

Are Centralized Election Management Bodies Suitable for Federal Structures?

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1. Introduction

This paper asks whether centralized election management bodies (EMBs) are more effective than decentralized bodies to ensuring free and fair elections in a federal polity. We define a centralized election management body as one which has been founded for the purpose of, and is legally responsible for, managing one or more of the elements that are essential for the conduct of elections, and of direct democracy instruments—such as referenda, citizens’ initiatives, and recall votes—if those are part of the legal framework. These essential elements include: (a) determining who is eligible to vote; (b) receiving and validating the nominations of electoral participants (for elections, political parties and/or candidates); (c) conducting balloting; (d) counting votes; and (e) totaling votes from polling locations.

Our case study of the 2006 post-civil war elections in the province of Aceh, Indonesia, challenges the conventional wisdom that centralized EMBs are invariably better suited for federal polities than a state level EMB. While acknowledging that EMBs demonstrably work more effectively and voters’ interests are better served when the EMB has a clear accountability and performance control structure from its highest to its lowest levels, we hold that state

elections in post-conflict federal polities constitute a clear exception. The 2006 elections in the province of Aceh, Indonesia, marked the culmination of a peace process that brought to an end three decades of armed conflict between Indonesia's central government and the separatist Free Aceh Movement (GAM). We show how deeply-rooted suspicions from the part of the Acehnese public vis-à-vis the central government that it would gerrymander the elections required that the EMB be independent from the national election commission, headquartered in the provincial capital of Aceh, and managed by Acehnese with a demonstrated track record of impartiality during the conflict.

2. Challenging the Conventional Wisdom about Centralized Polities

The question of whether an election agency should be centralized is probably most salient when polls are held in ethnically divided or/and post-conflict polities. Successful elections are not merely about efficient and impartial management of the voting process, but also depend very much on *perceptions* by voters and contestants that the polling process was “free and fair”. The 2006 local elections in Aceh were the culmination of the peace process between the central government and the GAM. The Peace Treaty, while emphasizing that Indonesia is a unitary state, granted the Province of Aceh self-rule vis-à-vis the Government of Indonesia. Aceh's self-rule contains some of the key features of a federalist arrangement. In view of widespread suspicions by large segments of Acehnese society that free and fair elections could be held in that province if they were managed by the national election commission, Indonesia's national parliament took the unprecedented decision to allow the establishment of an Aceh election commission that was independent from the national election commission. Examining the main technical and political challenges faced by Aceh's Independent Election Commission (KIP) in managing these landmark elections, we make the argument that decentralized election agencies are essential for ensuring free and fair local elections in federal polities which have experienced ethnic conflict. We caution that post-conflict federa-

tions, especially those where the ethnic communities have clear geographic boundaries, must avoid at all costs managing local elections through a centralized election management body.

3. Aceh and Indonesia's Central Government: From Uneasy Coexistence to Armed Insurrection

Aceh has become infamous for the Boxing Day Tsunami of 2004 that tragically claimed almost 180,000 lives in that province alone. As the Acehnese political scientist Rizal Sukma has put it succinctly, excessive centralization, unfair exploitation of Aceh's resources, human rights violations, and impunity by the security forces were the key factors that created the conflict in Aceh which began with an armed rebellion in 1976 and ended with a peace treaty signed in mid-2005. Ever since the war of liberation from Dutch colonial rule which ended with Indonesia's de facto independence in 1949, the province of Aceh had a contested status within the unitary state of Indonesia. Two striking features, one economic and the other ethno-religious, set Aceh apart from the rest of Indonesia. First, Aceh had massive reserves of natural resources, especially gas and oil but also numerous precious minerals. Second, the Acehnese adhered to orthodox Islam. It contrasted sharply with the syncretic form of Islam espoused by the country's ruling elite on the island of Java, which had resulted from a blending with Buddhism and Hinduism which had prevailed for centuries before the venture of Islam in the fifteenth century.

Following the discovery in 1971 of the world's largest gas field in Aceh, tensions between the Acehnese and Jakarta were no longer ethno-cultural, but tangibly economic. It had become a struggle over resources and wealth, and by the mid-1970s contributed decisively to the establishment of the Free Aceh Movement (GAM) whose charter called for Aceh's independence from Indonesia. The movement was based in the oil and gas rich regions of north-east Aceh. By 1979, a brief rebellion had been easily suppressed by the Indonesian Armed Forces (TNI). GAM's growth was to a large extent fueled by the increasingly intense exploitation of the

province's natural resources without any commensurate increase in living standards among the population. It is estimated that in the mid-1970s Aceh contributed one-third of Indonesia's Liquid Natural Gas (LNG) production making it the world's largest exporter. However, only 5 per cent of gas and oil revenues remained within the province, making it one of Indonesia's poorest.

In May 1998, retired General Soeharto, who had presided over Indonesia for more than three decades, stepped down. The fall of the dictatorship ushered a transition to democracy that culminated with general elections in June 1999. Meanwhile, Aceh failed to a large extent to capitalize on Indonesia's impressive socio-political transformation. As the 1990s drew to a close, the TNI continued to have an estimated 20,000 troops deployed throughout the restive province. Very few, if any, of Indonesia's new political freedoms materialized in Aceh, and there remained a media blackout which made it impossible for national public opinion to get a real sense of the conflict's roots and magnitude. It is widely held that the failure of Indonesia's political reforms to materialize in Aceh enabled GAM for probably the first time to evolve in a genuine political movement. Sensing the growing alienation of the Acehnese public vis-à-vis the central government, in late 1998 GAM resumed its military activities.

4. The Path from War to Peace: 1999-2005

During the tumultuous period leading to Indonesia's first free and fair elections in fifty years, the country underwent spectacular political reforms. The regions, which had long resented the centralistic, top-down approach of their national government, were given unprecedented freedoms to manage their affairs locally through an ambitious devolution plan.¹ East Timor was given the choice to choose between remaining with Indonesia under a special autonomy arrangement or to become an independent nation. In a UN-

¹ Laws 22/1999 and 25/1999 on fiscal and administrative decentralization, known as the Regional Autonomy laws.

supervised referendum in August 1999, 80 per cent of the East Timorese voted in favour of independence.

In early 2000, the central government took steps toward a political settlement with GAM through international mediation. For complex reasons beyond the scope of this study, peace did not last and in fact the conflict escalated in 2003 and for much of 2004. A watershed came with the election of a new Indonesian president in the fall of 2004. Within weeks of being sworn-in, the new President set out on a peace initiative for Aceh. Again, this was to involve international mediation. The government of Indonesia's formal invitation to the GAM leadership for direct peace talks was fatefully sent 48 hours prior to the 2004 Boxing Day Tsunami. This tragedy, in which thousands of soldiers and guerillas were annihilated, acted as a powerful catalyst for peace, and within the stunningly brief period of eight months the former enemies signed a peace treaty in Helsinki to end almost three decades of conflict.

5. Translating Good Words into Policy: Aceh's 2006 Local Elections

The Helsinki Memorandum of Understanding (MoU) contained three provisions which, in our view, were the prerequisites for a successful completion of the transition from war to lasting peace. First, it called for the decommissioning of weapons by GAM and the demobilization of TNI forces in Aceh. Second, it required the enactment of the Law on the Governance of Aceh (LoGA) which provided the legal framework for Aceh's quasi-federal status within the unitary state of Indonesia. This was the most controversial provision in the MoU given that the law was to be enacted solely by Indonesia's national parliament, not Aceh's provincial legislature. Third, democratic local elections were to be held not later than eight months after the signing of the Helsinki MoU. In the remainder of this paper our focus will be on the lessons learned from holding the local elections in Aceh and how these are relevant to elections in other ethnically divided or post-conflict societies. We will focus on the role of Aceh's election agency, the Aceh Independent Election Commission (KIP).

It is widely acknowledged that implementing the broad principles of a peace treaty into concrete policy is a process fraught with risks, and if decisions are reached without careful consideration and support from all the parties, they can ultimately undo the peace. As we saw from our above synopsis of the Aceh conflict, it was permeated by the population's deep-seated distrust of the central government, and in particular of the military. The debate over whether a central election agency was compatible with the political context of the Aceh elections highlights the perennial dilemma faced by election agencies: legitimacy *vs.* efficiency.

The LoGA called for the establishment of an Aceh independent election agency to manage the province's formative elections. While the draft law was being debated in national parliament there was significant opposition to this proposal on both political and technical grounds. Politically, the nationalist parties saw the creation of KIP as a dangerous precedent that eroded national sovereignty over the province. Moreover, there were also concerns that a provincial election agency is more vulnerable to being hijacked by local power structures than a national one. For example, the incumbent, the security forces, or GAM. Technically, they voiced deep skepticism about the capacity of a local, inexperienced election agency to manage such a decisive suffrage. In Indonesia's 32 other provinces besides Aceh, elections are managed by the local chapters of the national election agency (KPU).

Those in favour of creating KIP highlighted the exception represented by Aceh given the high political stakes of the election. If we consider the legacy of Aceh distrust toward the central government, there was a very clear danger that if the electorate were to perceive the election as gerrymandered by Jakarta in any shape or form, it could either result in very low voter turnout or/and rejection of the results by the public and candidates alike. Technically, while it is undeniable that an Aceh election agency would have limited experience at best, the election itself was not very challenging technically provided that the agency was given a realistic timeframe to conduct the election. As a yardstick of comparison, Aceh had a total of 2.6 million registered voters, a small number com-

pared to local elections in the province of West Java with 27.5 million voters.

The argument in favour of the creation of subnational election agencies managed by Acehese commissioners won the day. In fact, not only did the LoGA enact the establishment of a provincial election agency to conduct the governor poll, but also allowed for the setting up of municipal/district election agencies that would be independent of the provincial agency and responsible to conduct the election of mayors and regents.

Although the national parliament harboured doubts about the technical capacity of the Aceh Independent Election Commission, it preferred to err on the side of maximizing the legitimacy of the polls.

In what reads like a list of the pros and cons of establishing subnational election agencies, both sides of the argument saw their claims substantiated by the course of events in the 2006 Aceh local elections. On the plus side, voter turnout was very high, at 85 per cent. By comparison, in the 2004 national parliamentary and presidential elections conducted by Indonesia's central election agency, turnout in the province of Aceh had been in the lower 60s, well below the national average of 84 per cent. Crucially, the high turnout combined with the fact that the provincial agency was managed by Acehese citizens widely recognized by the public as non-partisan was instrumental in ensuring that the defeated candidates accepted the results which saw the guerrilla movement's former chief of intelligence win the election for governor of Aceh.² This was no small feat if we consider that all reliable public opinion surveys prior to election day did not identify the winner among the two front-runners for the governorship.

The potential dangers that are inherent in subnational election agencies also materialized as the election unfolded. Technically, the election agencies often appeared out of their depth. For instance, names of candidates were misprinted in ballot papers for some of the municipal elections. Also, several thousand blank ballot papers were misplaced and subsequently found in a warehouse mixed up

² Opinion survey conducted by IFES-Democracy at Large, October 2006.

with voter identification cards. At a more serious level, the incapacity of the election agency to distribute voter ID cards in time for the election prompted a last-ditch change in the regulations, allowing voters to use their national ID cards in lieu of the hitherto compulsory voter ID cards. However, the fact that there was no vertical chain of command—municipal/district election agencies were administratively independent from the provincial agency—meant that the last-minute change in regulations was not systematically communicated to polling stations. Consequently, voters were disenfranchised, but fortunately only a small number that did not bear impact on the final results.³

A more sinister by-product of the decision to create administratively independent municipal/district election agencies was that they were easily penetrated by local power structures. Two cases of collusion at Regency level between the incumbent, the election agency, the local parliament and the police were of such magnitude that, six months after the election, the results had yet to be formally announced in these two Regencies. This highlighted the warning made almost one year earlier that read as follows:

Electoral Management Bodies (EMBs) demonstrably work more effectively and voters interests are better served, when the EMB has a clear accountability and performance control structure from its highest to its lowest levels. The . . . LoGA does not provide for this, but for the opposite—a fractured structure for electoral management in Aceh, requiring Municipal/Regency election agencies (KIPs) to be established by Municipal/Regency [parliaments] and affirmed by the relevant Mayor/Regent, with no reference to the provincial election agency. Integrating Municipal/Regency KIPs into provincial electoral management will be difficult if not impossible to achieve under proposed selection/appointment arrangements, whereby each Muni-

³The winner of the governor election and the runner-up were separated by 22 percentage points.

cipal/Regency KIP derives its authority from a different source.⁴

In our view, the gross electoral fraud conducted by the Regency KIPs in South-East and Central Aceh Regencies indicates the limits to de-centralizing election agencies. The case of Aceh contributes to the vast body of evidence that small election agencies are prone to be hijacked by local interests, and thus tend to be less accountable to voters. In the case of Aceh's Municipal/Regency KIPs, the hijacking of the electoral process was made easier by the weak electoral framework that allowed for a "fractured" structure for electoral management in Aceh.

As we shall subsequently demonstrate, damage inflicted by the weak legal framework of the Aceh elections did not stop at the Municipality/Regency level. Another major flaw in design had the potential to undermine the Aceh polls in a way that reads as a cautionary tale for post-conflict elections. As national parliament rushed to meet the deadline set in the Helsinki peace accords to enact the LoGA, it borrowed heavily from existing legislation for regional elections. In the crucial articles that defined the electoral system to be used in the Aceh elections, the LoGA adopted a First Past the Post (FPTP) system, which falls under the Plurality-Majority systems. FPTP is the electoral system used in a majority of Indonesia's provinces. This "cut and paste" job was apparently done without due consideration of the fact that Aceh's election was to take place in a post-conflict political context, and therefore starkly different from Indonesia's other regions.

In a FPTP system, the winning candidate is simply the person who wins more votes; in theory he or she could be elected with two votes, if every other candidate only secured a single vote. In most of Indonesia's regional elections, the candidate who meets a threshold of 25 per cent (plus one vote) of valid ballots automatically win the election. The greatest advantages of this electoral system are its simplicity for voters and cost-effectiveness. Voters

⁴ Personal communication, March 2006. The author of this analysis has requested to remain anonymous.

only need to tick the name of the candidate on the ballot, and given that the winner only needs to get one quarter of total valid votes cast, it is virtually guaranteed that the election will be decided in one round rather than two rounds.

The choice to have a FPTP electoral system for Indonesia's regional elections had been reached several years prior to the Aceh 2006 elections. This choice was the outcome of an unspoken political compromise between the two dominant parliamentary factions in the Indonesian House of Representatives. Although touted by its supporters for its technical merits which we outlined above, the appeal of a 25 per cent + 1 threshold to the two largest political parties in parliament was on political grounds. Their previous electoral performance indicated that they could not get absolute majorities in most local elections. These two dominant parties calculated their "magic number" for winning a local election at approximately one quarter of votes, and consequently they reached a quid pro quo which "tailored" the electoral system to their advantage.

One month prior to Election Day, the first voter opinion polls about the governor/vice-governor elections indicated a deeply divided electorate. Of the eight pairs of candidates, none of them could muster more than a quarter of the vote, perhaps not entirely surprising if we consider the profound political cleavages in this post-conflict society. The candidates offered radically different visions of Aceh's future. There was a moderate platform with a message of reconciliation that brought together a national Muslim political party based in Jakarta with GAM's older generation that had been in the diaspora during the conflict. Then there were Islamists promising to implement sharia law more comprehensively in Aceh. Finally, there was a ticket representing the military wing of GAM and pro-independence activists. The latter belonged to the younger generation of GAM and had experienced the brunt of the Indonesian Armed Forces' clampdown on the resistance. According to the opinion polls, the front runners were the "moderates", followed by the "Islamists". GAM's "military wing" was a distant fourth.

Crucially, the result of the opinion polls underscored the dangers posed by the electoral system in this profoundly divided society. In this fiercely contested election, if none of the candidates

could muster the support of a quarter of the electorate, then there would be a run-off between the first and second highest performers. This would ensure that the winner had an absolute majority of Aceh's vote. However, if one of the candidates were to have a late surge in the polls and scratch past the 25 per cent mark by a couple of points, would this be accepted as a legitimate mandate by the majority of Acehnese who did not vote for the winner? An even worse potential scenario would have two deeply ideologically opposed groups each scoring approximately one third of the votes. What would have happened if the "GAM military wing" candidate lost the elections by 32 per cent to the "moderates" 33 per cent? There would be no run-off, yet the winner would almost surely have a weak mandate given that more than two thirds of the voters would have not voted for him.

As the election campaign unfolded, the nightmare scenario did come remarkably close to reality. Supporters loyal to the "GAM military wing" candidate attacked the convoy of the "moderate" candidate who was at the time leading in the opinion polls. The candidate escaped relatively unharmed, but the fact was that the candidate camp with the most overt military profile had sanctioned violence and intimidation against other contestants. This reality was all the more disturbing because if we examine the patterns of violence in highly contested polls in post-conflict societies, hostilities tend to occur after the election results are announced, not beforehand.⁵

Fortunately, there was to be no violence after Aceh's Election Day. There are many reasons beyond the scope of this paper as to why bloodshed was averted. We can never know whether the violence and intimidation by supporters of the "GAM military wing" candidate was a bluff. It is completely conceivable that they would have refrained from violence even if their candidate had lost. Ultimately, the "GAM military wing" candidate won the governor elections by a convincing, if not overwhelming, 38 per cent of the

⁵ Kenya's 2008 presidential election, erupting at the time this paper was written, is an obvious example of post-election violence. Other cases in point are: Haiti (2006), Timor-Leste (1999), Angola (1992), and Burma (1989).

vote. The runner-up only won 16 per cent of the vote, giving the winner “a mandate to lead more than to govern” in the words of the Chief Election Observer of the European Union. The point we are making is that the choice of an electoral system needs to be informed by a careful reading of the political context. In the case of Aceh 2006, the electoral system had several potentially perverse effects on an already complex political situation. It should have promoted moderation and victory by absolute majority so as to increase the legitimacy of the winner. Instead, it unwittingly rewarded contestants with potentially extremist platforms and victory by a simple majority rather than by an absolute majority of the votes.

6. Recommendations

We make four main recommendations. First, the case of Aceh provides compelling evidence for advocating the creation of subnational election agencies in post-conflict elections because they contribute to markedly increase confidence in the electoral process by both voters and candidates. Consequently, voter turnout tends to be higher, and mechanisms for resolving electoral disputes are more effective.

Second, we caution that limits should be set on the extent to which election agencies are decentralized. While decentralized electoral agencies are a key to increasing the legitimacy of subnational elections, too much decentralization can yield the opposite result. In the Aceh 2006 elections, the creation of election agencies at municipal/district levels which were unaccountable to the provincial election agency became perhaps the greatest hurdle to free and fair elections. Politically, several of these local election agencies were hijacked by local power structures (incumbent, legislature, police, and strongmen) who manipulated the validation of electoral participants and election results. Technically, many local election agencies were overwhelmed by the task at hand due to lack of training and management experience, making mistakes ranging from misprinting ballots to requiring the wrong voter eligibility documents at polling stations.

Third, we postulate that the question of whether de-centralized election agencies are compatible with federalism becomes largely redundant unless it is addressed in conjunction with an analysis of the legal framework of the elections. A weak legal framework which, for instance, fails to clearly define the powers and responsibilities between the different election management bodies or to adopt an electoral system that is suitable to the particular political context, has the potential to undermine the integrity of elections regardless of whether the election body is centralized or not. As the case of Aceh makes abundantly clear, the disruptive potential of a weak electoral framework is markedly increased in the context of a post-conflict election because of low levels of trust in the process by both voters and candidates. Therefore, our final conclusion is that the legislature which enacts the election legal framework and the election agency tasked to operationalize the law must cooperate in a way as to maximize the prospects that the law is suitable to the political and physical/logistical environment of the election. Or at the very least avoid things which could lead to the breakdown of democracy.

7. Conclusion

Our case study has highlighted the perennial tension faced by election management bodies: efficiency vs. accountability. At the 4th International Conference on Federalism, India's Chief Election Commissioner N. Gopalaswami captured this tension by stating that "elections are very much about managing perceptions". The Aceh 2006 elections leave little doubt that de-centralized election management bodies are far more vulnerable to being penetrated by local vested interests than a centralized EMB. Therefore, we can safely conclude that in a majority of instances, elections in federal countries are safest in the hands of a national election commission with a strong mandate and independently appointed members. The exception to that rule is an election held in a post-conflict society where significant numbers of voters and contestants hold deep-seated suspicions toward institutions at the national level. This is particularly the case in a federal country where conflict was

ethnically or religiously motivated, and the communities are geographically separated from each other as in the case of Aceh. Given that it is impossible for an election to be conducted freely and fairly if the voters do not perceive the EMB to be impartial, we conclude that under the above conditions it is better to establish a de-centralized EMB. In the short-run, establishing a de-centralized EMB, for instance at the state level, will probably mean lower levels of efficiency. However, drawing from our study we believe that it is better for an EMB in a post-conflict society to err on the side of management shortcomings but being perceived as impartial and accountable to voters. The reverse could spell disaster because in a democratic election voters can forgive some degree of incompetence, but will not tolerate the faintest smell of deception.