbancy is for five years (47) and it is provided that the period should be the same for all regions. Thus, the law creating the regions will determine the period of office of the first parliament, so that it might last only as long as the other regions.

The Decentralization Law gives some rather detailed prescriptions as to membership and operation of the Legislature. It defines the prerequisites for membership (age, residence, etc.); it lists certain positions incompatible with membership (cabinet minister, member of a higher level Regional Executive Board, etc.); and, it provides for remuneration of members. (48) It also prohibits misuse of office, threatening suspension from office. The law demands meetings at least once every three months (open meetings unless otherwise decided, in which case certain classes of subject cannot be discussed); majority vote; and, provides for immunity of members. It does give to the Regional Legislature itself the duty of providing its own rules of order.

The Regional Executive Board is chosen by the Regional Legislature from among its own members (49) on the basis of proportional representation. The number of members, again, is specified by the law creating the region. The members stay in office normally for the same length of time as the Legislature, but can be removed by the larger body. And, if a member ceases to sit in the Legislature, he must give up his position on the Executive Board.

The Kepala Daerah is the most difficult position to define, for he serves both as an arm of the central govern-

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(45) Article 2, paragraph 3.

(46) Article 3. There is to be one election law for the whole country.

(47) According to the East Indonesia Law No. 44, 1950, it is for three years.

(48) Articles 4, 5, and 7.

(49) Article 13, paragraph 1. Under the East Indonesian Law, the members need not be chosen from among the Legislature.

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ment as well as a functionary of the region. (50) He is appointed by the President for a first level region, by the Minister of Internal Affairs for the second level, and by the head of the province for the third level. (51) In each case the appointment is to be made from among two to four candidates proposed by the Legislature of the region concerned. And, a Kepala Daerah can be suspended by the appointing agency on the recommendation of the Legislature of his region. However, such recommendation need not be followed by the appointing office. (52) As there is no provision for a specified term of office, it may be presumed that appointment is based on something like good behavior, or, perhaps, the political policies of the central government.

The only structural difference between a Special Region and a regular swatantra is in the provision for the appointment of the Kepala Daerah, and in the possibility of there being a Vice-Kepala Daerah. (53) The President appoints the head of a Special Region of any level. His choice is limited to the direct descendants of the pre-Republic of Indonesia rulers who are still in authority in their regions. The Special Regions, being formed from the former principalities, inherit the effects of the fiction of "independence" based on the old contractual relationship, which meant that regardless of the content of their authority, the rulers were maintained in certain forms. Thus, the claims of dynasty are recognized in these regions. However, the selection must be made with due reference to the ability and reliability of the candidate, while keeping in mind the customs of the area. (54) A swapradja which is made into an autonomous region without the application of this provision would be considered a regular swatantra. There is no requirement that a swapradja must become a Special Region, nor that

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(50) See official clarification, Decentralization Law, op. cit., p. 31.

(51) Article 18. Under the East Indonesian Law, the Kepala Daerah of lower levels is chosen by the Regional Executive Board of the first level.

(52) Official clarification, Decentralization Law, op. cit., p. 33. It would seem that while the appointing office need not follow the recommendation, it cannot remove without it. This may be too strict an interpretation, however.

(53) Article 18, paragraphs 5-7.

(54) Ibid. Under the East Indonesian Law, the candidate must also be nominated by the Regional Legislature.

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it must become a swatantra of any kind. The provision for a Vice-Kapala Daerah for some Special Regions is to take care of those regions formed from more than one swapradja. (55)

The office of the Kepala Daerah, then, is not specifically an organ of the regional government. As a separate institution, it must be considered part of the central government, and the several specific delegations of authority to that office contained in the Decentralization Law can be considered as responsibilities of the central government. But, the Kepala Daerah is the chairman of the Regional Executive Board as well as a member. As such, he is part of a regional organ, so that references to the activities of the Board must of necessity include him.

Structure of Authority:
The Legislature

The Decentralization Law provides that "the Regional Legislature governs the affairs of the region." (56) This means that according to our previous definition it alone is responsible for the autonomous activities (which are transferred to the swatantra as such rather than to any particular organ of regional government (57)). Theoretically, in carrying out its responsibilities the Legislature has a free hand, within the framework of the autonomous authority assigned to its region, except for two important limitations explicit in the law itself.

The central government has the right to determine how these activities should be carried out "if the regional government is negligent in governing its affairs to the point that such negligence is damaging to the region or to the State." (58) This right is given to the central government only, and not to higher level regions. While these higher level swatantras have some supervisory functions over lower ones within their jurisdictions, this important consideration, that a swatantra is not functioning properly, can be determined only by the highest authority.

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(55) Official clarification, Decentralization Law, op. cit., p. 35.

(56) Article 23, paragraph 1.

(57) See Logemann, op. cit., p. 170.

(58) Article 25, paragraph 1.

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A further limitation on the free decisions on the Regional Legislature has to do with legal punishment. While it can prescribe punishment for violation of its regulations, it can be for no more than three months imprisonment or one hundred rupiah fine. (59)

The central government, of course, also assigns rights and responsibilities in medebewind to the Legislature. But, here, assignment can also be made directly to the Regional Executive Board. The direct assignment of functions to the Executive Board seems to be justified on the consideration that the Board is an integral part of the Legislature. Only the Legislature can pass the necessary regulation for the implementation of these tasks. Only the Legislature could transfer activities on to lower levels, including, presumably, those tasks assigned originally to the Executive Board. Further, the Executive Board would not seem in any case to be exempted from its responsibility to the Legislature. There need be no conflict between Legislature and Executive Board over activities assigned to the Board by higher authorities. The direct assignment to the Board seems to be provided for in the interests of convenience and more rapid implementation.

The right to pass regulations--to legislate--is given to the Regional Legislature by the Decentralization Law, (60) which also stipulates that before the regulations go into effect, they must be signed by the Kepala Daerah, and promulgated. This does not seem to be intended as furnishing the Kepala Daerah at this point with a veto over decisions of the Legislature. Giving a direct veto to the Kepala Daerah would place in an office not a part of regional government a free opportunity to interfere with the constitutional right of a region to govern its own affairs. Later in the Law, he is specifically given the responsibility of preventing a decision from being put into effect when in his view it conflicts with the public interest or regulations of a higher authority. (61) Such limitations on his discretion are not mentioned in connection with the requirement for his signature on a regional regulation.

It has been suggested (62) that the provision for the signature of the Kepala Daerah is meant only as a matter of form, and in exercising this function, the

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(59) Article 29.

(60) Article 28.

(61) Article 36.

(62) Soenarko, op. cit., p. 60.

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Kepala Daerah can only ensure that proper procedure has been followed. Thus, according to this opinion, while he can prevent a decision from being effectuated by his powers under article 36, he cannot withhold his signature merely because he disagrees with the contents. The distinction can be important in regards to the machinery set to work under article 36, which would not occur when the Kepala Daerah fails to sign a bill. But, the requirement of his signature does give the Kepala Daerah the po er to delay.

Structure of Authority:
The Executive Board

The Regional Legislature's activities are deliberative, and the concrete results are Regional Regulations and other decisions necessary for the governance of the swatantra. A part of the Legislature--to a number fixed by the law creating the region--is given the added responsibility of "carrying out the daily government." (63) This is the Regional Executive Board, and its members are individually and jointly responsible to the Legislature.

The specific meaning of "carrying out daily government," and thus the precise role of the Executive Board must be defined by practice. And, it is conceivable that the practice will vary considerably from area to area, depending on levels of political experience and awareness. Further, this role cannot be discussed apart from that of the Kepala Daerah, to the extent that he is the "chief executive," for he is the chairman of the Board. This relationship can range from the Kepala Daerah holding all effective administration in his own hands to the other extreme of all his activities, aside from those as an arm of the central government, being submerged in the joint responsibility of the Executive Board. (64)

The Law does not indicate how the Board is to carry out the daily government other than requiring the Legislature to issue a guide for its operation. (65) The principle avowed for the internal organization is "collegial," (66) carrying with it the implication of a general

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(63) Article 34, Decentralization Law.

(64) The clarification of the Decentralization Law warns that "in arranging the division of work (in the Executive Board) the Kepala Daerah as chairman holds not a little influence, and because of that must use a great deal of tact so that such division wouldn't cause difficulties in implementation."

(65) Article 15.

(66) Clarification of the Decentralization Law, op. cit.,p. 30.

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sharing of authority over the whole of the Board's task. The Executive Board is evidently not specifically intended as a "cabinet" in the usual parliamentary sense, yet the possibility exists of such a development emerging. (67) It is difficult to see how it, or something similar to it, can be avoided, as the sphere of regional activity expands. It is evident that the Board's active participation in the execution of tasks is desired. Lacking definite spheres of responsibility, the members could only get bogged down in the problems of multiple head administration. What, then, is meant by the "collegial" form is not yet clear. A specifically Indonesian functional definition is likely to emerge as the system matures, and the relationship of the Board to the Kepala Daerah becomes stabilized--which in turn must wait until the distribution of fields of activity becomes more complete.

The stipulation that the members of the Executive Board are to be chosen by proportional representation is meant to ensure that the most important political elements of the region are represented on it. Such a device, to the extent that there are diverse tendencies in the region, ensures a lack of homogeneity on the Board. The possibly conflicting values of representativeness and executive efficiency may be noted without further comment here, but the warning qualification must be made that the values may differ between Indonesian practice and that of other countries. Party selection of Board members, together with the possible development of specific areas of responsibility for individual members, would lead to a decidedly political role for the Executive Board. An adjustment between the needs of general administration and political maneuvering would have to take place. The results would probably determine the nature of the "collegial government."

Aside from the possibility of being directly assigned tasks in medebewind, the Executive Board is given some explicit work by the Decentralization Law. While it is the responsibility of the Regional Legislature to defend the interests of its region to higher bodies, appeals of this nature can be addressed to the higher Executive Board. To turn this around, the Executive Board can directly receive appeals from lower Legislatures. The Board also represents the region in the courts. These assignments to the Board, of course, are in the interests of expeditious action, so that adjustments of conflicts can be made without waiting for the discontinuous and cumbersome machinery of the Legislature. But, notwithstanding these areas for action, the Regional Executive Board

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(67) This possibility is discussed by Soenarko, op. cit., p. 101 ff.

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seems to be designed primarily to carry out the decisions of the Regional Legislature. (68) It is, as its name implies, the machinery given to the Regional Legislature to perform executive functions daily.

Structure of Authority: The Kepala Daerah

The head of the region as such is given no part to play in carrying out either of the two main types of activity, though, of course, he participates in his role as member of the Executive Board. But, he is specifically mentioned as responsible for some activities by the Decentralization Law. The official clarification of the law refers to this as "out of the ordinary medebewind," (69) to emphasize that regional tasks are to be carried out by regional organs. It might be simpler, however, to refer to these tasks as responsibilities of the arm of the central government in the region, since in all cases they are functions ordinarily performed by that highest authority. These functions are appointment (the head of a first level swatantra appoints the Kepala Daerah of a third level swatantra) and supervision (preventing regional decisions from going into effect under certain conditions). (70) While these activities of the Kepala Daerah are important, they are largely supervisory.

Other activities of the Kepala Daerah in the realm of direct administration lie outside the scope of the Decentralization Law. As has been mentioned, the sphere of regional activity is determined by national law, and, for its beginnings, it has been narrow. Until such time as regional autonomy is expanded, there will be a large number of functions operating in the region under the direct control of the central government. And, these can be strictly administrative as well as technical. The manner in which these functions are administered varies, but there are some which are coordinated, for example, through the governors office.

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(68) See official clarification of the Decentralization Law, op. cit., p. 54.

(69) Ibid., p. 27

(70) These are functions authorized by article 18, paragraph 3, and article 36 of the law. Based on our above discussion of the requirement for the Kepala Daerah's signature on a regional regulation, that function is not considered here, being a minor matter of form.

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Regional government, it is constantly reiterated, is meant to be "collegial." Whether the introduction into a regional organ of an element--the Kepala Daerah--essentially uncontrolled by the region violates the concept can be left an open question until practice gives a much clearer definition of the concept. (71) The "Chief Executive" of the region, the head of the Regional Executive Board, is not responsible to the Legislature, and cannot be dismissed from office by it. Yet, the Executive Board itself, which bears the responsibility as a whole for "operating the daily government" is responsible. Such an arrangement is perhaps inevitable as long as the need is felt for a central government appointee actively participating in the conduct of regional government. How serious a problem it may be depends in great measure on the role the Executive Board makes for itself, and the political relations among the three institutions. There is no legal redress within the regional government system short of the central government's intervention in cases of too serious conflict.

Regional Civil Service

As the area of regional activity grows, the need for a regional civil service grows apace. The Decentralization Law provides specifically for a secretary (who serves the Legislature, the Executive Board, and the Kepala Daerah), and in general for the possibility of a much larger organization. The regulations for a whole regional civil service, pertaining to their appointment, suspension, separation, pay, pension, etc., are to be determined by the Regional Legislature. (72) This opens the possibility of divergence from similar regulations of the central government for its personnel, though the region's rules are required as far as possible to accord with the national practice.

As regional government expands, and more and more functions are turned over to it, the size of the central government force operating in the region will grow smaller. It is expected that the part of the central government

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(71) M. Nasroen says it is illogical and does not accord with the collegial basis. M. Nasroen, Masalah Sekitar Otonomi (Problems Concerning Autonomy), Groningen, Djakarta, J. B. Wolters, 1951, p. 33.

(72) Article 21, Decentralization Law.

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service known as the pamong pradja (73) will gradually disappear, leaving only the Kepala Daerah as the administrative representative of the national government. (74) Until that happens, the Kepala Daerah is the head of the pamong pradja that still exists.

As to the more technical services, the work of specialists, provision is made for employees of higher levels being put at the disposal of lower. (75) This was evidently done in recognition of the shortage of such experts, and the need to distribute their services as rationally as possible. Such "detached service" is to be paid for by the region receiving it.

Evidently there will still be room for central government employees operating in regional territory, to carry out such services that must remain with the national government. This staff will work directly under the ministries concerned, and not under the Kepala Daerah. (76) The final outline of the relationships between national offices in the regions and regional offices will be determined in time. While the eventual goal may be a uniform pattern, this will not be achieved for some time to come. One may suspect that the usual inertia of bureaucracy will be operative here as in other countries; but, one can hope that with wise statesmanship the adjustments will be made as smoothly as possible.

Vertical Relationships

It has been mentioned that the three regional levels are in a hierarchic arrangement, above which, as the apex, rests the central government. The Decentralization Law specifies certain vertical relationships between levels.

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(73) As a working definition, we can take the pamong pradja to be the strictly civil administration force (as opposed to the technical services). Thus, it would include the heads, together with their staffs, of divisions which have not been made autonomous, and of divisions still existing in practice which are not mentioned as eligible for autonomy, to the extent that they are still appointed by the central government. It refers, of course, only to central government employees.

(74) See clarification of the Decentralization Law, op. cit., p. 37.

(75) Decentralization Law, Article 22.

(76) G. J. Wolhoff, op. cit., p. 261.

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The most pervasive influence, naturally, is that of the central government towards all swatantras. It defines their very existence. But, even once activities are assigned to the region, where regional judgment presumably becomes decisive, there is still no absolutely free hand for the regional organization. The central government feels responsible for the whole country, and each level feels responsible for the lower units included in its territory.

There is a class of activities that is immediately subject to the supervision of higher authority. The Decentralization Law specifies that regional regulations dealing with certain enumerated fields must be validated from above before going into effect. (77) By higher authority is meant the President in cases involving the province, and the next higher Regional Executive Board, where the other two are concerned. (78) This is called "preventive supervision." Any decision of a regional body can be suspended or annulled by the higher authority if it is "in conflict with the public interest, (central government) laws and regulations, or regional regulations of a higher level."(79) This is called "repressive supervision."

A regulation subject to preventive supervision must be sent to the higher authority for validation before it is promulgated. This is one of the definite uses of the requirement for the Kepala Daerah's signature on a regulation. He can ensure that the proper procedure was

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(77) The fields are:
Remuneration of members of the Regional Legislature (article 7);
The guide for the operation of the Regional Executive Board (article 15);
Honorarium for members of the Regional Executive Board (article 16);
Regulations governing the Regional Civil Service (article 21);
Joint regulations (involving more than one region, and including the amendment and abrogation of these regulations) (article 27);
Regulations containing legal punishment (article 29);
Borrowing money (article 33);
Fixing the budget (article 39);
Increasing the budget once established (article 31);

(78) Here is an instance of the Executive Board rather than the Legislature being assigned a specific task. The reason seems to be efficiency--that regulations from lower bodies should not be made to wait for meetings of the Legislature.

(79) Decentralization Law, Article 42.

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followed, and no decision needing higher approval slips by without it. If the validation is not immediately granted, there are two possible results: (30) 1. No action is taken. Here, a three month period is specified, from the date the validation is requested, which can be prolonged for three more months, after which the regulation can be put into effect. 2. The decision is rejected, in which case the higher authority must provide an explanation for its action. A second or third level swatantra can appeal such rejection to the level higher than the one immediately over it.

The Kepala Daerah is given a "watchdog function" over the Regional Legislature and Executive Board. He has the right to prevent the carrying out of any decision when "in his opinion" there is any of the above mentioned conflicts with public interest or higher regulations. (31) A regulation either before or after it has been put into effect, can be annulled under article 42. This is evidently meant to be taken in conjunction with that supervisory function of the Kepala Daerah. Implicitly, the action of the Kepala Daerah in stopping a regulation is the principal method of informing the higher authority that a situation has arisen requiring--at least in the opinion of the Kepala Daerah--the intervention from above. His action must be reported within seven days both to the body whose action he is stopping, and to the appropriate higher authority. (32) If the higher power takes no action within three months, the original decision of the regional body goes into effect. If, on the other hand, it annuls or postpones the regional decision, it must so inform the region, and provide reasons. A postponement cannot be for more than six months. (33)

The higher authority need not depend exclusively on the reporting from the Kepala Daerah. It is given the right to request information from lower bodies, and to investigate "everything concerning the work of governing regional affairs." (34) This is done specifically in the interests of leadership and supervision.

While there is the injunction that repressive supervision is to be exercised within the limits of public

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(30) Article 30.

(31) Article 36.

(32) Ibid., paragraph 2.

(33) Article 42, paragraphs 2-5.

(34) Article 45.

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interest or higher regulations, there is no such frame of reference in regards to preventive supervision. In its use of repressive supervision, the higher authority is not meant to pass judgment on purely local affairs, but only to apply the test of compatability with the wider references. (35) But, it can and must take regional circumstances into account in deciding on the validation of regional decisions subject to preventive supervision. Most of these decisions have to do with general administration and finance. Either they are of particular importance (the regulation providing the guide for the activities of the Regional Executive Board), or to ensure that the swatantra is acting within its means (regulations providing salaries). While these reasons are suggested by the official clarification of the law (36) as the consideration for subjecting them to supervision, the higher authority is not bound to them. But certainly, it would be commenting on strictly regional affairs if it was to criticize the instructions issued by a regional legislature to its own Executive Board.

Both types of control are ordered so that they operate only on the level immediately below the supervising unit. Presumably, then, the central government could not directly interfere with decisions of a second level swatantra. But, presumably, it could order the province to act if it felt that proper supervision was not being given. And, presumably, the central government, in the laws creating lower level swatantras, could include provisions that would make them effectively responsible to it--though this might not be in the spirit of the Decentralization Law.

These controls have been called the "absolute condition to preserve the unitary nature of the state." (37) But, the division of the controls by levels has been severely criticized. This is based on the possibility of confusion stemming from the opportunity for differing conceptions of "public interest" at the various levels. (38) Another observer claims that "by this system of divided controls, the necessary harmony between center and regions

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(35) See Soenarko, op. cit., p. 71

(36) Decentralization Law, op. cit., p. 49 and p. 44.

(37) Kenang-Kenangan Konperensi Antar-Propinsi Seluruh Indonesia (Records of the All-Indonesia Inter-Provincial Conference), Bandung, March 7-9, 1955. Paper read by Moh. Sjafe'i of the West Java Provincial Government.

(38) Soenarko, op. cit., p. 75.

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is not guaranteed, for central government supervision does not reach below the province." (89)

The right of the central government to step in when a region seriously neglects its affairs has already been mentioned. This right belongs exclusively to the central government only in regards to autonomous activities. When medebewind activities are involved, if a region does not carry out its assigned tasks not only the central government but also a higher level region which has transferred a function to a lower one has the right to indicate which bodies are to carry out the work. (90) Further, if conflicts arise between regions, the level higher than the highest one involved settles it. (91)

Finances

It has been recognized that all the provisions for autonomy, all the rights of managing regional affairs, would come to nothing without the means to finance them, and that there must be a guarantee of sufficient financial resources for the swatantras. These means are enumerated in the Decentralization Law as follows: (92)

> "a. Regional taxes, including fees for government services;
> b. income from regional (government) owned concerns;
> c. state taxes transferred to the regions;
> d. others."

By regional taxes are meant "taxes which are not or not yet levied by the central government. (93) The kind of services intended for which fees could be demanded include such things as licensing. The Regional Legislature has the right to pass regulations on the collection of regional taxes and fees, but first there is to be a national law structuring this kind of activity. (94)

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(89) Nasroen, op. cit., p. 36.

(90) Article 25, paragraph 2, Decentralization Law.

(91) Article 43, Decentralization Law.

(92) Article 37.

(93) Clarification of the Decentralization Law, op. cit., p. 56.

(94) Decentralization Law, article 32. Fees for government services is a loose rendering of the term "retribusi."

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The kind of business activity a swatantra could enter upon should be those that "benefit the region and fulfill social responsibilities," (95) thus, probably, among others, public utilities. It has been suggested that this is not meant to compete with private business. (96)

Taxes collected by the national government remain the affair of the center, but it can give over all or part of the receipts of specified levies to the regional government.

The indefinite category "others" leaves the door open to the imagination of the region. The official clarification of the law, however, suggests that included here are such items as loans and subsidies, though emphasizing that these suggestions are not exhaustive.

The Regional Legislature is responsible for fixing the regulations for financial administration, (97) and, starting with the second year, for fixing the regional budget. (The first budget is determined by national law.) The budget is subject to preventive supervision--validation by higher authority before going into effect. The supervisor can accept or reject the budget as a whole. Any amendments to the budget must likewise be validated. In case there is no acceptance by January first of the year concerned, the budget of the previous year is to be used as a guide.

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(95) Clarification of the Decentralization Law, ibid., p. 57.

(96) Soenarko, op. cit., p. 127.

(97) Decentralization Law, article 38.

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PART III

REALIZATION

After the official transfer of sovereignty and the establishment of the federal state, came the movement to combine. All of Java and most of Sumatra and Kalimantan (Borneo) joined directly with the State of the Republic of Indonesia (Jogjakarta). The Decentralization Law, which might have remained a dead letter for the small territory left to the Republic by the Round Table Agreement setting up the federation, became applicable again. (98) Legislation was now needed to bring into existence the units outlined by that basic law.

The first laws creating swatantras were passed in March 1950, for the province of East Java, and the Daerah Istimewa (Special Region) Jogjakarta,(99) which was given the status of Province. Four months later laws were passed creating the provinces of Central Java and West Java. (100) And, to improve the structure before entering the unitary state, emergency laws were passed creating the provinces of South Sumatra, Central Sumatra, and North Sumatra. (101) At that same general time, kabupatens were created in East Java, Central Java, West Java, and the Special Region Jogjakarta. (102) Since that time, the province of Kalimantan was made into a swatantra and divided into kabupatens and cities, (103) and, still later, the autonomous province (swatantra) of Central Sumatra was divided into kabupatens, cities, and towns. (104)

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(98) Jogjakarta law was made applicable, insofar as possible, to these "homecoming" areas by Emergency Law No. 1, 1950, amended by Law No. 3, 1950.

(99) Law No. 2, 1950 for East Java, and Law No. 3, 1950 for Jogjakarta.

(100) Law No. 10, 1950 for Central Java, and Law No. 11, 1950 for West Java. The four laws creating provincial level swatantras in Java were put into force by Government Regulation No. 31, 1950, which provided August 15, 1950 as the operative date.

(101) Emergency Laws Nos. 3 (South Sumatra), 4 (Central Sumatra), and 5 (North Sumatra), 1950.

(102) Laws Nos. 12, 13, 14, and 15, 1950.

(103) Emergency Laws Nos. 2 and 3, 1953, Lembaran Negara 8 and 9, 1953.

(104) Laws Nos. 8, 9, and 12, 1956, Lembaran Negara 19, 20, and 25, 1956.

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In October 1956, the national Parliament passed a law providing for a separate province for Atjeh, in North Sumatra, and for dividing Kalimantan into the three provinces of West, South, and East Kalimantan. However, at the time of this writing, we have no further information on this development. It will be assumed that aside from redrawing provincial boundaries, there were no substantive additions to the decentralization process. Thus, there will be no further mention of these changes in our discussion.

The laws passed after 1950 present some differences in style and practice from those passed by the Jogjakarta Republic before the establishment of the unitary state. We will discuss the latter group first, and then compare the later laws to it.

Java and Sumatra: Provinces

The devinition of the territorial limits of the provinces in Java and Sumatra was accomplished by the designation of the "residencies" (105) to be included in the provincial jurisdiction. These provinces, further, are congruous with the administrative divisions made in 1950 under the United States of Indonesia, based on the agreement between the federation and the Jogjakarta Republic looking towards the creation of the unitary state. (106) This regulation, which defines the area to be under the administration of a governor (of a province), put the area of East Sumatra--a component state of the federation which had not joined directly with the Jogjakarta Republic--within the territory under the governor of North Sumatra. Subsequently, when the swatantra North Sumatra was formed by Republican (Jogjakarta) law, the territory of East Sumatra was included in it, though Jogjakarta's authority over East Sumatra at the time was questionable. In practice, however, East Sumatra is now

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(105) The residency has a history as an administrative unit--smaller than a province, but larger than a regency--that goes back to before the war. This unit was maintained during the Japanese occupation. It was the basis of the division of territory undertaken by the original Republic of Indonesia in 1945. Under the decentralization plan based on the 1948 law, this level of administration was not scheduled for autonomous status.

(106) Government Regulation No. 21, 1950 in Lembaran Negara 59. See also, Mr. Djody Gondokusumo, Tatahukum Daerah Otonoom (The Law of the Autonomous Region), Jogjakarta, Menara Pengetahuan, (nd) pp. 11 ff.

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clearly a part of the Province of North Sumatra. (107) Of the ten administrative provinces formed by this division, three have not yet become swatantras. (108)

Djakarta, the capital of Indonesia, is not included in the territory of West Java. It is governed according to pre-war regulations plus those new regulations designed specifically for it. (109) Greater Djakarta is considered a municipality (kotapradja) and can be considered equivalent to a swatantra. And, since there is no higher swatantra over it, it must be considered a first level unit.

The number of members of the provincial Legislatures is specified in these formative laws, based roughly on the population of the province, and each province is to have a Regional Executive Board of five in addition to the chairman. The capital city for each province is also designated. (110)

Provincial Authority

The areas of activities of the province, whether autonomous or in medebewind, are in general enumerated in fifteen titles. (111) Then, in a supplement to each law, the titles are subdivided in a little more detail. The responsibilities of the province in the field of general government (the first two titles) repeat the injunctions of the Decentralization Law itself, making those activities such as preparation of budgets, provisions for civil service regulations, and supervision of lower bodies, explicitly the responsibility of these swatantras. In general, this work should give the region a sufficient basis to start functioning (remembering that the first

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(107) See Mr. R. Sastranegara, Hukum Tatanegara Indonesia, Sedjak Perang Dunia Ke-II (Constitutional Law of Indonesia since the Second World War), Djakarta, Neijenhuis & Co. N. B., p. 21 fn., and 28.

(108) Sulawesi (The Celebes), Maluku (The Moluccas), and Nusa Tenggara (The Lesser Sundas).

(109) See Sastranegara, op. cit., pp. 29, 33, and Logemann, op. cit., pp. 165-6. Its territory was expanded, Berita Negara 18, 1950, and it was placed directly under the Minister of Internal Affairs, Lembaran Negara 31, 1950.

(110) See Appendix I.

(111) Fourteen, in the cases of West Java and Central Java. See Appendix II for complete listing.

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budget must come from the central government).

The other titles are in more or less technical fields, defining what the province can do for its population, both regulatory and in providing services. They can be divided as follows:

General services: water works, roads and buildings, land holdings;
Economic services: farming, fisheries, cooperatives, cattle, trade and industry, distribution;
Social services: labor affairs, social work, information, education and culture, health.

The enumeration is descriptive of limits rather than prescriptive of immediate duties. Some of the activities are self-defining, and the swatantra can immediately upon formation undertake their implementation. This is especially true in the fields of general government. It must be remembered, however, that the swatantras are not created out of a vacuum, nor is it intended that a vacuum be allowed to develop during the transfer of authorities. The provinces are a reorganization of existing administrative areas with on-going activities. What is generally involved is the change of basis for those activities from central authority to regional authority. The transfer of authority can take place only when regional abilities are developed, and the regions are prepared to take them over.

The statement of areas of activities open to the regions as given in the laws establishing them was not meant to be the authorization of transfer of control over an on-going function. For this, the province had to wait for a government regulation on the realization of the transfer. Each such regulation so far issued has dealt with the work of a single ministry, and each one specifies what work of the ministry would be turned over to the region, how in general the work was to be organized, and what the relationship would be with the ministry. Also, provision was generally made for transfers further down the line to lower units. (112)

(112) Such regulations have already been issued in the fields of Farming, Cattle, and Fisheries (Government Regulations Nos. 29-49, 1951, contained in Lembaran Negara 48-68, 1951); Education and Culture (Government Regulation No. 65, 1951, contained in Lembaran Negara 110); Social Affairs (Government Regulation No. 45, 1952, contained in Lembaran Negara 73); Public Health (Government Regulation No. 49, 1952, contained in Lembaran Negara 80. In the case of this field, a separate transfer was made to the kabupatens); Public Works (Government Regulation No. 13, 1953, contained in Lembaran Negara 31); and, Industry (Government Regulation No. 12, 1954, contained in Lembaran Negara 24).

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Java: Kabupatens and Cities

The three provinces of Java, plus the Special Region Jogjakarta, were all divided into kabupatens--second level regions--so that the whole island of Java was subdivided down to the second level. (113) Certain cities were specified as kota besar (large city) by a separate law, (114) thus equivalent in rank with the kabupaten. It may be noted that while a separate and distinct law was used for each of the provinces, a single law was used for all the kabupatens in a province, and for all the cities on Java. Swatantras can be created singly or collectively.

The kabupatens in Java in general are continuations of the former Netherlands Indies autonomous regencies (115) (with some adjustment in boundaries in a few cases). But, the Dutch structure had not applied to the former principalities of Jogjakarta and Surakarta, so that the second level swatantras in those areas are newer to the concept. It may be mentioned here that the principality of Surakarta was considered as having gone out of existence before 1949, thus not longer eligible for the status of Daerah Istimewa. It has been included in the province of Central Java by the law creating that province. Also, the several principalities of North Sumatra were eliminated before that date, so again, do not qualify for the special status.

The laws for the kabupatens follow the same general form as those for the provinces. The name and extent is specified (again by reference to the administrative area it is replacing). The size of the Regional Legislature is given for each one, ranging from 20 to 35. The Regional Executive Boards are allowed at most five members not including the chairman.

The powers and responsibilities of the kabupaten government are listed under the same titles as for the provinces. They too are given supervisory functions over lower areas, and functions to fulfill their own housekeeping needs. As might be expected for the smaller area, the

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(113) The laws were number 12 for East Java, 13 for Central Java, 14 for West Java, and 15 for the Special Region Jogjakarta, all of 1950, by the Republic of Indonesia (Jogjakarta). They were made effective by Government Regulation No. 32, 1950, which specified August 15, 1950 as the operative date.

(114) Law No. 16, 1950, which only mentioned cities in Java.

(115) See Djody Gondokusumo, op. cit., p. 14, Logemann, op. cit., p. 160.

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descriptions of anticipated types of activity refer to work which is closer to the inhabitants and less supervisory than is the case with the province. The general population will feel the effects directly of kabupaten activity, which may indicate the importance of this level. It seems to be much more than a minor stepping stone between the province and the population.

The cities--Surabaja, Malang, Madiun, and Kediri in East Java; Semarang, Pekalongan, and Surakarta in Central Java; Bogor, Bandung, and Tjiribon in West Java; and, Jogjakarta--were former Netherlands Indies autonomous municipalities (except, again, for the principality cities, Surakarta and Jogjakarta). The powers and responsibilities given to the cities are the same as for the kabupatens.

The only third level swatantras created were the towns (kota ketjil). These are Modjokerto, Blitar, Pasuruan, and Probolinggo in East Java; Tegal, Salatiga, and Magelang in Central Java; Sukabumi in West Java. (116) The types of activities given over to them resemble those of the second level, except, of course, there are no supervisory functions over lower levels. Any further divisions of the towns would be administrative only. In 1954, Tegal was changed from a town to a city. (117)

There have been no villages formed on the basis of the Decentralization Law in Java or in Sumatra. In Sumatra there are units functioning as kabupatens, cities, and towns though they have not received the legal authorization, (118) thus remaining officially administrative divisions. That this causes some confusion is recognized.

Kalimantan

After 1950, there were no more swatantras created under the Decentralization Law of 1948 until 1953, when the province of Kalimantan was formed as a swatantra, and subdivided into second level units. This province had been divided on an informal basis since the formation of the unitary state, according to a decision of the governor, but difficulties had arisen due to there not being a legal autonomous province to supervise, and due to the confusion between the roles of the two levels. That,

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(116)Created by Law No. 17, 1950.

(117)Law No. 13, contained in Lembaran Negara 40, 1954.

(118)This was true for all three provinces of Sumatra until 1956, when lower level swatantras were legally established in Central Sumatra.

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together with the desires of the people, gave rise to the feeling on the part of the government that the situation must be legalized and formalized on the basis of the Decentralization Law. An emergency law was used instead of an ordinary law because the government "could not be responsible for any further postponement" and the formation had to be determined by a regulation that could go into immediate effect. (119)

The law states the necessary forms and territory. Congruous with the administrative province established by Government Regulation No. 21 of 1950, it includes the residencies of South, East, and West Kalimantan. (120) The provincial Legislature is given 30 members, and the Regional Executive Board five besides the chairman. The capital city is put at Bandjarmasin.

For the specifications of the province's areas of activities, the law combines features of the laws creating the provinces of Java and Sumatra with the government regulations transferring actual authority. The fields covered explicitly are public health, public works, farming, cattle, fisheries, education and culture. There are some miscellaneous areas covered by assigning to the province certain regulations dating from the Dutch period which are still valid.

The explicitly mentioned areas are fewer than the titles assigned to the earlier provinces, but they do cover the activities actually transferred to these regions by government regulation, and in about as much detail. Provision is made for further transfers, which can be made by government regulation. (121) To prevent difficulties that might arise from part of its affairs being defined by law (thus amendable only with the approval of the national Parliament) rather than by government regulation, it is further provided that changes in the assignments contained

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(119) Official clarification of Emergency Law No. 2, 1953, contained in Tambahan Lembaran Negara No. 351. This clarification contains the argument presented in this paragraph.

(120) West Kalimantan had not joined itself directly to the Republic of Indonesia (Jogjakarta), but had given over its governance to the federal government. It was included in the administrative province of Kalimantan established by Government Regulation No. 21, 1950. Based on the agreement between the federal government and the Republic, the Republic's Decentralization Law was used for this area. See Tambahan Lembaran Negara 352.

(121) Article 74, Emergency Law No. 2, 1953.

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in the law can be effected by regulation.

This procedure brings the newly created province into line with the older established ones in terms of what is included in its affairs. Such government regulations transferring authority that came after the establishment of Kalimantan as a swatantra includes it as one of the units receiving the authority. (122)

Kalimantan is distinguishable from the other provinces in that its Regional Legislature is specifically given the right to govern "matters in the general interest of the province," (123) though in doing so it must follow any recommendations the central government may give. It may be assumed that such a general provision for taking care of regional interests is implied for all swatantras, but it is made explicit for Kalimantan. The clarification of the law creating the province suggests that "the freedom of action given in this law is clearly necessary according to the practice of decentralization in Java and Sumatra, in order that the practical transfer of rights and tasks can be carried out smoothly." (124) It is not clear what "practice" was being referredto, or what changes are implied for the provinces of those two islands. However, since any problem that might arise in connection with this can be resolved by interpretation of the definition of "regional affairs" as implied in the basic law, perhaps no further legislation was necessary for those earlier formed provinces.

The transfer of activities to Kalimantan is made at the same time the swatantra is created. Theoretically, this means that for the activities specifically mentioned in the law, the central government from that time on is no longer active. But, there was the awareness that the province would probably not be able to assume all its new burdens at once. Thus, transition arrangements were included whereby such tasks as could not immediately be taken up would be carried out by the staffs of the ministry concerned. (125)

Perhaps also growing out of the experience on Java and Sumatra, consideration was given to the problem of

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(122)See, for example, Government Regulation No. 12, 1954 in Lembaran Negara 24, on transfers of authority in the field of industry.

(123)Article 75, Emergency Law No. 2, 1953.

(124)Tambahan Lembaran Negara 351.

(125)Article 83, Emergency Law No. 2, 1953.

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what to do if a Regional Legislature or Executive Board could not immediately be formed or couldn't carry out its tasks. The solution given is that lacking a functioning Legislature, the Executive Board can act, and, if that too is missing or incapacitated, the Kepala Daerah can act, either by himself or together with a committee of five appointed by the Minister of Internal Affairs. (126) All this can be arranged, if necessary, by a government regulation.

As has been mentioned, the province of Kalimantan had been divided since 1950 into units resembling second level swatantras, based on a decision of the Governor. This division was formalized after the province was made a swatantra. (127) Thirteen kabupatens, two cities, and three Special Regions (128) were brought into the decentralization system as second level swatantras. It is interesting to note here the case of Sambas, which was made into an autonomous kabupaten (not a Special Region) though the territory included in essentially the same as the swapradja of the same name. This means that the Sultan need not be named as the Kepala Daerah.

The usual provisions are included regarding the structure of the government, with the one variation that the Regional Executive Board is given a possibility of three to five members. Present also are the new provisions for meeting the exigency that the Legislature and Executive Board are non-existent or non-operative and the provision for caring for general regional interest.

Central Sumatra: Kabupatens

In March 1956, the autonomous province of Central Sumatra was divided into lower level swatantras, consisting of 14 kabupatens, 3 cities, and 5 towns. (129) The language of the laws creating these swatantras seems to indicate a tendency to express the terms of the authority of a region in a more general fashion than was the previous practice, thus giving wider compass to regional initiative to determine the extent of regional activity.

In the area of authority to arrange for the proper

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(126)Article 4, Emergency Law No. 2, 1953.

(127)Emergency Law No. 3, 1953 in Lembaran Negara 9, 1953.

(128)See Appendix I.

(129)Laws Nos. 8, 9, and 12, 1956, Lembaran Negara 19, 20, and 25, 1956.

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functioning of regional government--the housekeeping needs, such as the establishment of regional offices, and a regional secretariat--the laws creating swatantras in Java attempted to list by specific items the proper activity of the region. A change from this formula, evident in regards to the swatantras of Kalimantan, is carried further in these laws for Central Sumatra; the swatantras, keeping in mind the appropriate regulations, are told to arrange "everything considered necessary to ensure the smooth operation of the regional government." (130)

In the more technical fields, no actual transfer of authority is made to these second and third level swatantras. Rather, it is stated that in these fields (131) the regions will regulate those matters transferred to them by the province. In the earlier laws setting up second level swatantras, attempts were made to spell out the authority to be held by the region in these fields. However, most of this authority depended on action by the province, so that the style adopted for the Central Sumatran swatantras does not seem to present any substantive changes in the affairs of a second level swatantra. It does, however, emphasize the responsibility of the province in the extension of the decentralization process and makes the dependence of the second level swatantra on the province more definite.

The most interesting change in style promoted by these laws is in the provision granting the right "to regulate those matters which are not regulated by the central government nor by the province of Central Sumatra, except if later provided otherwise by a regulation of higher order." (132) The concept of the "affairs" of a region, left vague in the Decentralization Law, has expanded considerably. In the first laws establishing swatantras, the explicit field of regional affairs included only those matters enumerated as part of the laws themselves. The laws creating the autonomous province of Kalimantan, and its lower level swatantras, indicated the concept of "matters in the regional interest" as part of the "affairs" of the swatantras. Finally, by the laws creating swatantras within the province of Central

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(130)Article 4, in each of the three laws.

(131)Public Works, Health, Farming, Fisheries, Cattle, Social Affairs, and Small Industry--in other words, the fields which have been actually transferred, by government regulation, to the provinces. It may be noted that the towns of Central Sumatra are not mentioned in this connection in regards to farming.

(132)Article 8, in each of the three laws.

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Sumatra, the regional government is permitted to take care of matters not governed by higher levels. While such redefinitions of regional "affairs" presents the possibility for an expanded use of regional initiative, it remains for further investigation to determine the effect on actual regional practices.

Note on the Former State of East Indonesia

For the most part, we have been discussing only the Decentralization Law of 1948 and the territory subject to it--which means the islands of Java, Sumatra, and Kalimantan. We have thus far mentioned only those swatantras established on these islands. We have, however, pointed to the existence of a separate Decentralization Law operating in the territory of the former State of East Indonesia. There is not much difference between the two laws in terms of the structure and procedures authorized by them. But, when it comes to describing the application of the laws since the establishment of the unitary state, the East Indonesian situation turns out to be rather more complicated. To deal adequately with it, one must discuss in some detail the events in the area between 1945 and 1950. One must have a clear picture of the variety of political forms established during the creation of the State of East Indonesia--forms which in large measure have been inherited by the present Republic. (133) Since we have made no attempt, in this Interim Report, to put the decentralization process in any historical perspective, we excluded consideration of the "pre-federal" period. Thus, we felt that any extended discussion of the swatantras subsequently established in East Indonesia would be confusing. This means that our discussion of the actual establishment of autonomous regions, while reasonably complete for Java, Sumatra, and Kalimantan, does not indicate the variations in situations that would become apparent if the whole country were considered.

There is some justification for using this procedure. The variety of forms inherited from the State of East Indonesia are gradually being eliminated, and the area is being brought more and more into line with the rest of the country. Part of the area has already been transformed into swatantras by the unitary state and are treated

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(133) For a detailed exposition of the legal steps involved in the creation of the State of East Indonesia, see A. Arthur Schiller, The Formation of Federal Indonesia, 1945-1949, the Hague, Bandung, W. Van Hoeve Ltd., 1955. See also, R. Soenarko, op. cit., Vol. III, pp. 22-24, and Ch. VII.

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much the same as the autonomous regions of the other islands. It is clear that the experiences gained in implementing the 1948 law have been used as the basis for this policy. Thus, extended discussion of the East Indonesian Decentralization Law is not necessary to an understanding of the basic decentralization process. However, for the sake of completeness, some mention should be made of developments in the area, even if only to name the swatantras that have been established.

The former State of East Indonesia was divided into thirteen regions (daerah) which were organized in a variety of forms, (134) generally involving the combining of two or more smaller areas, often small swapradjas. With the establishment of the unitary state, the territory of East Indonesia was divided into three administrative provinces, (135) which up to the present time have not been given autonomous status. The thirteen regions, however, were considered autonomous according to the East Indonesian Decentralization Law, (136) which is still valid for the area.

Some of the regions have remained as they were, operating under regulations that were in force prior to the establishment of the unitary state. Some, on the other hand, have undergone changes since 1950, involving the dissolution of the region and the establishment in their place of two or more swatantras (on the basis of law No. 44), usually at a level equated with kabupaten. We will indicate these changes, without further discussion of them.

In 1952, the region South Maluku was divided into the swatantras Central Maluku and Southeast Maluku. The region South Sulawesi was divided into the swatantras Makasar (not including the city Makasar), Bonthain, Bone, Pare-pare, Mandar, Luwu, and Southeast Sulawesi. The region Central Sulawesi was divided into the swatantras Poso and Donggala. In 1953, the region North Sulawesi was formed into a swatantra, and in 1954, the swatantra

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(134) These were: Sangihe-Talaud, Minahassa, North Sulawesi, Central Sulawesi, South Sulawesi, Bali, Lombok, Sumbawa, Flores, Sumba, Timor, South Maluku, and North Maluku.

(135) Sulawesi, including the regions Sangihe-Talaud, Minahassa, and North, Central, and South Sulawesi; Nusa Tenggara (formerly called Sunda Ketjil--the Lesser Sundas) including the regions Bali, Lombok, Flores, Sumbawa, Sumba, and Timor; and, Maluku, including the regions North and South Maluku.

(136) Article 1, Law No. 44, 1950, State of East Indonesia.

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Bolaang-Mongadow was separated from it. In 1953, the city of Menado was made into a swatantra, as was the city of Ambon in 1955. (137)

In August 1956, the territory of West Irian was established as an autonomous province. This area is presently occupied by the Netherlands, though Indonesia claims it as part of the state of Indonesia. A few small parts of the Administrative Area Maluku were included in the province in order for the provincial administration to have a seat of government, and some territory under Indonesian control in which to start functioning. The territory of West Irian itself is still in dispute between Indonesia and the Netherlands.

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(137) These changes were all made by government regulation. The regulations were: for Central Sulawesi, Government Regulation No. 33, 1952; for South Sulawesi, Government Regulation No. 34, 1952; for South Maluku, Government Regulation No. 35, 1952; for North Sulawesi, Government Regulation No. 11, 1953, and Government Regulation No. 24, 1954; for the city of Menado, Government Regulation No. 42, 1953; for the city of Ambon, Government Regulation No. 15, 1955.

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PART IV

THE TRANSITION PERIOD

Implementation of the Decentralization Program depends on the creation of autonomous regions, swatantras, and the transfer to them of various fields of authority. Included in the system, however, is provision for a period of transition during which the structures could be built and put into operation. These transitional arrangements enable the postponement of certain requirements of the law and provide for the continuity of government while awaiting necessary preparatory legislation.

The explicit provisions of the Decentralization Law for this transition period are: (133)

1. Existing regions (at the time the law went into effect) continue in existence until otherwise provided.

2. Existing administrative areas continue until abolished.

3. As long as there is no election law, and until such time as an election under such a law can take place, the method of forming a Regional Legislature and Regional Executive Board shall be determined by government regulation.

4. The appointment of the Kepala Daerah will temporarily be made in exception to the provisions of article 18.

5. As long as there is no regional regulation for determining regional finances, matters will be arranged according to methods established by government regulation.

The picture as it has emerged after six years of practice is still incomplete. At the first level, Java, Sumatra, and Kalimantan have been brought into the decentralization system--originally divided into seven provinces plus two areas equivalent to provinces, but more recently divided into ten provinces plus two equivalent areas. There remain, however, three provinces which are still administrative areas: Maluku, Nusa Tenggara, and Sulawesi. At the second level, all of Java and Kalimantan, but only part of Sumatra have been divided into swatantras. The administrative provinces mentioned above have been--

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(133)Article 46, Decentralization Law.

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since 1950--partially divided into autonomous regions but based on a different decentralization law. The remainder of Sumatra, while not officially subdivided, has units which are treated much as if they were legal second level swatantras. Perhaps the most significant delay in the implementation of the scheme is to be found at the third level. While some towns have been created, no villages have yet been brought under the provisions of the law and the ideals of the program.

Regional Legislatures

Perhaps the most difficult aspect of implementation of the decentralization program, and the transitional arrangement giving rise to the most controversy, has been the one regarding the formation of Regional Legislatures. Throughout the legislation and commentary on regional autonomy, and prominent in the debates on the subject that have taken place in the national Parliament and outside that body, great stress is placed on the need and demand for democratic forms in the swatantras, symbolized by the powers and representativeness of the regional parliament. Yet, given the situation in Indonesia, of confusion and disruption emerging from the revolution, of illiteracy, of lack of experience with modern forms, of a lack of trained administrative personnel, of shaky financial resources, of a complicated party development, it is not entirely surprising that the process of elections has been slow. While waiting for regional elections, some kind of body to perform the functions of such a legislature was felt to be needed.

The first step in the process of regional elections comes from the central government. A national law is required (139) structuring the elections and setting forth the principles and general procedures to be followed. Such a law was passed by the Republic of Indonesia (Jogjakarta) in June 1950. (140) Its most notable feature was the provision for indirect elections, with the general public choosing an electoral college, which in turn selected the Regional Legislature members. This law was actually applied only in Jogjakarta, which consequently has had the only elected Regional Legislature among the swatantras created on the basis of the 1948 decentraliza-

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(139)Article 3, paragraph 4, Decentralization Law.

(140)Law No. 7, 1950.

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tion law. (141) But, the law was not applied in any other area "for technical and financial reasons" (142) and subsequently could be considered a dead letter.

Since the election law that had been enacted was not implemented, some procedure was necessary to form interim bodies to perform the duties called for in the Decentralization Law--a "Provisional Regional Legislature" was needed, just as the central government functioned for six years with a provisional Parliament.

In April, 1950, a regulation was issued by the Republic of Indonesia (Jogjakarta) for the formation of regional assemblies with members appointed by political parties, and by labor, farm, women's, and youth organizations. The Acting Parliament expressed its disapproval of this regulation. A second attempt was made in June 1950, this time in the form of an emergency law. This, too, was rejected by the Acting Parliament. Finally, on August 14th, the day before the unitary state was formed, another government regulation appeared on the subject. On the basis of this regulation (143) many Provisional Regional Legislatures were actually established.

The regulation provided first for the selection of members of second level (kabupaten and city) and third level (town) legislatures. The choice was to be made by an "electorate" composed of people appointed by those . . parties and organizations (144) located in all the sub-

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(141) The Minahassa Region, in Sulawesi, which operated under the authority of the 1950 decentralization Law of the former State of East Indonesia, has had an elected Legislature, chosen on the basis of its own election procedures. The Minahassa election was "direct" as opposed to the indirect procedure used in Jogjakarta.

(142) Indonesisch Bulletin No. 9, 1956, issued by the Indonesian Information Service, the Hague. See also the statement by Mr. Assa'at, then Minister of Internal Affairs, to the acting Parliament, in January, 1951. Dewan Perwakilan Rakjat Republik Indonesia, Risalah Perundingan 1951, Vol. IX, pp. 3573 ff.

(143) Government Regulation No. 39, 1950.

(144) The kind of organization able to participate are specified as labor, farm, youth, women, and social organizations. The inclusion of the last named type had an influence on the subsequent history of this government regulation.

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districts (145) of the swatantra. To be able to participate, however, a party or organization would have to exist in at least three kabupatens of the province and have been established in the subdistrict by June 30, 1950. (146) A candidate was elected to the Provisional Regional Legislature if he received an appropriate number of votes from the "electorate," based on the division of the number of electors by the number of seats to be filled. Once the kabupaten Legislatures were chosen, they in turn acted as the "electorate" in the selection of members of the provincial Legislature. The candidates for this latter body were those whose names were proposed by at least five members of a kabupaten Provisional Legislature.

This Government Regulation No. 39 suffered a fate similar to its predecessors in the attempt to establish a basis for creating Provisional Regional Legislatures--opposition in the national Parliament. A motion, (147) introduced in that provisional assembly of the newly formed unitary state, expressed dissatisfaction with the regulation and requested not only its withdrawal, but also the dissolution of those regional bodies already formed under its authority. (148)

Opposition was based on the charge that Government Regulation No. 39 did not provide a sufficiently democratic basis for the regional bodies. The main arguments presented were concerned with the granting of equal status, in choosing electors for the "electorate," to social organizations, which were usually small (and they were numerous), and to farm and labor organizations. It was felt that such a procedure would be unfair to the latter type organization, since it would penalize them for being

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(145) Under the Dutch system of internal administration on Java, the kabupaten, or Regency, was divided into districts (kewedanaan) and subdistricts (ketjamatan). The terminology has spread. At the present time, these divisions are maintained as administrative areas, headed by wedanas and tjamats, who are members of the pamong pradja, thus under the hierarchy of the central government. It is anticipated that these positions will eventually come entirely under the authority of the swatantra.

(146) Article 4, paragraphs 1 and 2, Government Regulation No. 39, 1950.

(147) The Hadikoesoemo Motion, named after its mover, S. Hadikoesoemo of the PNI (Partai Nasional Indonesia--Indonesian National Party).

(148) See, Dewan Perwakilan Rakjat Republik Indonesia, Risalah Perundingan 1951, Vol. IX, pp. 3520-3624, for transcripts of the debates on this motion.

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combined in a few large organizations. Further, the requirement that the organization be located in each subdistrict of the kabupaten penalized labor organizations, which were more likely to be concentrated in urban centers, or near their places of employment, rather than spread over the whole kabupaten. What was needed, claimed the proponents of the motion, was a more democratic procedure based on elections.

The Government's defense of its actions in utilizing Government Regulation No. 39 depended not so much on a defense of the specific provisions of the regulation, which were admittedly imperfect, but rather on the difficulties of holding elections in the immediate future. Its main objection to the Hadikoesoemo motion was based on the requirement for the dissolution of the already existing Regional Legislatures.

The passage of the Hadikoesoemo motion by the national Parliament brought about the downfall of the Natsir cabinet. (149) The succeeding cabinet was still faced with the problems of Provisional Regional Legislatures, Government Regulation No. 39, and the Hadikoesoemo motion. A compromise was apparently worked out whereby those regional bodies already created would continue to function, while no new ones would be formed under the disputed regulation. (150) In any case, the existing bodies did continue in office, and there was little further mention of the Hadikoesoemo motion.

No replacement for Government Regulation No. 39 was forthcoming. This left a situation whereby some swatantras (notably the provinces of East Java and North Sumatra) were without provisional legislatures. This circumstance was given formal recognition in 1954, when an emergency law (151) provided for the exercise of regional authority by the Kepala Daerah, when the Regional Legislature was non-existent or non-operative (similar to the provisions of the law creating the swatantra Kalimantan, which had been passed the year before).

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(149)The cabinet led by Mohammad Natsir of the Moslem Masjumi party was the first one formed by the unitary Republic of Indonesia. It went out of office March 20, 1951, and was followed by the Sukiman cabinet (formed April 26, 1951). Prime Minister Sukiman was also a member of Masjumi.

(150)This solution was reported in Herbert Feith, Towards Elections in Indonesia, Pacific Affairs, Vol. XXVII, No. 3 (Sept. 1954), pp. 236-254.

(151)Emergency Law No. 7, 1954, Lembaran Negara 54, 1954.

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Most swatantras have had provisional legislatures, usually having used Government Regulation No. 39, before it was condemned by Parliament, as a guide. These bodies continued to function (with the exception of the Central Sumatra Provisional Legislature which had been suspended in 1951) until July 1, 1956, when by decision of the Minister of Internal Affairs, they were all suspended. This step was based on the consideration that these bodies had in general exceeded their terms of office (152) and could no longer be considered as accurately reflecting the various opinions or movements in the region. The five year term of office was, in fact, stipulated for the first elected Legislature. To remove any doubt as to the situation regarding the provisional (non-elected) bodies, a law was passed (153) setting July 1, 1956, as the date for terminating the life of the provisional bodies. The decisions of the Minister of Internal Affairs was in implementation of this law.

The existing Provisional Regional Legislatures were removed from the scene, but the possibility of holding regional elections was still at least a year away. The national Parliament--the first one based on a national election--was quite concerned that this development would lead to a "vacuum, in terms of democratic forms, in the organization of government in the autonomous regions." (154) Put in other words, the concern was over the emergence of one-man government, by the Kepala Daerah, in the swatantras. To prevent this, a bill was introduced and passed (155) calling forth "Transitional Regional Legislatures," which would function until elected bodies could be installed, but at most for one year.

The formation of the new bodies would be based on the results of the elections for the national Parliament concluded in September 1955, with the parties and organizations that participated appointing members of the regional boards in proportion to the votes they received locally

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(152) See, for example, article 3, paragraph 2, of Law No. 11, 1950, creating the swatantra West Java, where it is stated that the members of the first Regional Legislatur: go out of office on July 15, 1955. A similar provision can be found in most of the laws creating swatantras.

(153) Law No. 7, 1956. See Indonesisch Bulletin, op. cit., pp. 1-6.

(154) Ichtisar Parlemen (Parliamentary Summary), issued by the Ministry of Information, No. 62, 1956, p. 505.

(155) For the text, ibid., pp. 503-504.

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in the national election. The details of appointing election committees for the regions, and determining their rules of procedure were left to the Minister of Internal Affairs. The actual appointment of Transitional Legislature members was assigned to that Minister in the case of the provinces, and to the respective Governors (Kepala Daerah of a province) in regards to the lower levels.

One problem that had to be settled was the determination of the regions to be subjected to the new proposal. At first, the area included in the former State of East Indonesia was to be exempted, inasmuch as that area had a separate decentralization law and election regulations and did not come under Government Regulation No. 39. In the final form of the law, however, this exclusion was removed, based mainly on the demand during the debate for more uniformity of treatment and the need for renewing the Regional Legislatures in East Indonesia as well as in the rest of the country. But, due to the differences of legal bases between "East Indonesia" and the other regions, implementation of the law in the former was left to the discretion of the Minister of Internal Affairs. Further, the regions of Minahassa, and Sangihe-Talaud, and the cities of Macassar and Menado, all in Sulawesi, were excepted from the law, since they had had direct elections or such elections were immediately pending. Also, application of the law to Jogjakarta was left to the same Minister, since that region had an elected legislature whose term of office was not due to expire until December 24, 1956.

This arrangement does not satisfy the demand for regularly elected regional bodies, and a new election law was passed, authorizing direct elections, to take place by July 1957. The transitional bodies, however, do provide a means for avoiding a situation which is, judging from the debates, inadmissable--the existence of one-man government in the regions, government by the Kepala Daerah alone.

Central Government Civil Service

The procedure specified by th Decentralization Law for the appointment of the Kepala Daerah--binding the choice to nominees of the regions--has not been put into practice yet. This allows the central government to ignore such nominations when they are made, if it so chooses. Thus, the emphasis in regards to the dual character of the Kepala Daerah, at least during this trasition period, has been as an arm of the central government. Until the division of functions between the central government and the regions becomes more complete, the lines of authority will inevitably be confusing. Most activities performed in the regions are still in the name of the

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central government. For this reason, and where the regions are still technically incapable of doing without close supervision, the Kepala Daerah seems to be exercising the effective leadership, and no great difficulty seems to be caused by any confusion of his roles. There are signs, however, of difficulty in those regions anxious to exercise more of their own initiative, where a bigger voice in the appointment procedure has been demanded.

It will be recalled that the pamong pradja, the central government's administrative service in the regions, was expected to disappear with the spread of the decentralization system, but there has been little tendency for this to take place. The central government maintains administrative divisions not eligible for autonomous status (156) and appoints the officials to head them. These officials have been called administrative assistants to the heads of autonomous regions. Their influence in the regions is probably considerable, especially in connection with activities which continue to be under the direct authority of the central government; for they are officials of the central government, members of the pamong pradja.

The ultimate fate of these officials and of the areas in their charge is not clear. The problem may well be solved by the extension of the authority of swatantras, and the concommitant withering of the activities of the pamong pradja. In any case, it does not seem to be of immediate concern. There are many more pressing problems involved in the decentralization process, such as the formation of regional governing bodies, and the development of regional capacities. However, as the process continues, a decision as to the future role of these divisions will have to be made.

Financial Relationships

One of the thorniest problems that has developed in the course of the decentralization process has been that of financing regional government, and regularizing the financial relationships between regional and central government. As was pointed out earlier, certain sources of income were made available to the swatantras, including regional taxes, and State taxes turned over to the regions. It was expected that a national law would regulate these matters, specifying which levies would be collected by the regions, and what share of the State income would be made available to them. In the absence of such legislation,

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(156) Under the province is the residency. Under the kabupaten is the kewedanaan and then ketjamatan, often called district and subdistrict.

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tax affairs in the regions have been rather haphazard, based largely on pre-war regulations. More important, only a small proportion of the routine expenses of the swatantras has been covered by a regular regional income.(157) The result has been that the swatantras have been able to operate only on the basis of central government subsidy. Further, any major development project desired by the regional governments requires a grant from Djakarta--and thus prior approval.

If nothing else, such a system carries with it the difficulties of straining relations between the center and the regions, as regional requests come into Djakarta, and travel from office to office in search of approval. Whether or not a swatantra could develop its resources more expeditiously by another system, the dissatisfaction with the present situation has been manifest. Whatever the origin of these feelings, there is the demand for sources of income directly available to the regions, and a sense of frustration that they have not yet been provided. This is especially true for those regions which through their products provide a large share of the nation's foreign exchange, but feel that only a small portion of the benefits return to them.

The fiscal structure that has been in operation in Indonesia since its independence involves a concentration of functions in the central government. While there has been some scope for local tax activity--mostly at the kabupaten and city level--it has consisted mainly of "numerous small levies which en toto contribute little to total revenue, (most of which) are atavistic remnants of the Dutch colonial tax structure." (158) The major revenue producing taxes have been administered through the central government's fiscal services.

The efficiency of this arrangement has been criticized. There seems to be general agreement that certain taxes, such as the rural income tax or the tax on private property, could be far more effectively collected by local

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(157) It has been estimated that only one per cent of provincial expenses, and 30 to 40 per cent of kabupaten expenses have been met by regional income. See, Kenang-kenangan Konperensi Antar Propinsi, op. cit., p. 45. There have been other estimates of these percentages, but they have all been uniformly low.

(158) Douglas S. Paauw, "The Tax Burden and Economic Development in Indonesia," Ekonomi dan Keuangan Indonesia (Economics and Finance in Indonesia), Year VII, No. 9 (Sept. 1954), p. 530.

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governments, both in terms of assessment as well as in preventing evasion. (159) But, merely specifying the taxes that have a local character does not solve all the problems of this division of authority. Regional experts will admit (160) that the regions do not have sufficient means--either in manpower or in equipment--to levy and collect all taxes which might properly fall to their jurisdiction.

The problem, then, is determining which taxes should be turned over to regional administration, and which ones should continue to be collected by the central government, with part of the proceeds being turned back to the regions. And, it must be decided whether or not the system devised will meet at least the routine needs of the swatantras, and what provisions need be made in case it does not. In search of a solution to these problems, the Nasrun Committee (named after its chariman, Mr. Mohammad Nasrun), made up of people from the Ministries of Internal Affairs and Finance, was appointed in 1952 by the Minister of Internal Affairs. Its purpose was to make studies and recommendations.

The Nasrun Committee was concerned mainly with the existing tax structure. Its recommendations contained suggested alterations in the distribution of tax administration and revenues between the central government and the swatantras; the suggestions were made in the framework of existing taxes and existing rates. But the committee doubted whether this redistribution would fully meet regional needs. It went on to recommend three types of support to be made available by the central government. These included "payments," which might be considered as reimbursement for the fulfillment of functions by the regions; "subsidies," given, for example, in cases of serious natural disasters; and "contributions," or special

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(159)See, for example J. de Bruine, "Hubungan Keuangan antara Pemerintah Pusat dan Daerah" ("Financial Relations between the Central Government and the Regions"), Ekonomi dan Keuangan Indonesia, Year VI, No. 2/3 (Feb./March 1953), pp. 102-123; and, Douglas S. Paauw, "The Role of Local Finance in Indonesian Economic Development," ibid., Year VII, No. 1 (Jan. 1955), pp. 2-24.

(160)See, for example, the paper on regional finances read at the Inter-Provincial Conference, Bandung, March 1955, by a delegate from the province of Central Java.

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grants to cover temporary deficits. (161)

Whether or not such a system would accommodate the demands of the regions and the caution of the central government cannot be determined in advance. The required legislation has not yet appeared at the time of this writing. It may be predicted, however, that if dependence on central government supports for purely regional development turns out to be too great, dissatisfaction will continue.(162) The redistribution of tax administration will give the swatantras a new area of activity--the assessment and collection of taxes--which is to be operated for the good of the region and the State. The danger remains, however, of misuse, whether stemming from lack of experience in fiscal matters or otherwise, which the central government must guard against. Developments in this area of activity in the immediate future may well be crucial for the general political stability of Indonesia. A law establishing financial relationships between the central government and the regions, and its smooth implementation by both, can be a major factor in soothing ruffled regional feelings, which have been more and more in evidence in many swatantras.

Tensions in the Program

The process of decentralization as designed by the legislation described in this Interim Report is not yet complete. The country has been largely, but not completely, divided into first and second level swatantras equipped with regional governments; limited fields of activity have been transferred to them. These accomplishments have been attained over a six year period, from the establishment of the first swatantras in 1950 to the last quarter of 1956.

The process of division has been an arduous one, complicated by the conflicting tendencies of increasingly insistent demands on the part of the regions for further autonomy, and the reluctance of the central government to release activities to the regions. The various steps in

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(161)A summary of the committee's recommendations can be found in de Bruine, op. cit. A shorter summary, in English, is in Paauw, op. cit., January 1955.

(162)A possible alternative, that there is a sizeable amount of untapped tax capacity in the "rural sector" of the economy that could be reached by tightening tax administration and by some shifts in the tax burden, has been suggested by Paauw, op. cit., September 1954. This additional income, if it could be realized, could accrue to the regions.

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the process have been slow in appearing and, with that slowness, dissatisfaction has become more and more evident. The year 1956 saw an intensification of the protests against the way the central government was handling its relationships with the regions, so that the "regional problem" took a more prominent place on the political stage of Djakarta. We have not been concerned, in this Interim Report, with the politics of decentralization, important as they are to an understanding of the program. But some mention should be made of some of the questions that have arisen, if only to indicate some areas of possible further investigation.

The rationale of the central government's reluctance to move at a faster pace in implementing the decentralization program is based on technical considerations, the need for careful investigation and preparation before each step is taken, the need to develop trained personnel, and the need for a more uniform development of the whole country. Further, it has stressed that "provincialism," or ethnic separatism must be avoided. But as valid as these points may be, it would be hard to deny that there have been other factors causing inertia, which have hindered implementation.

Political life in Djakarta is complicated. There has been a rapid turnover of cabinets, and each one has promised as part of its program to carry through the decentralization process. But the short terms of office of these cabinets have made difficult the extended efforts necessary for as long range a program as decentralization. The promises were repeated, but the necessary legislation was slow in forthcoming. The extent to which decentralization has become an issue of national politics may be left an open question here, but there is no doubt that the maneuverings of the political parties in Djakarta had their effects on the rate of growth of stable and active regional government.

The influence of the central government bureaucracy on the rate of development of regional affairs has never been examined. It has often been claimed that any bureaucracy is reluctant to release authority once in its hands. It would be surprising if there were no indications of this phenomena in Djakarta. The measurement of a region's ability to carry a given activity rests with the ministry concerned. The factors that go into that measurement--aside from the broad categories of finances and personnel--are not clear. It is clear, however, that if the regions themselves were to determine what activities they were capable of handling, there would be far more activities transferred to the regions than is presently the case. This argument, of course, does not mean that the activities would necessarily be better performed by the regions.

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The relationships between the central government in Djakarta, and articulate political forces located away from the capital have not always been smooth. The demand for regional autonomy has been heard from the first days of the unitary state to the present. But it is not always clear where these demands originate, nor what exactly is being demanded. The discontent and the protests against the central government do not seem to be a function of political party attitudes. It is not primarily directed against the unitary character of the state as such. Economic motives can be noted, but they alone are an insufficient explanation. Put in its best light, regional dissatisfaction can be called a protest against the small area of participation allowed to regional initiative in building up the country. About the only definite conclution that can be drawn is that further investigation is necessary in determining the basis and extent of that dissatisfaction.

Whatever the source, certain areas of dissatisfaction can be noted. We have already mentioned the problem of establishing financial relationships among the levels of government, and we have hinted at the feeling on the part of the regions that too little meaningful activity has been entrusted to them. These, certainly, are among the grounds for discontent in the regions. But these are matters that could be arranged through supplementary legislation; no new principles are involved. The reasons for shortcomings in these matters are not peculiar to the decentralization program, but must be searched out in the whole constellation of Indonesian political progress. There have been, however, areas of protest that are perhaps more basic, the settlement of which could, to a greater or lesser degree, change thestructure pictured in this Interim Report.

Looking at the island of Java, the division of territory into provinces and kabupatens seems to create no difficulties. There are three provinces of approximately equal size, with a clear enough basis of division to distinguish them. But, ouside Java, any comparably large division of territory involves the combination of groups and forces which historically were kept separate. Thus, North Sumatra includes the various Batak groups, the tobacco and rubber areas of East Sumatra, and, until recently, the various Atjenese groups. Central Sumatra has been made up of the Minangkabau area, Djambi, and the many islands of the Riau archipelago. And there is even more variation in other areas. Over the past six years, many demands have been heard from one or another of these groups for provincial status for itself, apart from the other areas in the province as presently constituted.

Some of these demands have been fulfilled. In October

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1956, Atjeh was made into an autonomous province independent of the rest of North Sumatra. At the same time, Kalimantan was divided into three autonomous provinces, with the promise that within a few years a fourth province, Central Kalimantan, would come into existence. But there are other voices, growing louder, such as those in East Sumatra, and Central Sulawesi, demanding provincial status. It may be that these demands will be granted or refused within the structure of the hierarchy of regions as outlined by the 1948 Decentralization Law. But it may be that a re-examination of the basis and role of the province, and of the now mandatory three levels of government, is in order. It is possible that the direction the answer to this problem will take will be determined in 1957.

The experience of the past six years has indicated some areas of dissatisfaction with the structure of government authorized for the swatantras. In particular, the relationship of the Kepala Daerah to the region and regional government has never been sufficiently clear. The Kepala Daerah, with the dual purpose of exercising controls over the region in the name of the central government at the same time that he leads the execution of regional affairs, is given the difficult task of trying to satisfy two masters. Control over the appointment of this important regional official has been closely guarded by the central government. The regions feel that he should be chosen by the region itself, or at least that the regions should be given a larger voice in the matter. Inevitably, friction has been the result.

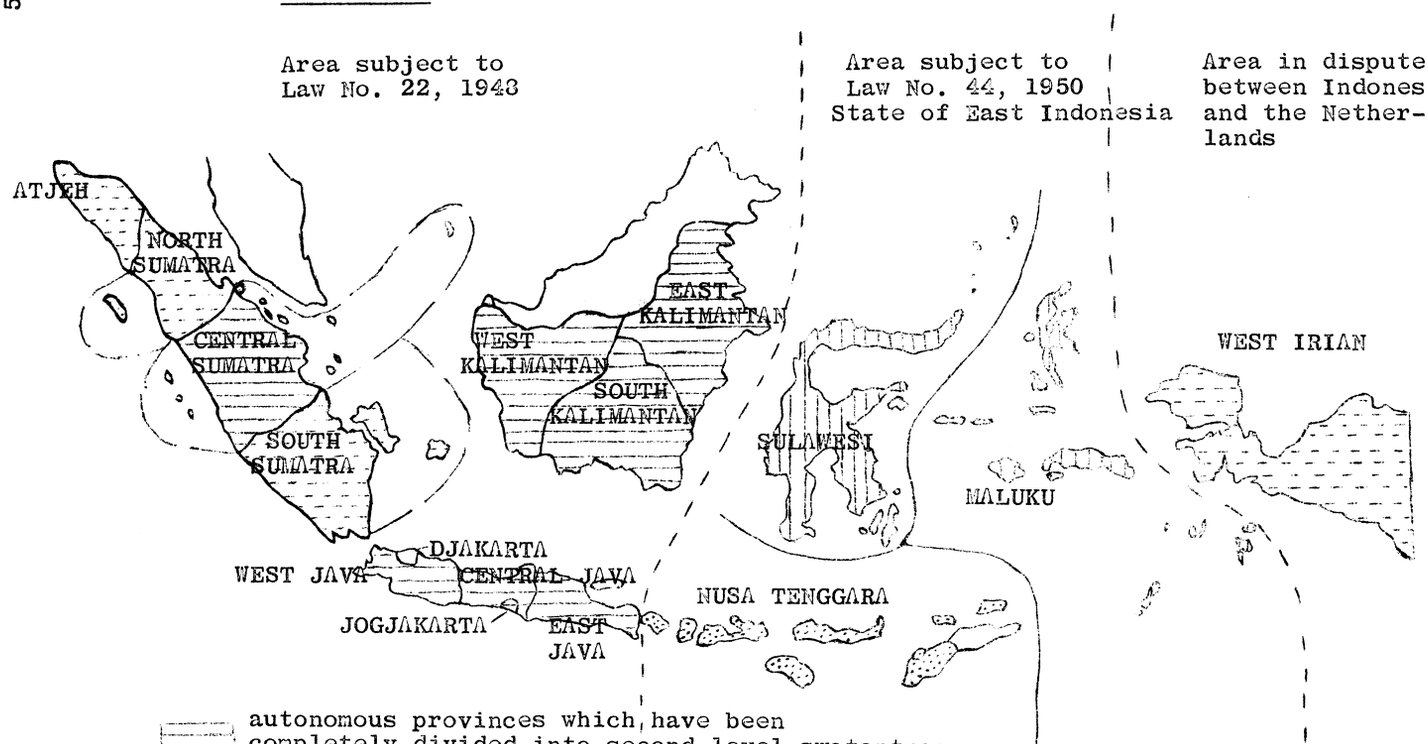
The two separate decentralization laws will have to be replaced by a single law for the whole country. That law will present an opportunity for modifying the structure that has been in existence for the past six years. The whole decentralization program--both structure and implementation--is still in the process of development. The problem of the local government of Indonesia's extensive territory cannot yet be called solved. The extent to which any modifications introduced by a new decentralization law can aid in the solution and alleviate the growing tensions between the central government and the regions remains to be seen.

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APPENDIX I

Swatantras Established in Indonesia as of October 1956



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SWATANTRAS ESTABLISHED IN INDONESIA

AS OF OCTOBER 1956

In accordance with Law No. 22, 1948, swatantras have been established at three levels. The first level includes provinces and equivalent units (special regions given the status of province). The second level, which is subject to the jurisdiction of the next higher level, includes kabupatens and equivalent units (special regions given the status of kabupaten), and also cities. The only third level units thus far established have been towns. They are subject to the jurisdiction of the kabupaten in which they are located. By cities (kota besar) and towns (kota ketjil) are meant those units legally established as such. We are listing here only legally established swatantras as defined in this Interim Report. We do not mention those units (such as the kabupatens of North Sumatra) which resemble swatantras, but have not yet been legally designated as such.

Law No. 44, 1950, of the State of East Indonesia did not use the same terminology of levels as the 1948 law. However, the government regulations issued by the unitary Republic of Indonesia establishing swatantras in that area generally equated the units with kabupatens. The Administrative Areas of Sulawesi, Maluku, and Nusa Tenggara are not swatantras; they are mentioned in this list for identification purposes only.

(The seat of government is indicated in parentheses if its name differs from that of the swatantra.)

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I. Province of West Java (Bandung)

Kabupatens

- Tanggerang
- Bekasi
- Krawang
- Purwakarta
- Banten
- Pandeglang
- Lebak
- Bogor
- Sukabumi
- Tjiandjur
- Bandung
- Sumedang
- Garut
- Tasiknalaja
- Tjianis
- Tjirebon
- Kuningan
- Indramaju
- Madjalengka

Cities

- Bandung
- Bogor
- Tjirebon

Town

- Sukabumi (in the kabupaten Sukabumi)

II. Province of Central Java (Semarang)

Kabupatens

- Semarang
- Kendal
- Demak
- Grobongan
- Pekalongan
- Pemalang
- Tegal
- Brebes
- Pati
- Kudus
- Djepara
- Rembang
- Blora
- Banjumas (Purwokerto)
- Tjilatjap
- Purbolinggo
- Bandjarnegara
- Magelang
- Temanggung
- Wonosobo
- Purworedjo
- Kebumen
- Klaten
- Bojolali
- Sragen
- Sukohardjo
- Karanganjar
- Wonogiri

Cities

- Semarang
- Pekalongan
- Tegal
- Surakarta

Towns

- Salatiga (in the kabupaten Semarang)
- Magelang (in the kabupaten Magelang)

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III. Province of East Java (Surabaja)

Kabupatens

Surabaja (Gresik)
Modjokerto
Sidoharjo
Djombang
Bangkalan
Pamekasan
Sumenap
Sampang
Panarukan
Djember
Bondowoso
Banjuwangi
Malang
Pasuruan
Probolinggo
Lumadjang
Kediri
Tulungagung
Trenggalek
Blitar
Ngandjuk
Madiun
Ponogoro
Magetan
Patjitan
Ngawi
Bodjonegoro
Tuban
Lamongan

Cities

Surabaja
Malang
Madiun
Kediri

Towns

Modjokerto (in the kabupaten Modjokerto)
Pasuruan (in the kabupaten Pasuruan)
Probolinggo (in the kabupaten Probolinggo)
Blitar (in the kabupaten Blitar)

IV. Special Region of Jogjakarta

Kabupatens

Bantul
Sleman
Gunung-kidul (Wonosari)
Kulon-progo (Wates)

City

Jogjakarta

V. Municipality of Greater Djakarta

VI. Province of West Kalimantan (Pontianak)

Kabupatens

Sambas
Pontianak
Ketapang
Sanggau
Sintang
Kapuas Hulu (Putus Sibau)

City

Pontianak

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VII. Province of South Kalimantan (Bandjarmasin)

Kabupatens
- Bandjar (Martapura)
- Hulusunggai Selatan (Kandangan)
- Hulusunggai Utara (Amuntai)
- Barito (Muara Teweh)
- Kapuas (Kuala Kapuas)
- Kotawaringin (Sampit)
- Kotabaru

City
- Bandjarmasin

VIII. Province of East Kalimantan (Samarinda)

Kabupatens
- Kutai Special Region (Samarinda)
- Berau Special Region (Tandjung Redeb)
- Bulongan Special Region (Tandjung Selor)

IX. Province of Central Sumatra (Bukittinggi)

Kabupatens
- Agam (Bukittinggi)
- Padang/Pariaman (Pariaman)
- Solok
- Pasaman (Lubuk Sikaping)
- Sawah Lunto/Sidjundjung (Sidjundjung)
- Lima Puluh Kota (Pajakumbuh)
- Pesisir Selatan/Kerintji (Sunggai Penuh)
- Tanah Datar (Batusangkar)
- Kampar (Bangkinang)
- Inderagiri (Rengat)
- Bengkalis
- Kepulauan Riau (Tandjung Pinang)
- Merangin (Buara Bungo)
- Batang Hari (Djambi)

Cities
- Bukittinggi
- Padang
- Djambi

Towns
- Pakan Baru (in the kabupaten Kampar)
- Sawah Lunto (in the kabupaten Sawah Lunto/Sidjundjung)
- Padang Pandjang (in the kabupaten Agam)
- Solok (in the kabupaten Solok)
- Pajakumbuh (in the kabupaten Lima Puluh Kota)

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X. Province of Atjeh (Kotaradja)
no further divisions as yet

XI. Province of North Sumatra (Medan)
no further divisions as yet

XII. Province of South Sumatra (Palembang)
no further divisions as yet

XIII. Province of Irian Barat (Soa Siu)
no further divisions as yet

XIV. The Administrative Area Sulawesi

Swatantras
Makasar (Sungguminasa)
Bonthain
Bone (Watampone)
Pare-pare
Mandar (Madjene)
Luvu (Palopo)
Sulawesi Tenggara (Bau-bau)
Poso
Donggala (Palu)
Sulawesi Utara (Gorontalo)
Bolaang-Mongadow (Kota-mobagu)
the city of Menado

XV. The Administrative Area Maluku

Swatantras
Maluku Tengah (Amahai)
Maluku Tenggara (Tual)
the city of Ambon

XVI. The Administrative Area Nusa Tenggara
has not yet been divided into swatantras.

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APPENDIX II

REGIONAL ACTIVITIES

Each of the laws establishing the autonomous provinces of Java and Sumatra included a supplement enumerating the activities which were to belong to the affairs of the region. It was also specified which among these activities were to be performed in medebewind. We present here an unofficial translation of a standardized version of that supplement in order to give some indication of the nature and scope of the field of work envisaged as the proper domain of the provinces. The list was not meant to preclude the possibility of later additions. It must be pointed out that many of the matters listed here required subsequent definition in a government regulation relating to the actual transfer of authority over the activity. In other words, inclusion in this list did not mean an immediate assumption of responsibility on the part of the region. Such government regulations have appeared in only a few of the fields listed below. (An asterisk indicates that the activity is in medebewind.)

I. Affairs relating to general administration include:

1. matters relating to the preparation and functioning of the Regional Legislature;
2. preparation of proposals and estimates for the regional budget, and any other matters relating to the budget;
3. regional financial administration;
4. regional personnel;
5. archives and communications;
6. investigation of budgetary matters of kabupatens and cities for purposes of validation;
7. supervision over the finances of kabupatens and cities.

II. Affairs relating to general government include:

1. supervision of the execution of provincial regulations;
2. supervision of regulations relating to public security, including police affairs; *

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3. supervision and direction of the activities of swatantras within the jurisdiction of the province;

4. effectuation of the fixing or altering of boundaries of regions within the jurisdiction of the province; *

5. matters relating to Indonesian citizenship; *

6. miscellaneous matters relating to, but not specifically included, in these affairs.

III. Affairs relating to land holdings include:

1. receipt of transfers to the State of property rights over lands privately owned according to western law; *

2. transfer of state lands to national ministries or agencies, or to autonomous regions; *

3. granting of permission to transfer rights of ownership of, and construction on land, if one or both of the parties to the transfer are aliens; *

4. supervision of the activities of swatantras within the jurisdiction of the province relating to land holdings; *

IV. Affairs relating to waterworks, roads, and buildings include:

1. authority over public waterworks (rivers, wells, lakes, and water conduits) including the encompassing lands, shores, and dykes, and over government owned establishments at or on the shores of said waterworks which are used for transporting, disposing of, or containing water, which are transferred to the provinces by the central government; *

2. authority over the use of water from public waterworks which have been transferred to the province by the central government, for agricultural purposes and other regional and national interests; *

3. authority over roads, including adjoining land, buildings, and trees, which have been transferred to the province by the central government; *

4. authority over State buildings which have been transferred to the province by the central government. *

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V. Affairs relating to farming, fisheries, and co-operatives include:

farming:

1. supervision and planning of matters leading to the awakening of a modern spirit of farming, and make the farm community more dynamic;

2. organization of coordination in technical fields; *

3. organization of central experimental stations for fruits, vegetables, medicinal plants, and commercial crops;

4. direction in combatting plant diseases that extend to more than one kabupaten;

5. provision for a center of farm information;

fisheries:

1. supervision of the regions within the jurisdiction of the province; *

2. investigation and compilation of materials relating to the improvement of the level of inland fisheries, assisting in the work of the Ministry; *

co-operatives:

to be determined at the time of actual transfer of authority.

VI. Affairs relating to animal husbandry include:

1. supervision of the work of swatantras within the jurisdiction of the province in combatting and preventing contagicus diseases, except for laboratory research and quarantine matters; *

2. coordination of the work of swatantras within the jurisdiction of the province in suppressing non-contagious diseases;

3. supervision of veterinary hygiene concerning milk and meat;

4. periodic investigation of animals used for transportation purposes;

5. supervision of efforts against the maltreatment of livestock;

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6. supervision of activities relating to hog raising;

7. implementation of regulations relating to inter-provincial trade in livestock, and coordination of trade in livestock within the province;

8. organization of breeding centers, coordination and supervision of matters relating to cattle in regions within the jurisdiction of the province, combatting the illegal slaughter of cattle.

VII. Affairs relating to industry, internal trade, and cottage industry:

to be determined at the time of actual transfer of authority.

VIII. Affairs relating to labor include:

1. collection of information relating to unemployment from swatantras within the jurisdiction of the province, to be forwarded to the Ministry of Labor; *

2. periodic reporting of statistical information on unemployment to the Ministry of Labor; *

3. organization of the mobilization and distribution of labor power wherever needed in the various regions of the province; *

4. improvisation of new fields of work as an effort to combat unemployment; *

5. organization of information services regarding vocational guidance and fields of work; *

6. organization of vocational training to raise the level of technical competence of the unemployed, and of youth in particular; *

7. supervision of the work of swatantras within the jurisdiction of the province in the field of labor affairs. *

IX. Affairs relating to social welfare include:

1. provision of leadership for, and supervision of the swatantras within the jurisdiction of the province.

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X. Affairs relating to distribution include:

1. establishment of regulations relating to apportionment applicable to the regions within the jurisdiction of the province;

2. determination of percentage price increase for the sale of goods included in the distribution program in order to meet the expenses of the program.

XI. Affairs in the field of public information include:

1. assistance to the Ministry of Information to ensure the smooth flow of public information;

2. organization of local information services.

XII. Affairs relating to education, instruction, and culture include:

1. establishment and organization of elementary schools, except those schools used for teacher training purposes, and subsidization of privately organized elementary schools;

2. establishment and organization of adult education courses levels B and C, and subsidization of privately organized courses of similar type;

3. operation of public library services;

4. maintenance of connections between the central government and youth movements;

5. provision of leadership and encouragement of regional art;

6. establishment of courses for the training of teachers to be employed in courses leading to compulsory education.

XIII. Affairs relating to public health include:

1. education of technical personnel at the middle and lower levels;

2. organization of public hospitals and supervision over private hospitals;

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3. medical examination relating to the transmigration services within the jurisdiction of the province;

4. supervision and coordination of the health offices of swatantras within the jurisdiction of the province.

XIV. Affairs relating to public enterprises include:

1. enterprises which the province is able to manage.

XV. Affairs relating to traffic and motor vahicles include:

1. supervision of matters relating to traffic;

2. examination of vahicles;

3. operation of government owned vehicle service stations which have been transferred to the province;

4. stockpiling of parts;

5. organization of transportation facilities for official purposes;

6. arrangements for public transportation.

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APPENDIX III

POSTSCRIPT: JANUARY 1957

In January 1957 (after this Interim Report had been reproduced), Law No. 1, 1957 was promulgated as the replacement for Law No. 22, 1948, and Law No. 44, 1950 State of East Indonesia. This is the long awaited decentralization law valid for the whole country. Basically, with one important exception, the system of regional government established by the old laws and described in this Interim Report has been continued. But, there have been many textual revisions, and some matters previously implied are now explicitly state. We present here a summary of the changes brought about in the legal structure by the new law, based on an unofficial mimeographed text. It should be pointed out that it is much too early to determine the effect this new law will have on the immediate future of regional government in Indonesia, or on the tensions which have been coming to a climax in central-regional relations in the past few months.

(Page references here refer to part II of this Interim Report)

Hierarchy of Forms (pp. 9-12):

The hierarchic arrangement of levels of regional governments is made explicit by the new law (article 1). But, instead of three levels being mandatory, there can now be at most three (article 2). This allows for the postponement of the creation of third level units. The levels are not given names as previously; they are now called first, second, and third level swatantras. The distinction between city and town is abolished, and the terms are replaced by "municipality." Municipalities are included as second level swatantras, but they cannot be further divided into lower level units. The municipality of Greater Djakarta is specifically placed at the first level. The special position of swapradjas is still recognized, but the possibility of making them regular swatantras is explicitly stated (article 2, paragraph 2).

Framework of Authority: Autonomy (pp. 13-14):

The trend towards a more general description of what constitutes the "affairs" of a region has been noted in the various laws establishing swatantras that have been discussed in this Interim Report. In this new law, the trend is carried further; the term is left undefined.

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The regional government governs all the "affairs" of the region (article 31), but in doing so it cannot conflict with the public interest or higher level regulations. This prohibition is the only limitation on "affairs" given by this new law. Thus, any matter not governed by a higher authority can be considered as belonging to the affairs of a region until such time as a higher level takes it up, or decrees otherwise. But, to provide an area of activity for the region over which there can be no argument, and which can provide a basis for the immediate functioning of the regional government, the item by item enumeration of affairs made at the time of the establishment of the region is considered as a starting point for regional activity.

Framework of Authority: Medebewind (pp. 14-17):

Regions can be delegated the responsibility of rendering "assistance" in the execution of higher level regulations (articles 32, 33). This is called medebewind by the official clarification of the law, without further defining the concept. The wording of this responsibility in the new law, if strictly compared with that of the old law, would lead to the conclusion that the concept has become more vague. Previously, a distinction was made between a regional activity in medebewind, and "assistance" to be rendered to a central government agency (see pp. 16-17 above). Now, that distinction is gone. Now, medebewind activities themselves are called "assistance." It would seem that any time a higher authority calls on a lower to aid in the execution of a function, regardless of how small a detail it might be, it may be called medebewind. It is not clear whether the intent was to redefine the concept in this way, or whether it was assumed that the notion of medebewind itself indicates that the region will be expected to exercise initiative in determining how the assistance is to be given, as was the case under the old law. In any case, these provisions are meant to fulfill the constitutional prescription discussed on page 14 above.

Organs of Regional Government (pp. 17-20):

The new law again enumerates the Regional Legislature and the Regional Executive Board as the two organs of regional government. Their description is essentially the same as in the old law, but is given in somewhat more detail. The period of office is for four years instead of five. A new provision is made for the removal of a member of the legislature from office. There is to be a vice-chairman of the Executive Board.

The most radical change in structure from the old law has to do with the position of the Kepala Daerah.

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His dual role as both a central government and a regional functionary comes to an end. Under the new law, both in selection and function, he is strictly a regional functionary. He is to be elected in accordance with a law to be passed for that purpose (article 23). Until such time as an election can be carried out, he will be chosen by the Regional Legislature (article 24). According to the clarification of the law, it is expected that he will be selected from among the members of the legislature, but it is pointed out that that needn't be the case. He continues to be chairman and member of the Regional Executive Board. His term of office is for the same four years as the legislature.

The immediate applicability of this change of structure is not clear. In the first place, the Kepala Daerah cannot be elected by the Legislature until that body itself is elected, which won't be before July 1957. According to the transitional arrangements of article 74 of this law, the President, with regards to a first level swatantra, and the Minister of Internal Affairs in the other cases, appoints the Kepala Daerah until any of the election procedures can be carried out. Probably, the present Kepala Daerahs will be continued in office for this transition period. But, it is not clear how sharply their old roles as central functionaries will be immediately curtailed.

Kepala Daerahs of Special Regions of the first level are to be appointed by the President, while the Minister of Internal Affairs appoints the heads of second and third level Special Regions. A new feature, however, is that the choice must be made from candidates nominated by the Regional Legislature. The candidates still must have the dynastic qualifications.

Structure of Authority (pp. 20-24):

The Regional Legislature remains responsible for autonomous affairs, but medebewind activities are to be assigned primarily to the Executive Board (article 34). Regional legislation no longer requires the signature of the Kepala Daerah, but the latter is responsible for promulgating the regulation. The limits on the legal punishment that can be prescribed for violations of regional regulations have been raised.

The Regional Executive Board is explicitly given the task of executing the decisions of the Legislature (article 44, paragraph 1), and can be assigned the authority to issue regulations for that purpose (article 45). It is also charged with providing "leadership" in the daily government of the region. Members of the Board are collectively responsible to the Legislature, but no

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longer individually. This emphasizes the "collegial" nature of the Board. The Kepala Daerah as a member of the Board is definitely included in the joint responsibility.

The change of position of the Kepala Daerah implies that he no longer carries out functions in the name of the central government. None of that type of activity that was assigned to him by the old law is contained in this new law. The Kepala Daerah's supervisory activities and his "watchdog" function (see page 28 above) have been removed.

Vertical Relationships (pp. 26-30):

It seems clear that some changes in the methods of exercising supervision over the activities of the regions are necessary, but the details are not included in this law. The methods are to be established in a subsequent government regulation (article 69). What the law does make clear is that while each level is subject to the "repressive supervision" (see page 27 above) of the next higher level, all levels are subject to the central government's supervision. This is apparently in answer to the criticisms of the former system of "divided controls." Further, the controls are now to be exercised, in general, by the Minister of Internal Affairs (not, as previously, by the President) in regards to first level swatantras.

The list of matters subject to "preventive supervision" has been extended. In addition to the matters mentioned in footnote 77 (page 27 above), regulations concerning the following subjects are also included: removal from office of a member of the Regional Legislature (article 11); the rules of order of the Regional Legislature (article 16); election and recall of the Kepala Daerah by the Regional Legislature (article 24); remuneration of the Kepala Daerah (article 28); transfer of regional affairs to a lower level swatantra (article 31); and, amendment or cancellation of regional taxes (article 56). The validation of decisions of first level swatantras in these matters must come from the Minister of Internal Affairs in all cases except the appointment and recall of a Kepala Daerah, in which cases the President exercises the function.

Already Existing Swatantras:

Swatantras already existing on the basis of Law No. 22, 1948 need not be re-established. They continue under the new law as first and second level swatantras and Special Regions. All cities and towns already established continue as municipalities. Regions based on Law No. 44, 1950

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State of East Indonesia, or other regulations, continue under those regulations until changed or eliminated by a regulation based on this law.

Until such time as the organization of the regional government can be modified to conform to this new law, the existing regional governments continue in authority. New elected regional legislatures must be installed within two years from the date of this law, and within three months after that, the Kepala Daerah must have been chosen. As was mentioned, until that can be done, the Kepala Daerah will be appointed by the President or the Minister of Internal Affairs. Any other difficulties of transition from the old law to the new will be arranged by government regulation.

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