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Discourse on Constitutional Court Decision No. 006/PUU-IV/2006 on Aceh KKR: Asymmetric Decentralization and Doelmatigheid Perspective

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Abstract
This article re-examines the status of the Aceh Truth and Reconciliation Commission (KKR Aceh) from the perspective of effectiveness following Constitutional Court Decision No. 006/PUU-IV/2006, which dissolved the national Truth and Reconciliation Commission. The central issue lies in the Court's failure to address the position of KKR Aceh, despite its legal basis in Aceh's special autonomy framework under asymmetric decentralization. Using a normative legal research method, this article advances three main findings. First, a dualism of status arises due to the absence of legal clarity on whether the Constitutional Court's decision applies to KKR Aceh. Consequently, KKR Aceh continues to operate within Aceh's special legal framework and holds the potential to function as a regionally autonomous institution. Second, from historical and philosophical perspectives, the establishment of KKR Aceh is grounded in considerations distinct from those underlying the national KKR, supporting its placement within the asymmetric decentralization regime. Third, in terms of effectiveness, positioning KKR Aceh within this asymmetric framework is more beneficial for the people of Aceh, particularly in addressing past human rights violations. Accordingly, this article argues that maintaining KKR Aceh within the framework of asymmetric decentralization constitutes the most appropriate solution to resolve its institutional dualism while ensuring its continued effectiveness.

Introduction

Aceh, as is well known, has become a thriving province with special rights (asymmetric decentralization) that emerged in the wake of past armed conflict. The peace agreement reached in 2005 led to the signing of a Memorandum of Understanding (MoU) in Helsinki, Finland.[1] Overall, the MoU

[1] Amrizal J. Prang, *Desentralisasi Asimetris Aceh: Konteks Konsultasi Dan Pertimbangan Gubernur Dan Dewan Perwa Rakyat Aceh* (Bandar Publishing, 2020): 2-3.

contains 71 agreed-upon articles that can be grouped into several key sections.[2] The implementation of the Helsinki MoU is outlined and explained in the UUPA, which consists of forty chapters and two hundred seventy-three articles. One of the most notable aspects of these provisions is the establishment of institutions that integrate centralization and autonomy, such as the Aceh Truth and Reconciliation Commission (KKR); even today (as of the writing of this article in July 2026), the legitimacy of this institution remains in question.

This issue of legitimacy has been ongoing since 2006 and continues to this day. It began after the Constitutional Court issued its ruling No. 006/PUU-IV/2006, which invalidated Law No. 27 of 2004 on the Truth and Reconciliation Commission (KKR) and led to the dissolution of that institution. At the same time, another question arose: given that the Constitutional Court issued such a ruling and the KKR was dissolved, what would happen to the Aceh KKR, which was established under Law No. 11 of 2006 on the Government of Aceh (UUPA)? Would this institution be affected by the dissolution even though it operates under a different legal framework (special autonomy)? The legal status of the Aceh KKR is explicitly set forth in Articles 229 and 230 of the UUPA, which govern the establishment and operational procedures of the institution.[3]

Article 229:

(1) To seek truth and reconciliation, this Law establishes a Truth and Reconciliation Commission in Aceh.
(2) The Truth and Reconciliation Commission in Aceh, as referred to in paragraph (1), is an integral part of the Truth and Reconciliation Commission.
(3) The Truth and Reconciliation Commission in Aceh operates in accordance with statutory regulations.
(4) In resolving cases of human rights violations in Aceh, the Truth and Reconciliation Commission in Aceh may consider customary principles prevailing within the community.

Article 230:

"Further provisions regarding the procedures for implementing elections, appointing members, organization and work procedures, term of office, and costs for organizing the Truth and Reconciliation Commission in Aceh are regulated by the Aceh Qanun which is guided

[2] Adiningtyas Dwiputri Samsoerizal et al., "Analisis Konflik Antara Pemerintah Provinsi Aceh Dan Pemerintah Pusat Republik Indonesia Terhadap Implementasi Memorandum Of Understanding Helsinki Melalui Analisa Pohon Konflik," *Jurnal Education and Development* 9, no. 4 (2021): 60, https://doi.org/https://doi.org/10.37081/ED.V9I4.2982.

[3] Teuku Okta Randa and Wahyu Ramadhani, "Kedudukan Komisi Kebenaran dan Rekonsiliasi Aceh Menurut Qanun Nomor 17 Tahun 2013," *Syiah Kuala Law Journal* 4, no. 3 (2020): 274, https://doi.org/10.24815/sklj.v4i3.18268.

by statutory regulations."

These provisions specifically and clearly state that the Aceh Truth and Reconciliation Commission (KKR Aceh) operates under the legal framework of the UUPA, and its legitimacy does not derive from Law No. 27 of 2004 on the Truth and Reconciliation Commission, which was declared unconstitutional in its entirety by the Constitutional Court. On the other hand, paragraph (2) of Article 229 also affirms that the existence of the Aceh KKR is an integral part of the KKR established under Law No. 27 of 2004. This is where the main question arises: Does the impact of Constitutional Court Decision No. 006/PUU-IV/2006, which annulled Law No. 27 of 2004, also apply to the Aceh TRC, thereby requiring the dissolution of the Aceh TRC as well?

Furthermore, this issue is compounded by the fact that the Constitutional Court, in its ruling, made no mention whatsoever of the future of the Aceh Truth and Reconciliation Commission (KKR Aceh) following the decision. On the one hand, the Aceh KKR operates under a different framework than the national KKR. It possesses distinct characteristics, and the Constitutional Court's ruling should not be automatically applied to the context of the Aceh KKR. This is where the conflict lies—between the Constitutional Court's ruling and Law No. 11 of 2006. Consequently, in the context of the Aceh KKR, the Constitutional Court's ruling cannot be considered directly applicable, as it goes beyond the scope of the law under review, and the relevant legislation was not considered at all in this ruling. This is especially true when considering the foundational pillars underpinning the existence of these two legal instruments (Law No. 24 of 2007 and the Aceh Special Autonomy Law).

This is the problem that ultimately arose: constitutional practices ultimately led to the claim that the Aceh KKR institution was also nullified by the Constitutional Court's ruling. This was particularly evident when the Ministry of Home Affairs (Kemendagri) issued a response to the KKR's 2024 request for assistance with the draft Aceh Qanun, asking the Aceh government to revoke the Aceh Qanun pertaining to the Aceh KKR institution. The Minister of Home Affairs' response, No. 100. 2.1.6/9049/OTDA, dated November 7, 2024, clarifies that the existence of the Aceh KKR no longer has a legal basis because Law No. 27 of 2004 has been declared unconstitutional by the Constitutional Court, and the existence of the Aceh KKR was an integration with the KKR institution established under Law No. 27 of 2004. This response is a consequence of the Constitutional Court's ruling that invalidated the previous KKR Law, which ultimately led to dualism and uncertainty.

Thus, there are two contradictory points of contention here regarding the

interpretation of the status of the Aceh Truth and Reconciliation Commission (KKR): whether it will remain in accordance with the framework of the Aceh Special Autonomy Law (UUPA) or will be compelled to comply with the Constitutional Court's ruling due to its status not being parallel to that of the national KKR established under Law No. 27 of 2004. In its Decision No. 006/PUU-IV/2006, which struck down Law No. 27 of 2004, the Constitutional Court based its ruling on the consideration that the principles and objectives enshrined in the national KKR law could not be realized due to the absence of legal certainty (*rechtsonzekerheid*).[4] The debate over the legal uncertainty surrounding the Aceh Truth and Reconciliation Commission (KKR) poses a constitutional threat to the guarantee of special autonomy enshrined in Article 18B, paragraph (1) of the 1945 Constitution. Consequently, if this issue remains unresolved, it will hinder the realization of the benefits of reconciliation, particularly for victims of past crimes. Thus, this issue will affect the guarantee of justice for victims, in addition to undermining the supremacy of the Constitution due to the loss of that guarantee of special autonomy.

In addition to being rooted in asymmetric decentralization, another aspect that needs to be considered is the principle of *doelmatigheid* underlying the establishment of the Aceh KKR. This principle (*doelmatigheid*) essentially concerns the objectives that government actions aim to achieve. *Doelmatigheid* takes a utilitarian perspective, with policies (*regeling and beshicking*) that prioritize achievement over compliance with existing laws (*rechmatigheid).*[5] The perspective of *doelmatigheid* serves here as an accelerative method that will assess this issue within an inter-perspective paradigm. The effectiveness of the Aceh KKR is part of the administration of government, and this is where the connection to *doelmatigheid* lies. Thus, in this context, the question centers on the value of benefits, including regarding the friction surrounding the Aceh KKR institution—specifically, which will provide greater benefits in achieving effective governance in Aceh: the UUPA or Constitutional Court Decision No. 006/PUU-IV/2006 regarding the public's need for the Aceh KKR institution.

Nevertheless, this article does not deny that several previous articles have addressed this issue, especially given its long-standing nature. Other articles or studies that are quite reliable in their relevance to this article include those by Randa and Ramadhani (2020), Khairil Akbar (2017), and

[4] Zahratul 'Ain Taufik, "PENYELESAIAN KASUS PELANGGARAN HAM BERAT MELALUI POLA REKONSILIASI PASCA PUTUSAN MAHKAMAH KONSTITUSI TAHUN 2006," *Jurnal IUS Kajian Hukum dan Keadilan* 5, no. 2 (2017): 203, https://doi.org/10.29303/ius.v5i2.454.

[5] Ridwan HR, *Hukum Administrasi Negara*, Edisi Revisi (Rajawali Perss, 2014): 170.

Zahlul Pasha (2017). These three articles discuss the position of the Aceh KKR from both centralist and decentralist perspectives. However, this article approaches the issue by examining two aspects: the supremacy of special autonomy as part of constitutional supremacy, and the utilitarian perspective, which suggests how constitutional interpretation should be applied to the Constitutional Court's rulings based on the principle of utility. The background of this article can then be narrowed down to a single question. From the perspective of asymmetric decentralization and doelmatigheid, can Law No. 11 of 2006 on the Governance of Aceh serve as a defensive legal framework for the Aceh Truth and Reconciliation Commission (KKR Aceh) in accordance with Constitutional Court Decision No. 006/PUU-IV/2006? By framing this question, this article aims to provide a prescriptive answer.

Methods

This article is structured as a normative legal research study that examines legal issues subject to diverse interpretations due to legal ambiguities between court decisions and statutes. Using statutory, case-based, and conceptual approaches, this study has reached important conclusions through deductive analysis. In its analysis, this study draws on three sources of reference, as proposed by Peter Mahmud Marzuki: primary legal sources, which consist of authoritative legal materials such as legislation and court decisions; secondary legal sources, which refer to various legal literature. Finally, there are non-legal sources used as supplementary references or to complement the main analysis. All of these were obtained through literature review and the snowball method.

Results and Discussion

Dualism of the Legal Umbrella of the Aceh KKR Institution

Before the Aceh KKR was established based on the UUPA, the national KKR institution had actually been established in 2004 through Law No. 27 of 2004, which specifically regulated the KKR institution itself. Two years after Law No. 27 of 2004 was enacted, the Constitutional Court issued Decision No. 006/PUU-IV/2006, which annulled all of these laws and resulted in the dissolution of the KKR institution, as previously mentioned. In the same year (2006), and before the issuance of the Constitutional Court decision, the Aceh Government Law was enacted, which recognized the Aceh KKR institution, and this is where the dualism began.

This was especially true when the Governor of Aceh issued his beshicking amidst this uncertain dualistic friction. On October 17, 2016, through Aceh Governor's Decree No. 162/796/2016 concerning the Determination of Members of the Aceh Truth and Reconciliation Commission for the 2016-2021

Period, the organizational structure of the KKR was established.[6] The Aceh Government has also appointed new members (commissioners) of the Aceh KKR for the next period (2022-2027).[7] This action shows a declarative attitude from the Aceh Government which indirectly declares the independent position of the Aceh KKR with the national KKR based on Law No. 27 of 2004.

This action shows a declarative attitude from the Aceh Government which implicitly declares the independent position of the Aceh KKR with the national KKR based on Law No. 27 of 2004.[8] However, specifically for the two MPR TAPs, they must be addressed with filtering for now, because not all MPR TAPs are still valid at this time, except there are only eight MPR TAPs (including MPRS) which are still valid.[9] Meanwhile, the two MPR Decrees referred to by Aryos Nivada above are no longer part of this MPR Decrees and are therefore irrelevant today. Therefore, the only relevant reference, according to Nivada's view, is the Human Rights Court Law.

If we follow this mindset, there is a possibility to affirm the existence of the Aceh KKR independently under decentralization, especially the asymmetric decentralization that Aceh has. But the question then is to what extent such an idea can be maintained, and of course this will not work in such a simple way. The UUPA, which is the main root of the Aceh KKR institution, states in Article 229 paragraph (1) that, to seek truth and reconciliation, with this law (UUPA) a KKR is established in Aceh. Then in paragraph (2) of the same article, the parallel status between the Aceh KKR and the national KKR is regulated, stating that the Aceh KKR is an inseparable part of the (national) KKR.

The next complexity lies in paragraph (3) of Article 229, based on the formulation of this norm, it is determined that the Aceh KKR works based on statutory regulations, which is meant to refer to Law No. 27 of 2004 as explained in the explanation of the article. An important interim conclusion may be put forward here. The status of the Aceh KKR institution cannot be separated from the unity of the (national) KKR institution which is subject to Law No. 27 of 2004. Moreover, this can be supported by questioning the exclusivity of the Aceh KKR institution in the UUPA. Through this section,

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[6] Zaki Ulya, "Politik Hukum Pembentukan Komisi Kebenaran Dan Rekonsiliasi Aceh: Re-Formulasi Legalitas Kkr Aceh," *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 2, no. 2 (2017): 103, https://doi.org/10.22373/petita.v2i2.65.

[7] Masrizal bin Zairi, "Gubernur Lantik Tujuh Komisioner KKR Aceh, Ini Pesan Nova Iriansyah Dan Ketua DPRA," Aceh.Tribunnews.Com, February 4, 2022, https://aceh.tribunnews.com/2022/02/04/gubernur-lantik-tujuh-komisioner-kkr-aceh-ini-pesan-nova-iriansyah-dan-ketua-dpra.

[8] *Zaki Ulya, Op. Cit.*, 101.

[9] Jimly Asshiddiqie, *Perihal Undang-Undang*, Edisi 1. Cet. 5 (Rajawali Pers, 2020): 47-48.

this article tries to project it through the question, does the UUPA provide definitive status to the institution, or is it only a cross-sectional position?

The answer to this question is whether the Aceh KKR, which has been officially designated as a government institution under the jurisdiction of Aceh's governance through Aceh Qanun No. 17 of 2013 concerning the Aceh Truth and Reconciliation Commission, is truly a state institution. In retrospect, the UUPA does not provide a specific address that justifies the Aceh KKR as a state institution subject to the framework of special autonomy. For example, the Independent Election Commission (KIP), the Sharia Court, the Wali Nanggroe Institution, and the Mukim are explicitly identified in the general provisions of the UUPA, but this is not the case with the Aceh KKR, which is only mentioned in a shortcut to a specific article.

Furthermore, Article 229 and Article 230 of the UUPA itself, which regulate the Aceh KKR, do not address the cloning of the Aceh KKR as a separate state institution from its integral part in the national KKR. The phrase used in both articles is "Aceh Truth and Reconciliation Commission". Moreover, Article 229 paragraphs (2) and (3) confirm its confirmation within the framework of the national KKR, so that at this point it is still not convincing enough to recognize the Aceh KKR as an institution un sich within the framework of full special autonomy. There are only two exceptions that are exempted for the Aceh KKR to follow the special autonomy pattern based on the UUPA. First, in Article 229 paragraph (4), namely, it can consider using customary principles that exist in society to resolve cases of human rights violations in Aceh. Second, in Article 230 which determines:

> “Further provisions regarding the procedures for implementing elections, appointing members, organization and work procedures, term of office, and costs for organizing the Truth and Reconciliation Commission in Aceh are regulated by the Aceh Qanun which is guided by statutory regulations.”

This final point of freedom does not indicate complete room for movement for the Aceh KKR compared to the first point of freedom before. The regulation of the qanun is still conditional and dependent on many other superior laws and regulations. As far as this explanation in the UUPA paradigm is based on a positivistic assessment, this article puts forward the statement that this legal umbrella (UUPA) does not work to initiate the birth of the Aceh KKR as an institution un sich under the special autonomy regime of the administration of Aceh. A similar description comes from Khairi Akbar who refers to Hendra Budiman, that the existence of the Aceh KKR should be

preceded by the existence of a national KKR, this is if based on the pattern of Article 229 paragraph (3) of the UUPA.[10]

However, another question has resurfaced, stemming from the Constitutional Court's decision to overturn the Aceh KKR Law. Why didn't the Constitutional Court act to address this dualistic friction sooner? Not without reason, as Herlambang P. Wiratraman noted, when the decision was read, the UUPA, which regulates the Aceh KKR, was already four months old.[11] Despite this, the Constitutional Court in its ruling failed to mention the existence of the UUPA at all. The question then arises as to whether this constitutes an a contrario to the existence of the Aceh KKR within the UUPA, thereby preventing the Constitutional Court from viewing the Aceh KKR as an integral part of the national KKR.

A provocative view emerged from Jimly Asshiddiqie, who argued that the Aceh KKR was not related to the KKR Law (Law No. 27 of 2004), which had been annulled by the Constitutional Court. Rather, it was directly linked to the Basic Agrarian Law (UUPA). Furthermore, Jimly stated that the Aceh KKR was established based on an agreement between the Republic of Indonesia and the Free Aceh Movement (GAM) through the Helsinki MoU. A reconciliation mechanism is urgently needed as a middle ground to resolve a number of past gross human rights violations during the Aceh conflict.[12] If linked to historical reasoning as Jimly stated, the origins of the Aceh KKR are indeed the embryo of the Helsinki MoU, specifically point 2.3. The MoU, to be precise:

> "A Truth and Reconciliation Commission will be established in Aceh by the Indonesian Truth and Reconciliation Commission with the task of formulating and determining reconciliation efforts."

Based on the perspective of the original source, it appears that there is an integral relationship between the Aceh KKR and the national KKR, this relationship is precisely when point 2.3 of the MoU mentions the phrase "... established in Aceh by the Indonesian Truth and Reconciliation Commission ..." so that there is a binding relational pattern between these two institutions.

There are significant difficulties in addressing this debate, and this paper will not provide a definitive conclusion. However, there is a stark dilemma in this phenomenon: the regulation of Articles 229 and 230 of the UUPA

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[10] Khairil Akbar, "Politik Hukum Pembentukan Komisi Kebenaran dan Rekonsiliasi Aceh," *Jurnal Lex Renaissance* 2, no. 2 (2017): 204, https://doi.org/10.20885/JLR.vol2.iss2.art11.

[11] Herlambang P. Wiratraman et al., "TAKING POLICY SERIOUSLY: WHAT SHOULD INDONESIAN GOVERNMENT DO TO STRENGTHEN ACEH TRUTH AND RECONCILIATION COMMISSION?," *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 5, no. 1 (2020): 26, https://doi.org/10.22373/petita.v5i1.93.

[12] Zaki Ulya, *Op. Cit.*, 14-15.

ultimately creates a flexibility gap and ultimately becomes a choice arena for the Aceh Government. Constitutional Court Decision No. 006/PUU-IV/2006 is the main trigger for this issue, and as a self-reflective note to conclude this section, it is important to note that in that decision, the Constitutional Court should have played its judicial activism role to break down Articles 229 and 230 of the UUPA. Although this debate is over, it does not mean that it cannot be corrected. To conclude this first section, it would be good to convey that there is an opportunity to file a judicial review with the Constitutional Court regarding these two articles to resolve this dualistic friction.

Special Pattern of the Aceh KKR Institution Under the Special Autonomy Regime

The fundamental reason for the establishment of the Truth and Reconciliation Commission (TRC), including the Aceh TRC, is the human rights violations. This reasoning is the fundamental rationale behind the creation of Law No. 27 of 2004 concerning the Truth and Reconciliation Commission. Although the Aceh TRC started from the foundation of human rights violations, a chronological examination reveals a process that ultimately gave rise to a differentiated institutional model within the framework of special autonomy. This is inseparable from the political conflict between the Free Aceh Movement (GAM) and the Indonesian government at the time, which led to numerous human rights violations. This historical truth was then used to drive the establishment of the Aceh TRC.[13]

As mentioned in previous discussions, the agreement on the Helsinki MoU marked the first milestone in establishing a convincing understanding of responsibility with the Indonesian government to achieve human rights justice in Aceh following the past conflict. One of the goals of the MoU is to establish an independent law enforcement agency to ensure justice for victims of human rights violations in Aceh.[14] Although the spirit of establishing the Aceh KKR institution had actually begun quite a long time ago, due to the political dynamics of the post-conflict period, the process of establishing this institution was hampered and it was only realized in 2016.[15] This is the historical pattern that distinguishes the existence of the Aceh KKR, there is a commitment in a different corridor than the (national) KKR which underlies the formation of the Aceh KKR.

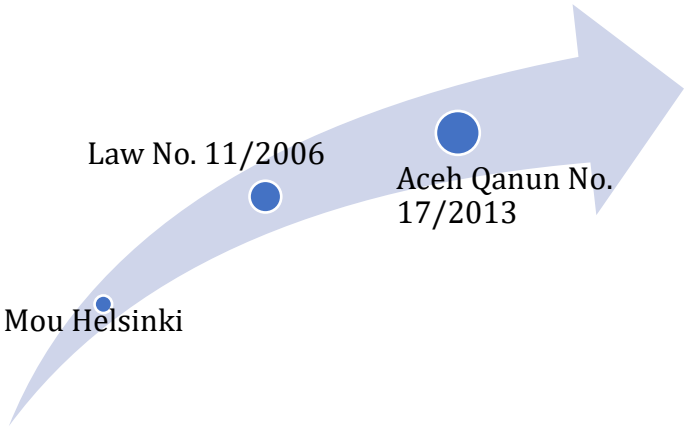
[13] Khairil Akbar, *Op. Cit.,* 200.

[14] Andri Rafi Prayogo and Dodik Setiawan Nur Heriyanto, "Mengukur Nafas Panjang Perdamaian: Analisis Normatif MoU Helsinki dalam Menjamin Hak Asasi dan Rekonsiliasi di Aceh," *Lex Renaissance* 10, no. 1 (2025): 134, https://doi.org/10.20885/JLR.vol10.iss1.art5.

[15] *Ibid.,* 135.

Although both institutions share the same goal of resolving human rights violations, their emergence occurred within different historical cycles. This historical pattern ultimately led to the enactment of Aceh Qanun No. 17 of 2013, which served as the core foundation for the establishment of the Aceh KKR in 2016. Tracing the historical trajectory, the birth of the Aceh KKR can be illustrated in the following overview:

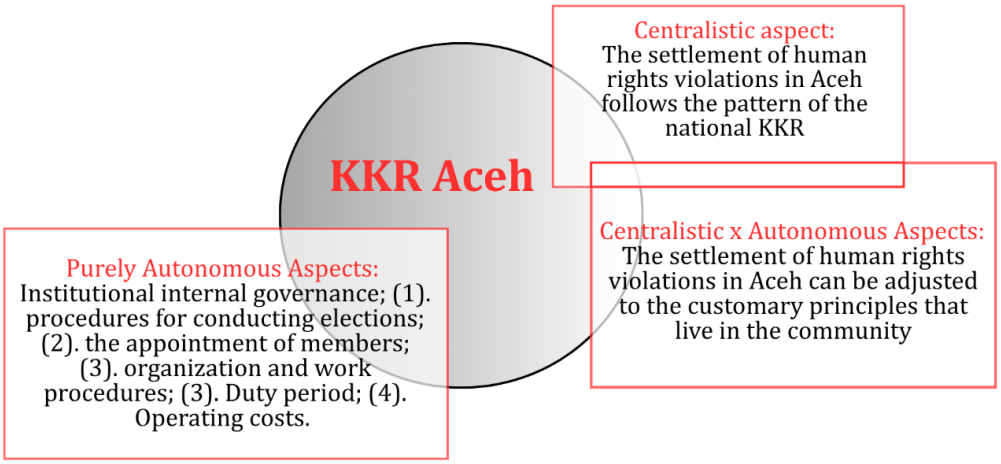
Chart 1. Historical Cycle of the Birth of the Aceh Government Law



The next pattern that distinguishes the Aceh KKR lies in the aspect of its institutional performance system. As mentioned in the discussion of dualism above, the Aceh KKR does not exist in a single zone even though it was established based on autonomous law. The UUPA has directed this institution to follow two different roles, and the UUPA has also divided when this institution will be autonomous and when it will be centralized. In terms of its institutional performance zone, *first*, the Aceh KKR, based on Article 229 paragraph (3), is directed to follow the procedural framework of the national KKR. This means that the truth-telling and reconciliation mechanisms implemented by the Aceh KKR must follow the guidelines or procedural legal patterns of the national KKR.

Second, the Aceh KKR is directed to become an autonomous institution regarding a number of specific matters. Article 230 of the Basic Agrarian Law stipulates that the institution's autonomous rights include the procedures for conducting elections, appointing members, organization and work procedures, term of office, and costs for organizing the Aceh KKR. Despite its autonomy, Article 230 still includes a key phrase at the end of its normative text, which states that all these autonomous rights must comply with statutory regulations. Upon closer examination, it can be understood that this autonomy is directed toward aspects of the internal institutional structure, while the working methods for uncovering truth and reconciliation for human rights violations must align with the national KKR model.

Responding again to this autonomous right, the UUPA actually also opens up a little flexibility in the right of autonomy within the main work area of the Aceh KKR, namely in the process of resolving human rights violations in Aceh. Referring to Article 229 paragraph (4) of the UUPA, this flexibility is the inclusion of customary principles that exist within the community to resolve human rights violations in Aceh. This article precisely suggests that the Aceh KKR can consider a number of customary principles that exist within the community to be adopted in resolving human rights violations in Aceh. Before concluding the discussion on this special pattern, it would be good for this section to present an overview of the flow of flexibility of the Aceh KKR in the relationship between autonomous rights and its centralistic connections, as follows:



Source: created by Authors

Figure 1. Flexibility of KKR Aceh in Centralistic and Autonomous Relations

As far as this point and referring back to the two substances in the two sub-discussions that have been going on, it is important to declare an initial understanding of this article that it cannot be denied that in its principal substance the existence of the Aceh KKR is on two axes, first, which pulls it towards centralism and another axis which gives it autonomous standing.

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Idealization of the Aceh KKR Institution in the Meaning of Asymmetric Decentralization and Doelmatigheid Post-MK Decision No. 006/PUU-IV/2006

The previous two sub-topics are still within a moderate conclusion, aiming to state tendentiously whether, given the ambiguity stemming from Constitutional Court Decision No. 006/PUU-IV/2006, the Aceh KKR should be within the framework of asymmetric decentralization. Using the perspectives of asymmetric decentralization and doelmatigheid, this final discussion will provide a unified conclusion to this ambiguity. An explanation from Jimly regarding the distribution of power in federal and unitary states can serve as an opening to this discussion. Residual power in the federal model is the power held by regions or states, in contrast to the unitary state model, which places residual power in the central government. Therefore, in the concept of a unitary state, the power granted to the regions is not original power, but rather legalized power, commonly referred to as authority.[16]

Starting from this philosophical perspective, it is not surprising then why Article 18 paragraph (2) of the 1945 Constitution of the Republic of Indonesia emphasizes that regional government authority is referred to as government affairs and is carried out based on the principles of autonomy and assistance tasks. The exact wording of this article states:

> "Provincial, district and city regional governments regulate and manage their own government affairs according to the principles of autonomy and assistance tasks."

This is the basis of legitimacy that justifies the right of regions to operate autonomously in managing their own affairs. This principle of autonomy ultimately grants regions considerable freedom to carry out self-government, but this autonomy does not mean that these regions are so free that they can negate their integration with the central government.

Autonomy, fundamentally, refers to such freedom. Lexically, this term is derived from the Greek words "autos" meaning self, and "nomes" meaning rules. Therefore, autonomy is defined as one's own rules or one's own legislation.[17] In the Encyclopedia of Social Affairs, this terminology is translated as "the legal self-sufficiency of a social body and its actual independence." This raises two characteristics of autonomy: legal self-sufficiency and actual independence. In relation to government/politics, the term "regional autonomy" is interpreted as self-government or the condition of living by one's own laws. At this point, the term "regional autonomy" implies self-sufficiency, a form of self-government, in regions whose governance and administration are improvised through their own regulations.[18]

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[16] Jimly Asshiddiqie, *Konstitusi & Konstitusionalisme Indonesia*, Edisi-2 (Sinar Grafika, 2010): 228-229.

[17] Sarjiyati, *Politik Hukum Model Otonomi Daerah Dan Kesejahteraan* (Depublish, 2019): 69.

[18] *Ibid.,* 69-70.

Likewise, in Dutch literature, it is defined as self-government (zelfregerring). Van Vallenhoven defined this expansion as the authority to independently create, implement, adjudicate, and prosecute laws. However, all of this freedom remains within limits, not exceeding the authority of the central government within what has been distributed to the regions.[19] The recognition of the existence of regional autonomy is determined more complexly later through Article 18 paragraph (5) and paragraph (6) of the 1945 Constitution of the Republic of Indonesia. First, in paragraph (5) it is recognized that there is the broadest possible autonomy for regions, unless otherwise determined by law. Second, in paragraph (6) it is recognized that self-regulatory access to carry out autonomy and assistance tasks from the central government. A very important recognition of Article 18B paragraph (5) is the existence of the broadest possible autonomy for regions, this seems to indicate that the distribution of power (authority) between the center and regions begins from the bottom up as in federal countries and not with a top down distribution as is the paradigm of the distribution of power in a unitary state.

Gray F. Bell has expressed a similar view on this issue, stating that this form of Indonesian autonomy differs significantly from other models. Regions are empowered to create their own regulations, and local governments are granted the broadest residual authority through the constitution. Meanwhile, the central government is only exempted by law. Jimly also responded to this autonomy model, stating that the unitary state of Indonesia has shifted from a rigid format to a more dynamic one. This is based on the possibility of a federalistic relationship between the central government and the regions, as well as the possibility of implementing the principle of pluralistic autonomy, where each region may have varying degrees of autonomy.[20] Jimly also responded to this autonomy model, stating that the unitary state of Indonesia has shifted from a rigid format to a more dynamic one. This is based on the possibility of a federalistic relationship between the central government and the regions, as well as the possibility of implementing the principle of pluralistic autonomy, where each region may have varying degrees of autonomy. [21] The important fact of the description of the principle of autonomy at least provides one important clarity, that autonomy in this constitution has been regulated in a truly extensive manner, the existence of regional freedom has been given in a more dominant and pluralistic manner.

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[19] *Ibiid.*

[20] Gray F. Bell, "Decentralisation In Indonesia-Theory and Practice, *Jurnal Hukum Bisnis* 23, no. 1 (2004): 7," in *Putusan Mahkamah Konstitusi Nomor 137/PUU-XIII/2015 Dalam Perkara Permohonan Pengujian Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah Terhadap UUD 1945*: 115.

[21] Jimly Asshiddiqie, *Op. Cit.,* 275.

This demonstrates how Indonesia has readapted its own genus as a unitary state. The administration of government within the framework of this unitary state is not truly carried out with the doctrine of the rigidity of the unitary state itself; adjustments are made by repositioning the configuration to achieve a point of equilibrium in the administration of government. Therefore, it is not surprising why a number of re-conceptualizations of government models have occurred, even with the emergence of asymmetric decentralization in Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia in addition to the recognition of the broadest possible autonomy that already exists. The wording of Article 18B paragraph (1) mentions the recognition and respect for regional governments with special or unique characteristics. This is the constitutional foundation that guarantees the establishment of Aceh's special autonomy, which frames the existence of the Aceh KKR within it.

As mentioned in the previous introduction, the asymmetric decentralization designed in Aceh was once bound by three legal umbrellas, and until now only remains under Law No. 44 of 1999 and Law No. 11 of 2006 (UUPA). An interesting portrait of Aceh's asymmetric decentralization is when Article 18B paragraph (1) of the Constitution states that "regional government is special or has a special character," but UUPA actually combines the two, even though according to the constitution it should be an alternative choice from one of them. That is why it is very reasonable when Winarsi and Prihatiningtyas call Aceh a special autonomous region and a special region.[22]

Likewise, Prang gave a similar recognition, although the nomenclature of the UUPA title does not mention “specialty” or “specialness” like Law No. 44 of 1999 and Law No. 18 of 2001, but the substance of the UUPA regulates the specialness and specialness of Aceh by using the nomenclature “specialty and specialness of Aceh”, not “specialty or specialness of Aceh”. This is what makes Aceh’s asymmetric decentralization so different, namely as a special and special region, even when the Constitution says that asymmetric decentralization is only possible in a special or special (alternative) form.[23] In fact, more than ten years ago, the Constitutional Court resolved this friction by declaring that Aceh only has special status. This was the consideration in Constitutional Court Decisions No. 5/PUU-V/2007 and No. 35/PUU-VIII/2010.[24]

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[22] Sri Winarsih and Wilda Prihatiningtyas, *Buku Ajar Pemerintahan Daerah* (Airlangga University Press, 2019): 34.

[23] Amrizal J. Prang, *Op. Cit.,* 284.

[24] Suci Asrina et al., “POLITIK HUKUM PENUNDAAN PEMILIHAN KEPALA DAERAH DI ACEH TAHUN 2022 MENJADI 2024,” *Suloh:Jurnal Fakultas Hukum Universitas Malikussaleh* 12, no. 1 (2024): 45, https://doi.org/10.29103/sjp.v12i1.14999.

If we follow the consideration pattern of the Constitutional Court's decision, then the special nature of Aceh's asymmetric decentralization is only limited to the special nature contained in Article 3 paragraph (2) of Law No. 44 of 1999, namely the implementation of religious life, customs, education, and the role of clerics in determining regional policies. But in reality, the recognition that has been obtained in the implementation of government is actually the privilege that Aceh has on the basis of special autonomy far from the four elements as mentioned in the UUPA, including one of them, the existence of the Aceh KKR institution whose legal umbrella for its formation is through the UUPA itself. In fact, it would be less than ideal if we wanted to view asymmetric decentralization only as being within the alternative framework of Article 18B paragraph (1) of the UUD.

Saldi Isra (a representative of the Constitutional Court) once introduced an alternative idea in addressing emerging constitutional issues, stating that amendments are not the answer to every constitutional gap. He argued that these constitutional gaps can be resolved by developing constitutional conventions to fill legal gaps or interpreting constitutional norms. Therefore, amendments are not always the solution to constitutional problems.[25] This article views what Saldi Isra said as important to be responded to positively, seeing the good practices that have occurred in the UUPA with Aceh's status as a special and exclusive region, it will be beneficial to build a constitutional convention to transform the meaning of Article 18B paragraph (1) in an integral manner.

The phrase "regional government is special or special" can be interpreted not as an alternative offer, but as a simultaneous application. That is, a region (asymmetric decentralization) can have both special and special status. After all, isn't the intended goal of implementing asymmetric decentralization aimed at transforming the region, given its distinct local conditions? Aceh, for example, amidst a tense conflict, was ultimately granted significant special rights (special autonomy) with the primary goal of transforming regional stability, and then granting access to establish local political parties.

Doesn't this have a positive impact on the lives of local communities? So what's there to seriously question when the simultaneous recognition of these privileges and special characteristics actually offers even greater positive impacts? This is especially true when considering this within the autonomy paradigm established within the framework of the Indonesian state, as discussed at the beginning of this section, namely granting the broadest

[25] Mimi Kartika, "Celah Konstitusi Tidak Selalu Harus Diselesaikan Dengan Amendemen," Mkri.Id, Mahkamah Konstitusi Republik Indonesia, accessed June 21, 2026, https://www.mkri.id/berita/celah-konstitusi-tidak-selalu-harus-diselesaikan-dengan-amendemen-23648.

possible autonomy. The autonomy model in the Indonesian constitution has demonstrated flexibility in how regions have the opportunity to exercise such exclusive independence, and because of this, it doesn't preclude the possibility of affirming the existence of the Aceh KKR within this asymmetrical decentralization framework.

The construction of such an adjustment paradigm can be seen as meaningful in the effort to build and develop constitutional theory as expressed by Paul W. Khan. Khan's view, as cited by Ghani, states that "constitutional theory" needs to be built and developed as a solution, if in the future a conflict arises between regional and central governments, due to differences in interpretation regarding the implementation of self-government. This idea is in line with what was conveyed by Saldi Isra previously, namely to revive the constitutional convention as constitutional legitimacy when encountering normative problems in the constitution, and this paradigm is not a bad thing to use in responding to the friction of the asymmetric decentralization model which is "special or specific" in Article 18B paragraph (1) of the Constitution as previously mentioned.

Starting from the desire to build and develop constitutional theory, it is useful to revisit the concept of asymmetric decentralization. This concept originally developed from asymmetric federation, proposed by Charles Tarlton in 1965.[26] In Tarlton's view, asymmetric decentralization is characterized by the level of conformity and commonality in the relations of each separate political unit of the system to both the system as a whole and to the other component units.[27] In Tarlton's view, asymmetric decentralization is characterized by the level of conformity and commonality in the relations of each separate political unit of the system to both the system as a whole and to the other component units.[28]

Tarlton's objective reality can be divided into two groups: the first refers to political considerations. The second concerns efficiency or managerial considerations, aimed at strengthening the capacity of local governments to manage the economy and government administration effectively. These two realities are driven differently: political asymmetry is a bottom-up process that originates from local demands, while administrative asymmetry is initiated from the center (top-down).[29] This political asymmetry model leads to the granting of political autonomy that deviates from typical norms or tasks. Generally, this model emerges as a result of tensions occurring in certain

[26] Sri Nur Hari Susanto, "Desentralisasi Asimetris dalam Konteks Negara Kesatuan," *Administrative Law and Governance Journal* 2, no. 4 (2019): 645, https://doi.org/10.14710/alj.v2i4.631-639.

[27] Amrizal J. Prang, *Op. Cit.,* 44.

[28] *Ibid.,* 46.

[29] *Ibid.*

regions.[30] For this reason, it is not surprising that political asymmetries display more radical forms, and this can be found for example in the framework of Aceh's asymmetric decentralization which displays its own most extreme model, even in a way that directly cuts against the constitution.

The Aceh KKR, with its unique pattern (as discussed in the second sub-topic), must be seen as a form of asymmetric decentralization. The historical pattern of its birth and its institutional performance are sufficient to demonstrate how this institution was built from the bottom up within a politically asymmetric framework that encompasses local kamaun or demands for a differentiation in the administration of regional and central government. Therefore, by returning to the essence of asymmetric decentralization itself, this article then agrees unanimously that the Aceh KKR should be interpreted within the breath of asymmetric decentralization rather than including it in a centralistic meaning following the Constitutional Court's ruling on Law No. 27 of 2004. In line with the idea of developing constitutional theory, recognizing the Aceh KKR within the framework of asymmetric decentralization is not an exaggeration.

The concept of asymmetric decentralization, not without foundation, has presented a meaning regarding the asymmetric relationship between the central government and regional governments. This meaning is also recognized in several other related concepts, such as asymmetric devolution, fiscal decentralization, and federalism. These federalist concepts are not actually taboo for adoption in a unitary state, provided they do not go so far as to transform it into a federal state.[31] This development or trend of asymmetric decentralization has actually undergone a very dynamic transformation. Countries designated as federal states, such as Malaysia, have actually presented themselves as anomalous, as the most centralized states. Conversely, countries designated as unitary states have not always maintained their centralized nature, but have instead presented themselves as highly federalistic through this decentralization, such as China.[32]

Furthermore, placing the Aceh KKR within the framework of asymmetric decentralization actually has consequences for the doelmatigheid (religious reform). Similar to Tarlton's earlier statement, if asymmetric decentralization provides an effective solution, then it is indeed worth considering. This is the crucial point when presenting this discussion within the doelmatigheid

[30] Dorothée Allain-Dupré et al., *Asymmetric Decentralisation: Trends, Challenges and Policy Implications*, OECD Regional Development Papers no. 10, vol. 10, OECD Regional Development Papers (2020): 13, https://doi.org/10.1787/0898887a-en.

[31] Mujibur Rahman Khairul Muluk, "Systematic Literature Review On Asymmetric Decentralization," *BISNIS & BIROKRASI: Jurnal Ilmu Administrasi Dan Organisasi* 28, no. 2 (2021): 101, https://doi.org/10.20476/jbb.v28i2.1036.

[32] Sri Nur Hari Susanto, *Op. Cit.,* 646.

framework, namely, the extent to which the related objectives can be achieved by maintaining the Aceh KKR's existence under the asymmetric decentralization regime. Maintaining the Aceh KKR means providing an opportunity to realize the hope of resolving past human rights violations in Aceh, and this is one of several doelmatigheid goals to be achieved in governance. The existence of the Aceh KKR, as Melvin et al. argue, can be seen as a transitional justice mechanism.[33]

In 2020, the Aceh KKR demonstrated the realization of transitional justice, namely for 245 victims who submitted reparations to and finally through the Decree of the Governor of Aceh Number 330/1629/2020, it was successfully realized.[34] This kind of reparation was the goal (doelmatigheid) of the Aceh KKR, and an interesting portrait of the governor's decision, which should be maintained. However, the governor's decision demonstrated a form of discretion that was precisely targeted. Discretionary is said to have been born amidst the uncertainty of the Aceh KKR's position following the issuance of the Constitutional Court ruling. However, the Aceh government took the appropriate extreme step by bypassing it through Aceh Qanun No. 17 of 2013. Through this (unstable) legal framework, the concrete improvisation of reparations was created through the decree.

This is the accelerative legal policy that was created and interestingly, this extreme step was able to achieve the doelmatigheid of the Aceh KKR. The target of the Aceh KKR's goal can be seen from its foundation stone, namely Article 229 paragraph (1) which implicitly confirms that the formation of the Aceh KKR was intended as an effort to seek truth and reconciliation. This direction can be further found in Aceh Qanun No. 17 of 2013, based on this Qanun, Article 1 paragraph (16) states:

> "The Aceh Truth and Reconciliation Commission, hereinafter referred to as the Aceh KKR, is an independent institution established to reveal the truth, patterns and motives of human rights violations during the armed conflict in Aceh, recommend follow-up actions, recommend reparations and implement reconciliation."

Referring to Article 3 of the Aceh Qanun, with more specific and complex terms regarding the objectives of the Aceh KKR, it has been designed to be different from the national KKR as will be shown after the paragraph below.

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[33] Jess Melvin et al., "The KKR Aceh and Transitional Justice in Aceh," in *Resisting Indonesia's Culture of Impunity* (ANU Press, 2023): 61.

[34] Andrey Sujatmoko and Wildani Angkasari, "The Aceh Truth and Reconciliation Commission Roles in Victims Reparations," *Proceedings of the 3rd Borobudur International Symposium on Humanities and Social Science 2021 (BIS-HSS 2021)* (Paris), Advances in Social Science, Education and Humanities Research, vol. 667 (2023): 714, https://doi.org/10.2991/978-2-494069-49-7_118.

At this point, when compared to the (national) KKR under Law No. 27 of 2004, the Aceh KKR presents a significant, fundamental difference. This can be described as a continuity of the special model adopted by the Aceh KKR. This fundamental difference can be summarized in the following summary, which serves as a conclusion to this discussion:

Table. 1. Differences in the Principles of KKR and KKR Aceh

Principles of Implementation	
National KKR	**KKR Aceh**
(1). Independence; (2). Free and impartial; (3). Benefits; (4). Justice; (5). Honesty; (6). Openness; (7). Peace; (8). Unity of the nation.	(1). Islam; (2). Aceh-an; (3). Independence; (4). Impartial; (5). Non-discrimination; (6). Democratization; (7). Justice and equality; (8). Legal certainty.
Objectives of the National KKR Agency and the Aceh KKR Agency	
KKR Nasional	**KKR Aceh**
(1) to resolve past gross human rights violations through extrajudicial means, in order to achieve peace and national unity; (2) to achieve reconciliation and national unity in a spirit of mutual understanding.	(1) strengthen peace by revealing the truth about past human rights violations; (2) facilitate reconciliation between perpetrators of human rights violations—both individuals and institutions—and the victims; (3) recommend comprehensive reparations for victims of human rights violations, in accordance with universal standards regarding victims' rights.

Source: by Authors

This presentation demonstrates how the Aceh KKR differs in principle from the national KKR, particularly in its principles. Because of this distinct pattern, the Aceh KKR should be interpreted as an entity that is not necessarily integrated within the national KKR institution. This difference, in turn, reinforces the Aceh KKR's position within the framework of asymmetric decentralization.

Because of this differential aspect, maintaining the Aceh KKR is the right answer to achieve the goal of resolving human rights violations in Aceh, which has been ordained through this institution itself. Because when built on different principled foundations, this also mandates a different working method in its implementation. The logical truth of this can be seen in its

causal relationship through Article 229 paragraph (4) of the UUPA, which provides access for the Aceh KKR to use customary principles that exist within the community in resolving human rights violation cases in Aceh.

Conclusions

Constitutional Court Decision No. 006/PUU-IV/2006 has created a dualism in the governance of Aceh regarding the legitimacy of the Aceh Truth and Reconciliation Commission (KKR Aceh). In response to this dualism, this article argues that the asymmetric decentralization inherent in Aceh provides a strong rationale for maintaining the existence of the KKR Aceh as an autonomous institution under the framework of asymmetric decentralization. In addition to considerations of doelmatigheid (the benefits achieved by this institution), which highlight the continued utility of the Aceh KKR, the fact that the Aceh KKR operates under a model of asymmetric decentralization—which differs significantly from the national KKR as regulated by Law No. 27 of 2004—is a crucial reason for its continued existence. However, the establishment of the Aceh KKR was based on a context that is not entirely the same as that of the national KKR, and the foundational pillars of the Aceh KKR are not entirely the same as those of the national KKR. This provides a solid rationale for maintaining the Aceh KKR as an institution that is not identical to the national KKR; rather, the two are connected only through an operational relationship, not a foundational one.

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