

§ 2 Regional "local government" or "statehood"? The fundamental decision for a unitarian or federalist system

I. The model of the unitary state: one level of statehood with ultimate control and responsibility

1) Characteristic features

- vertical concentration of powers and responsibilities at the national level
- competences, structure and functioning, finances, supervision and even existence of regional collectivities regulated by statutory law that can be altered at any time
- some constitutions prescribe existence or autonomy of regional collectivities (see for Indonesia art. 18 et seq., Const. 1945) but this can be changed by constitutional amendment

2) Advantages and disadvantages

- more simple and transparent structure (much easier to learn!)
- legal unity (equal legal conditions throughout the country)
- easier to achieve economic unity and equivalent living conditions throughout the country
- possibly more efficiency (easier to implement new policies throughout the country)
- higher risk of dictatorship (no vertical separation of powers)
- difficulties to find policies suitable for the whole country
- higher risk of regional tensions and separatism (due to policies insufficiently taking into account regional economic, social and cultural particularities)

II. The model of the federal state: two independent levels of statehood within one sovereign state

1) Historical, theoretical and legal foundations

- a new model of state, invented in the USA and first introduced in 1788 with the conversion of the USA from a confederation to a federal state
- a model suitable in particular for unification states (founded by several previously sovereign states), but also for states which would otherwise fall apart (e.g. Belgium)
- theory of federalism established by JAMES MADISON, ALEXANDER HAMILTON, JOHN JAY in "The Federalist Papers", 1787/88; further developed in particular in the USA, Germany, Switzerland
- basic idea of federalism: *unity in diversity*
 - this slogan, though also characteristic for the unitary Republic of Indonesia, is the *classical slogan of federalism!*
- two concepts of statehood in the General Theory of State: *state in the sense of public international law* (sovereign state) *and of state law* (non-sovereign state within a state)

2) Delimitation from confederation and unitary state

- in the federal state, the federation is a sovereign state (in the sense of public intern. law) while the federated states are only states in the sense of state law
- in the confederation, the confederation itself is an organisation based on public intern. law while the confederated states are sovereign states
- in the unitary state the regions/provinces do not enjoy the status of a state

3) Characteristic features

- sovereignty of the federation
- special status of the *federated states as states in the sense of state law*
 - ordinary public power directly derived from the national constitution
 - existence, autonomy, competences and basic finances guaranteed and regulated in the national constitution
 - constitutional autonomy and autonomous self-organisation (each federated state has its own constitution and state law, its own government, parliament and courts)
- federal structure cannot be abolished by constitutional amendment
- different models of - usually complicated - distribution of competences
 - in Germany, the federated states also execute the federal admin. law
 - usually, each federated state has its own local government law
- cooperation between the two levels regulated in the national constitution

4) Advantages and disadvantages

- unity in diversity (the main reason for federalism)
 - in particular lower risk of regional tensions and separatism
 - often the only way to keep populations with different values and mentalities in one state
- vertical separation of powers complementing the classical horizontal separation of powers
 - the governments of the federated states as counterweight to the national president or government (with own administrative and police forces)
 - therefore lower risk of dictatorship
- strengthening of democracy
 - more hubs of democracy
 - better political culture, since the same parties will be partly in government, partly in opposition, partly cooperate and partly oppose each other
- more complex structure (much more difficult to learn!)
- complicated vertical relations and intransparent responsibilities
- more complicated legal system with restricted legal unity
- high risk of losing economic unity and equivalent living conditions in the country

III. Crossover phenomena: unitarian federal states and highly autonomous regions in unitarian states

- some federal states with little competences and political influence of the federated states (e.g. Austria)
- tendencies of unitarisation of federal states in the wake of development, geo-regionalisation and globalisation (e.g. decline of influence of the German Länder)
- unitary states adopting the concept of unity and diversity and implementing it by constitutional guarantees of regional and local autonomy
 - the example of art. 18 et seq. Indonesian Constit. 1945
 - an extreme example: the autonomy of the Comunidades Autónomas in Spain
- note that nowadays some autonomous regions in unitary states actually enjoy more independence than some federated states in federal states