

Analysis of the Granting of Special Autonomy for Papua in the Principles of the Unitary State of the Republic of Indonesia

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Abstract. *The laws enforced by the central government through the Law must be harmonized with the laws of the growing and diverse communities in the Papua region in order to optimize the special autonomy policy for Papua, the main aim of which is to achieve justice, prosperity, welfare and represent the Papua region as part of the Unitary State of the Republic of Indonesia in accordance with the mandate of the State constitution. The objectives of this research are (1) the unrest that has emerged in Papua as a result of the urgency of issuing the Papuan Special Autonomy Law, (2) the influence of the legal legitimacy of Papuan Special Autonomy on the regional and national situation in Papua, (3) the concept of ideal law in accordance with the constitutional mandate regarding the legal problems of Papuan Special Autonomy with implications for the principles of the unitary state of the Republic of Indonesia. The approach used in this research is normative juridical. The research specifications are descriptive and analytical. The data sources used are secondary data. Secondary data is data obtained from library research, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The research results and discussion can be concluded as follows: (1) The process of integrating the Papua region into the Unitary State of the Republic of Indonesia is seen by the leaders and supporters of Free Papua as still problematic. As a result, since 1964, movements demanding independence have emerged both politically and through armed resistance, such as the formation of the TPNPB (West Papua National Liberation Army). (2) Papua has a special institution, namely the Papuan People's Assembly, which has been regulated in the Special Autonomy Law for Papua Province. The*

Papuan People's Assembly or MRP is a cultural representative institution for the Papuan people that has certain authorities in the context of protecting the rights of indigenous Papuans, based on respect for customs and culture, empowering women, and strengthening religious harmony. (3) Monitoring the status of Papua's Special Autonomy for a period of time that strengthens them in affirming themselves as an integral part of the Unitary State of the Republic of Indonesia. Papua's special autonomy is a true manifestation of the principles of democracy, namely the wishes and aspirations of the people.

Keywords: *Constitutional; Special Autonomy of Papua; Unitary State.*

1. Introduction

The form of the state is a form of identity of a state, so that the form of the state needs to be clearly stated in the state constitution. Through the Indonesian constitution, namely the 1945 Constitution of the Republic of Indonesia or abbreviated as UUD NRI 1945, it is emphasized that Indonesia is a state of law, this is clearly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.¹ Every human being has a desire to live in an orderly, harmonious and in tune with society and longs for a society that complies with applicable laws.

Through the constitution of the 1945 Constitution of the Republic of Indonesia, Indonesia is definitively a unitary state as stated in Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, "The State of Indonesia is a unitary state in the form of a Republic." Placing it at the beginning is an affirmation of the form of the Indonesian state. There is even an element that maintains the form of the state, namely Article 37 paragraph (5) "specifically regarding the form of the Unitary State of the Republic of Indonesia, no changes can be made."

Considering the vast territory of the Unitary State of the Republic of Indonesia with thousands of islands, diverse tribes, races and cultures, it is certain that it is impossible for everything to be regulated centrally by the central government. Therefore, the founding fathers of the Republic of Indonesia agreed to establish a Unitary State Form with the division of Indonesian regions divided into large and small regions, with the form of government structure determined by law, while still considering and remembering the basis of deliberation in the state government system, and the original rights in special regions.

The Unitary State of the Republic of Indonesia (NKRI) is divided into provincial regions, which are further divided into districts and cities. Each city and district has its own regional government structure, which is regulated and stipulated in the Provincial Government Law.² The legal consequence of a unitary state is decentralization. The division of regions in Indonesia is based on the principles of decentralization, deconcentration, and assignment of duties.³ The foundations of the people are developed to create a democratic order that is in accordance with shared ideals, as well as a means of realization for each region to develop itself and advance its region based on cultural and geographical characteristics.

2. Research Methods

The approach used in this research is normative juridical or written legal approach (legislation)/*statute approach*).⁴ The normative legal approach is an approach that

¹Anirut Chuasanga and Ong Argo Victoria, Legal Principles Under Criminal Law in Indonesia and Thailand. Jurnal Daulat Hukum, Volume 2 Issue 1, March 2019, p. 131

is carried out based on the main legal material by examining the theory.-theory,draft-concept, principle-legal principles and applicable laws and regulationsrelation to this research.

This approach is also known as the library approach, namely by studying books.-books, laws and regulations and other documents related to this research.⁵

3. Results and Discussion

3.1. The Unrest that Emerged in Papua as a Urgency for the Issuance of the Papua Special Autonomy Law

Indonesia is a country that has diversity in terms of ethnicity, numbering more than 1,128 (one thousand one hundred and twenty eight) ethnic groups and more than 700 regional languages.⁶ This diversity makes Indonesia a nation rich in cultural diversity. This situation means that each region in Indonesia has unique needs to develop its potential. Given these conditions, the nation's founders decided to establish Indonesia as a unitary state.

The choice of a state form, or the choice of state structure in general, is not simply a matter of technical or practical considerations. It is also determined by political considerations, experience, historical considerations, socio-cultural realities, and so forth. With these various political considerations and socio-cultural foundations in mind, it is not difficult to form the Indonesian nation within the framework of a unitary state.⁷ Therefore, Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) confirms Indonesia's existence as a unitary state.

Literally, the Unitary State of the Republic of Indonesia has the following meaning:

²Ma'adul Yaqien Makkarateng. A Legal Study of the Implementation of Special Autonomy in Papua Province. *Ar-Risalah Journal*, Volume 2 Number 1, 2022, p. 1

³ A. Heru Nuswanto, *Regional Autonomy in the Perspective of Authority and Functional Relations between Provinces and Cities*, First Edition, Semarang University Press, Semarang, 2008, p. 17.

⁴Johny Ibrahim, *Theory and Methodology of Normative Legal Research*, Bayumedia, Malang, 2006, p. 295

⁵Soerjono Soekanto, *Normative Legal Research*, Raja Grafindo Persada, Jakarta, 2004, p. 10

⁶MPR Leadership and the MPR Socialization Working Team for the 2009-2014 Period, *Four Pillars of Nation and State*, Jakarta: Secretariat General of the MPR RI. 2012, p. 185

⁷Bagir Manan. *The Relationship Between the Central Government and the Regions According to the 1945 Constitution*, Jakarta: Pustaka Sinar Harapan. 1994, p. 22

- a. The integrity of the territory that includes all the islands with all the land, water and air that stretches from Sabang to Merauke.
- b. The integrity of cultural treasures which include customs, creative works and the results of thought.
- c. The Indonesian nation and ethnic groups throughout the territory of the Republic of Indonesia.
- d. The integrity of natural resources (SDA) includes all natural wealth in the form of mining goods, flora and fauna.
- e. The integrity of the population or Human Resources (HR) which includes people, status, safety and welfare.⁸

In general, the Unitary State of the Republic of Indonesia aims to provide for the welfare and happiness of its people. Because the purpose of the state is a guideline in compiling and controlling state equipment and regulating the lives of its people. As stated in the preamble to the 1945 Constitution, paragraph which reads: "Then therefrom to form an Indonesian state government that protects all the Indonesian people and all of Indonesia's homeland and to advance general welfare, educate the nation's life, and participate in implementing world order based on freedom, eternal peace and social justice, then the independence of the Indonesian nation is formulated in a Constitution of the State of Indonesia, which is formed in a structure of the Republic of Indonesia with people's sovereignty based on: Belief in the One Almighty God, just and civilized humanity, the unity of Indonesia, and democracy guided by the wisdom of deliberation/representation, and by realizing social justice for all Indonesian people."⁹

Indonesia is a large nation located at a strategic crossroads between the Asian and Australian continents and the Pacific and Indian Oceans. This critical geographic location, while offering significant potential for the economy and national development, also presents its own set of threats and challenges. Furthermore, other critical aspects of Indonesia's nation include its demographics and natural resources.

These three aspects—geography, demography, and natural resources—are collectively crucial and must be managed effectively. These three aspects, known as the Trigatra, represent the potential and capital for the Indonesian nation in implementing national development. Lack of attention to these potential

⁸GTK DIKDAS Team. Independent Learning Module: Prospective Teachers: ASN and PPPK (Pancasila and Citizenship Education Study Field. Directorate General of Teachers and Education Personnel, Ministry of Education and Culture, 2021, p. 141

⁹Ibid

and capital can lead to potential losses and even endanger the Indonesian nation as a whole.

Indonesia is fundamentally a unique country. The birth of the Indonesian nation is not limited to those who are biologically descended from and have lived on this land for generations. The Indonesian nation is comprised of all people, both indigenous and non-indigenous, who recognize Indonesia as their homeland. The birth of the Indonesian nation was marked by the Youth Pledge on October 28, 1928.¹⁰

The uniqueness and superiority of the Indonesian nation certainly require extraordinary unity. The spirit of unity and integrity of the Indonesian nation is often threatened from within the country. In the past, separatist movements emerged in several parts of the country. These movements included the Indonesian Communist Party (PKI) rebellion in Madiun, the 30 September Movement (G30S/PKI), the Darul Islam (DI)/Indonesian Islamic Army (TII) rebellion in West Java, the Free Aceh Movement (GAM), the Republic of South Maluku (RMS), and the Free Papua Movement (OPM).¹¹

No society can avoid conflict, at least what's called unreal conflict. Unlike realistic conflict, which is a tangible, tangible fact, unreal conflict is a misunderstanding of other groups within human thought. However, if a trigger is present, the conflict becomes realistic. Within religious communities, there are constructs that can lead to violence.¹²

In terms of interpretation, Stoner and Freeman divide views on conflict into two parts, namely the traditional view (Old View) and the modern view (Current View):

- a. The traditional view holds that conflict is avoidable because it can disrupt an organization or prevent optimal goal achievement. Therefore, to achieve optimal goals, conflict must be eliminated. Conflict is usually caused by managerial errors in designing and leading an organization. Because of these errors, managers, as members of management, are tasked with minimizing conflict.
- b. According to the modern view, conflict is unavoidable. This is due to many factors, including organizational structure, differing goals, perceptions, values,

¹⁰ Anis Matta, *Indonesia's Third Wave: A Roadmap to the Future*, Jakarta: The Future Institute, 2014, p. 32

¹¹ Azis Winarto, *Suppressing the Escalation of the Papuan Conflict to Strengthen National Unity and Solidarity*. National Resilience Institute of the Republic of Indonesia, Individual Scientific Paper (Taskap), 2022, pp. 1-2

¹² Samsul Arifin, *Contemporary Islamic Studies, Radicalism and Multiculturalism in Indonesia*, Malang: Intrans Publishing, 2015, p. 1

and so on. Conflict can reduce organizational performance at various levels. When conflict occurs, managers, as members of management, are tasked with managing it to create optimal performance to achieve shared goals.¹³

According to Myers, conflict is understood from two perspectives, namely traditional and contemporary:

- a. In the traditional view, conflict is seen as something bad and should be avoided. This view strongly discourages conflict because it is seen as a factor causing the breakup of a group or organization. In fact, conflict is often associated with anger, aggression, and conflict, both physical and verbal. Once conflict occurs, it inevitably evokes emotional reactions from everyone in the group or organization, leading to even greater conflict. Therefore, according to the traditional view, conflict should be avoided.
- b. Contemporary views on conflict are based on the assumption that conflict is something that cannot be avoided as a logical consequence of human interaction, however, the problem is not how to reduce conflict, but how to handle it appropriately so as not to damage interpersonal relationships or even damage organizational goals. Conflict is considered a normal thing in an organization, conflict is not made as something destructive but rather becomes something constructive to build an organization, for example how to improve organizational performance.¹⁴

3.2. The Influence of the Legal Legitimacy of Papua's Special Autonomy on the Regional and National Situation in Papua

In terms of the form of the state, although Indonesia has chosen a unitary state, it has established mechanisms that allow for the growth and development of diversity across regions. The natural and cultural riches of each region must not be homogenized within the structure of the Unitary State of the Republic of Indonesia (NKRI). In other words, the NKRI is structured with the guarantee of the broadest possible autonomy for regions to develop according to their respective potential and resources, with encouragement, support, and assistance from the central government.¹⁵

It can be argued that the most ideal form of government for a country with such ethnic, religious, and cultural diversity as Indonesia is a unitary state with a

¹³James AF Stoner and R. Edward Freeman, *Management*, Englewood Cliffs: Printice hall Inc, 1988, p 392

¹⁴ Norman Myers, *Ultimate Security: The Environmental Basis of Political Stability*, First Edition, WW Norton & Company, 1993, p 234

¹⁵Jimly Asshiddiqie. *The Indonesian Constitution and Constitutionalism*, Jakarta: Sinar Grafika. 2011, p. 79

decentralized system. This allows each region to explore its own potential, creating distinct characteristics that maximize development efforts in Indonesia.

When the founders of the nation who were members of the Investigating Committee for Preparatory Work for Indonesian Independence (BPUPKI), which was later replaced by the Preparatory Committee for Indonesian Independence (PPKI), deliberated on the formation of the Indonesian state, their choice fell on the principle of democracy with a unitary state and a republican form of government (Article 1 paragraph (1) of the 1945 Constitution).

Thus, the primary legal policy regarding the relationship between the central government and the regions adopted in the Indonesian constitution is the legal policy of a unitary state. Furthermore, Article 18 of the 1945 Constitution emphasizes the relationship between the central government and the regions, with the legal policies of decentralization (autonomy) and deconcentration, each with a hierarchical structure and attention to inherent and special rights. These are the two main lines of legal policy for regional autonomy in the Republic of Indonesia.¹⁶

Of the two articles, namely Article 1 paragraph (1) and Article 18 of the 1945 Constitution, there are things that are interrelated with each other. Although Article 18 states that the territory of the Republic of Indonesia is divided into autonomous regions and administrative regions that can regulate and manage their own households, Article 1 paragraph (1) is an affirmation that Indonesia remains a unitary state.

In addition to the existence of Regional Governments in the Unitary State, there are also regional governments that are special or exceptional. The existence of these special or exceptional regional governments is expressly stated in Article 18B of the 1945 Constitution. The principle contained in Article 18B is the state's recognition of special or exceptional regional governments and the principle of the existence and traditional rights of indigenous communities. The existence of special authority in special or exceptional regional governments is to respect the existence of traditional rights of indigenous communities.¹⁷

However, considering that regional governments of a special or exceptional nature in Indonesia are mentioned in Chapter VI concerning Regional Government, the position of regional governments of a special or exceptional nature is equal to that of regional governments, namely autonomous regions that are subject to and responsible to the Central Government.

¹⁶Abdul Latif and Ali, Hasbi, *Legal Politics*, Jakarta: Sinar Grafika Offset. 2010, p. 96

¹⁷Dianora Alivia, *Legal Politics of Regional Government Regulations of a Special Nature or Special Nature in Indonesia*. *RechtIdee*, Vol. 14 No. 2, December 2019, p. 156

Hierarchical work coordination between the Central Government and Regional Governments is carried out based on the principle of the broadest possible regional autonomy. Decentralization and deconcentration in regional autonomy are essentially nothing more than a means or method for carrying out regional governance in the best possible manner. Bagir Manan argues that the relationship between the Central and Regional Governments within the framework of decentralization is based on: the basis of deliberation in the state government system; the basis of maintaining and developing the principles of indigenous governance; the basis of diversity; and the basis of the rule of law.¹⁸

However, it is important to note that, no matter how broad the regional autonomy is to regulate and manage regional households, it must not result in damaging relations between the Regional Government and the Central Government of the Unitary State.¹⁹ Therefore, the constitution provides confirmation of the limitations of Regional Government in exercising its autonomy in Article 18 paragraph (5) of the 1945 Constitution.

Article 18B paragraph (5) of the 1945 Constitution is a form of limitation that is in accordance with the principle of a unitary state, namely that the central government has the highest power and authority in the field of state government, determines government policies and implements state government both at the center and in the regions.²⁰ No matter how extensive the regional autonomy is, a regional government that is special or exceptional in a unitary state will never make it a state because the highest authority in a unitary state is the central government.²¹

In the study of legal politics according to Mahfud MD, if law is interpreted as a "tool" to achieve ideals and achieve goals, then legal politics is interpreted as the direction that must be taken in making and enforcing laws in order to achieve the nation's ideals and goals.²²

According to Bagir Manan, the philosophical basis of regional autonomy law politics, apart from democracy or democracy (democracy led by the wisdom of deliberation/representation), there are at least two other bases of the Pancasila principles, namely the Unity of Indonesia and Social Justice.²³ Thus, the legal policy

¹⁸Irawan Soejito, *Relations between the Central Government and Regional Governments*, Jakarta: Bina Aksara, 1984, p. 4

¹⁹Ateng Syafrudin, *Regional Government Coordination Arrangements*, Bandung: Citra Aditya Bakti. 1993, p. 186

²⁰Rusdianto Sesung, *Regional Autonomy Law: Unitary State, Special Region and Special Autonomous Region*, Bandung: Refika Aditama. 2013, p. 49

²¹Dianora Alivia, *Legal Politics ...Op.Cit*, December 2019, p. 158

²²Mahfud MD, *Building Legal Politics, Upholding the Constitution*, Depok: PT Raja Grafindo Persada. 2017, p. 30

²³Bagir Manan, *Regional Autonomy Legal Politics*, Public Lecture at the Postgraduate Program of the Faculty of Law, Syiah Kuala University, Banda Aceh, 26 September 2013.

of regional government which is special or exceptional must be based on the basic framework of national legal policy which is directed towards the nation's ideals, namely a just and prosperous society based on Pancasila within the framework of a unitary state.

In the corridor of the Papua region as a representation of special regional government, special autonomy for Papua Province is essentially the granting of broader special authority to Papua Province to regulate and manage the interests of local communities according to its own initiative based on the aspirations and basic rights of the Papuan people. Through special autonomy, Papua has broad authority, covering all areas of government (except foreign policy, security, monetary and fiscal, religion and justice) namely: finance, economy, human rights, police, judicial power, protection of indigenous peoples, health, education and culture, population and employment, environment, cooperation and dispute resolution.

In terms of terminology, special autonomy is a special authority recognized and granted to provinces to regulate and manage the interests of local communities according to their own initiative based on community aspirations. This term autonomy can be interpreted as the freedom of the people to organize and manage their own households. Special Autonomy (Otsus) is a central government policy that grants broader authority, rights, and special responsibilities to certain regions in Indonesia to regulate governance and the interests of local communities based on regional aspirations and characteristics, within the framework of the Unitary State of the Republic of Indonesia. Its main objectives are to accelerate development, improve welfare, and resolve conflicts.²⁴

The use of the word "autonomy" in Special Autonomy can be interpreted as the freedom for provinces or regions that receive it to regulate and manage themselves, while also meaning the freedom to govern themselves and regulate the use of natural resources for the greatest prosperity of the people or region without abandoning the responsibility to participate in supporting the implementation of the central government and other regions in Indonesia that are indeed lacking. Another thing that is no less important is the freedom to determine social, cultural, economic and political development strategies that are in accordance with the characteristics and uniqueness of human resources as well as natural and cultural conditions. The word "special" in special autonomy can be interpreted as different treatment given to provinces or regions because of their special characteristics. These special characteristics include things such as the socio-economic level of society, culture and political history.²⁵

²⁴Ciputra Iha. Evaluation of the Implementation of ...Op.Cit, January 2018, p. 13

²⁵Dra. Mardiana Indraswati. Evaluation of the Implementation of ...Op.Cit, Edition 03, 2012. p. 19

According to Jimly Asshiddiqie, the granting of special autonomy to Papua was actually based more on political considerations. As is known, the local political situation in Papua and the separatist movement were quite heated at the time, while the central government was undergoing a transition of power. Therefore, granting special autonomy was more of a form of government bargaining.²⁶ This is in line with the opinion that states that the granting of Special Autonomy is very strongly influenced by the nuances of diverting the goals of the Papuan independence movement.²⁷

Law of the Republic of Indonesia Number 21 of 2001 concerning Special Autonomy for Papua Province (State Gazette of the Republic of Indonesia 2001 Number 135, Supplement to the State Gazette of the Republic of Indonesia Number 4151) was not born suddenly and without cause or from a vacuum.²⁸ Papua's special autonomy is part of a long historical series of the lives and struggles of indigenous Papuans in fighting for their destiny to build a self-governing region.

The idea of seeking a comprehensive political solution to the Papua problem gained momentum after the reform era in 1998 and was only formally discussed in the MPR-RI General Session on 14 to 21 October 1999. In the session, the problems of Papua, Aceh and Maluku were discussed specifically and their resolution was included in the MPR-RI Decree Number IV/MPR/1999 concerning the General Outlines of State Policy 1999-2004. Regarding Papua, the MPR Decree mandates the following: "Maintaining national integration within the framework of the Unitary State of the Republic of Indonesia while respecting the equality and diversity of the socio-cultural life of the people of Irian Jaya through the establishment of a special autonomous region regulated by law."²⁹

The policy of granting special autonomy was adopted at a time when political tensions in Irian Jaya were high, with the movement demanding secession from the Republic of Indonesia gaining momentum due to the turbulent political climate. Therefore, adequate legal and political solutions must be sought to resolve the issue with dignity and peace, thereby strengthening the integrity of the Unitary State of the Republic of Indonesia (NKRI) in Papua. The appropriate legal solution is a Decree of the People's Consultative Assembly (MPR-RI), which is directly subordinate to the Constitution. The MPR-RI Decree also serves as a

²⁶Jimly Asshiddiqie, *Main Points ...Op.Cit*, 2007, p. 507

²⁷I Ngruh Suryawan (ed.), *Papua on the Borderline, Perspectives, Reflections and Challenges*, Malang: Setara Press, 2011, p. 118

²⁸Jap Timmer, *Misguided Decentralization and Elite Politics in Papua*, in Henk Schulte Nordholt and Gerry van Klinken (Eds), *Local Politics in Indonesia*, Jakarta: Yayasan Obor Indonesia, 2007, pp. 595-625

²⁹MPR-RI Decree Number IV/MPR/1999 concerning the General Outlines of State Policy 1999-2004, Chapter IV Policy Direction, letter G Regional Development, Number 2 Specifically, Irian Jaya, part a.

political solution because the product of the MPR embodies the commitment of all Indonesians through their representatives in the MPR-RI institution.

Despite the enactment of a political solution for Papua through MPR-RI Decree No. IV/MPR/1999, the political dynamics in Papua have not become calmer and more conducive. According to records, from December 1999 to June 2000, several important political activities took place in Papua. These included the Morning Star/Dawn flag-raising ceremony on December 1, 1999, the Papuan Grand Conference on February 26, 2000, and the Second Papuan Congress from May 29 to June 4, 2000.³⁰ All these events basically have the same political nuance, namely the aspiration for Papua to separate from the Republic of Indonesia.³¹

As a follow-up to the MPR Decree, the MPR RI Decree Number IV/MPR/2000 concerning Policy Recommendations in the Implementation of Regional Autonomy, among other things, emphasizes the importance of immediately realizing this special autonomy through the enactment of a special autonomy law for the Province of Irian Jaya by taking into account the aspirations of the community. The MPR Decree, among other things, states:

"The Law on Special Autonomy for the Special Region of Aceh and Irian Jaya, in accordance with the mandate of the MPR-RI Decree Number IV/MPR/1999 concerning the General Outlines of State Policy 1999-2004, must be issued no later than May 1, 2001, taking into account the aspirations of the people of the regions concerned."

On July 19, 2001, the Indonesian House of Representatives formed a Special Committee (Pansus) on the Special Autonomy Bill for Papua Province, and the Indonesian House of Representatives officially adopted the draft of the Special Autonomy Bill for Papua which was prepared by various community groups in Papua as the DPR-RI Initiative Proposal Bill on Special Autonomy for Papua Province as the main material for discussion.³² After internal debate in the Special Committee, with a number of changes made by the Special Committee and approved by their respective factions, on September 28, 2004 the Special Committee completed its deliberations and the Draft Law of the Republic of Indonesia on Special Autonomy for Papua Province formally became a bill proposed by the House of Representatives. The next process during October was discussions with the government using the bill document initiated by the House of Representatives. On October 20, 2001, the bill was passed in a Plenary Session of

³⁰Sumule Agus (Ed), *Looking for a Way....Op.Cit*, 2003, p. 15

³¹Jacobus Perviddya Solossa, *Special Autonomy for Papua: Raising the Dignity of the Papuan People within the Unitary State of the Republic of Indonesia*, Jakarta: Sinar Harapan, 2005, p. 28

³²Secretariat General of the DPR-RI, *Discussion Process of the Draft Law on Special Autonomy for Papua Province*, Jakarta: Secretariat General of the DPR-RI, 2002, page xi

the House of Representatives. On November 21, 2001, President Megawati Soekarnoputri signed Law of the Republic of Indonesia Number 21 of 2001 on Special Autonomy for Papua Province (State Gazette of the Republic of Indonesia 2001 Number 135, Supplement to the State Gazette of the Republic of Indonesia Number 4151).

In its development, in connection with the formation of the Province of West Irian Jaya (West Papua) as a consequence of Law Number 45 of 1999 concerning the Formation of the Province of Central Irian Jaya, the Province of West Irian Jaya, Paniai Regency, Mimika Regency, Puncak Jaya Regency, and Sorong City (LN Year 1999 Number 173, Supplement to the Regulation Number 3894) but in reality in the Province special autonomy has not been implemented, then in 2008 the Government Regulation in Lieu of Law (Perpu) Number 1 of 2008 concerning Amendments to Law Number 21 of 2001 concerning Special Autonomy for Papua Province was issued which was then stipulated as Law Number 35 of 2008 concerning the Determination of Government Regulation in Lieu of Law Number 1 of 2008 concerning Amendments to Law Number 21 of 2001 concerning Special Autonomy for Papua Province to Become Law (LN Year 2008 Number 112, Supplement to the Regulation Number 4884). In Article 1 letter a of the Perpu which later became an Attachment to Law Number 35 of 2008, it is emphasized that what is meant by: "Papua Province is the Province of Irian Jaya which later became the Province of Papua and the Province of West Papua which were given Special Autonomy within the framework of the Unitary State of the Republic of Indonesia". Thus, since 2008 the Papua Special Autonomy Law applies to the Provinces of Papua and West Papua.³³

Special Autonomy (Otsus) has long been considered a key factor in determining the political status of both the government and the Papuan people. As is well known, through Law Number 21 of 2001 concerning Special Autonomy, Papua has been granted the authority to govern itself based on statutory regulations. With Special Autonomy, the central government aims to immediately halt separatist movements and ensure Papua remains part of the Unitary State of the Republic of Indonesia (NKRI). A further implication is that peace in Papua will be maintained, without any political upheavals seeking independence.

The implementation of Special Autonomy for Papua Province has, to some extent, been a sedative for the Papuan people. For nearly 27 years, since the UN's Act of Free Choice (Pepera), Papuans have lived under the pressure of central government restrictions, which have used a security approach to maintain the integrity of this resource-rich region. During President Abdurrahman Wahid's

³³Mohammad Jamin, "The Legal Politics of Recognizing Customary Courts in Papua Province Following the Enactment of the Special Autonomy Law." Doctoral Program in Law, Faculty of Law, Brawijaya University, Malang. Dissertation, 2013, p. 268.

administration, a draft Special Autonomy Law for Papua was drafted, and under President Megawati, the law was passed, despite the fact that

implementation in the field is still not optimal.

One of the strongest demands of the aspirations that developed in Papua in 2003 was the demand for the formation of the Papuan People's Assembly (MRP).³⁴In addition to demands for regional heads to be indigenous Papuans, optimal management of Papua's natural resources for the Papuan people, and several other important matters, the expansion of districts (kecamatan) and regencies, in accordance with the Special Autonomy Law, is an alternative solution for Papua. This expansion is an effort to realize the aspirations of the Papuan grassroots. Most people believe that the expansion of Papua Province, as stipulated in Presidential Instruction No. 1 of 2003 concerning the Acceleration of Development in Papua into three provinces, is ineffective. The reason is that Papua's existing human resources are not yet capable of managing it.³⁵

From the political sector, the Law has regulated how to grant political rights to the Papuan people, especially Indigenous Papuans (OAP), as stipulated in "Article 1 letter t of the Special Autonomy Law for Papua Province." Indigenous Papuans are given priority rights to "engage in politics," meaning that in the Papua region, those who are prioritized in politics in terms of voting and being elected are those who are Indigenous Papuans rather than immigrants or those outside the Papuan tribe. Indigenous Papuans are those who are of the Melanesian racial group. So if the Papua region contains various tribes and cultures, then in political activities - Governor, Deputy Governor, Mayor, Deputy Mayor, Regent, Regional Representative, and others, those who are of the Melanesian racial group are prioritized.³⁶

In terms of government bureaucracy, the Papuan regional government consists of legislative and executive bodies. The legislative body is the Papuan People's Representative Council (DPRP), and the executive body is the Regional Head or Governor. The Special Autonomy Law for Papua Province also specifically

³⁴As regulated in the Papua Special Autonomy Law, Article 19 states: (1) The MRP consists of indigenous Papuans consisting of representatives of traditional customs, representatives of religion, and representatives of women, each of whom constitutes one third of the total MRP membership; (2) The MRP membership period is 5 (five) years; (3) The membership and number of MRP members are determined by a Regional Regulation; and (4) The financial position of the MRP is determined by a Government Regulation. See: Indra J. Piliang, *Papua Special Autonomy and the MRP*, Suara Pembaruan, 11 July 2003

³⁵Nur Rohim, *Optimizing Papua's Special Autonomy in Increasing Public Legal Awareness to Reduce Conflict and Violence*. *Fiat Justisia Journal of Legal Studies*, Volume 8 No. 1, January-March 2014, p. 87

³⁶Elisabeth Lenny Marit, "Toponymy of Business Entities in the Era of Special Autonomy for Papua: An Analysis of Economic, Socio-Cultural, and Political Values in Jayapura City." *Melanesia: Scientific Journal of Literary and Language Studies*, Volume 1, Number 2, February 2017, p. 13

grants special privileges to Papua Province, namely the DPRD. "The DPRD in Papua is called the DPRP, namely the Papuan People's Representative Council, whose election, determination, and inauguration process is different from the usual DPR elections." Where the number of DPRP members is 1 1/4 (one and a quarter) times the number of members of the Papuan Provincial DPRD. One of the requirements to serve as Governor in Papua Province is to be an Indigenous Papuan. It can be seen that the regulation requiring a native Papuan to become a governor aims to respect customary law in Papua because Papua Province still has strong customary regulations. Because they are more aware of the potential, conditions, and needs of the local community itself.

Papua has a special institution, the Papuan People's Assembly, which is regulated in the Special Autonomy Law for Papua Province. "The Papuan People's Assembly, or MRP, is a culturally representative institution for the Papuan people, with specific authority to protect the rights of indigenous Papuans, based on respect for customs and culture, empowering women, and strengthening interfaith harmony." Clearly, this institution plays a significant role in the running of regional government in Papua. Its membership is also comprised of indigenous Papuans.³⁷

The MRP participates in determining and considering candidates for Governor, Members of the MPR RI representing Papua, Regional Regulations, cooperation agreements with the government and other parties, and provides advice to the DPRP, Governor, Regency/City DPRD and Regents/Mayors regarding matters related to the protection of the rights of indigenous Papuans.³⁸

Meanwhile, the Regional Government in Papua also has a different format and process than Regional Regulations in other regions. This is evident in the Special Autonomy Law for Papua Province, which stipulates that Regional Regulations in Papua are Special Regional Regulations, or *Perdasus* for short.³⁹, the legalization process of which has different procedures from Regional Regulations in general.⁴⁰

In the economic sector, there is a special allocation fund explicitly stipulated in the Special Autonomy Law for Papua Province, namely "giving priority to Papua Province." The law also explicitly states that "the economy in Papua is part of the national and global economy, which is directed as much as possible for

³⁷Cornelis Lay & Bambang Purwoko. Asymmetrical Decentralization, Representation, and Legitimacy in Indonesia: A Case Study of the Papuan People's Assembly. *Asian Survey*, Vol. 58 No. 2, January 2018, pp. 365-286

³⁸Yamin Rengen, The Institutional Structure of the West Papua People's Assembly (MRO-PB) in Special Autonomy 2017. *Journal of Governance and Public Policy*, Vol 4 No 3, October 2017, p. 514

³⁹A. Sakti RSRakia. (2021). The Special Authority of the Papuan People's Assembly Regarding the Formation of Regional Regulations. *JUSTISI*, Vol. 7 No. 1, January 2021, p. 20

⁴⁰Yamin Rengen, Assembly Institutions ...Op.Cit, October 2017, p 516

and for the benefit and welfare of the Papuan people." In terms of implementation, the use of natural resources must respect the rights of indigenous peoples and the principles of environmental sustainability. The special allocation fund given to Papua is a top priority compared to other regions in Indonesia.⁴¹

This is a consequence of the establishment of special autonomy status, so that in terms of funding, Papua is treated differently and certainly more than other regions in Indonesia. This special allocation fund continues to increase annually and is primarily intended for education and health in Papua. In terms of education, the Papuan people are guaranteed the widest possible access to quality education for all Papuans under the Special Autonomy Law for Papua Province. Similarly, in the health sector, it is obligated to establish quality standards and provide health services. The government is obligated to prevent and address endemic diseases and/or diseases that endanger the survival of the population.

Another special right held by the people of Papua Province is the right to the indigenous peoples of Papua. In the Special Autonomy Law for Papua Province, there is a specific chapter that regulates the rights of the indigenous peoples of Papua. Where it is explained "that the customary rights of the Papuan people must be respected and upheld. The Government, Provincial Government, and residents of Papua Province are obliged to uphold, promote, protect, and respect Human Rights in Papua Province," this is stated in Article 45 paragraph (1) of the Special Autonomy Law for Papua Province. The government's efforts to implement this as stated in the Special Autonomy Law for Papua Province are by "forming representatives of the National Human Rights Commission, the Human Rights Court, and the Truth and Reconciliation Commission in Papua Province," which is stated in the next paragraph, namely Article 45 paragraph (2) of the Special Autonomy Law for Papua Province.⁴²

4. Conclusion

The process of integrating the Papuan region into the Unitary State of the Republic of Indonesia is viewed by the leaders and supporters of Papuan Independence as problematic. Consequently, since 1964, movements demanding independence have emerged, both politically and through armed resistance, such as the formation of the West Papua National Liberation Army (TPNPB) as the military wing or armed force of the Free Papua Movement (OPM), which focuses on armed violence. The OPM is a broader political and ideological umbrella movement aimed at separating Papua from the Unitary State of the Republic of Indonesia

⁴¹Cornelis Lay & Bambang Purwoko. *Asymmetrical Decentralization...* Op.Cit, January 2018, pp. 365-286

⁴²Article 45 of Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for Papua Province

(NKRI). It encompasses armed factions (TPNPB), political factions, and diplomatic forces, a resistance that persists to this day. In connection with these demands for independence, successive military operations and other repressive policies have emerged, leading to the root of the problem. Empirical reality in Papua shows that the granting of special autonomy was intended to address the long-standing conflict that has claimed many victims due to demands for separation from the Unitary State of the Republic of Indonesia. After the government had previously implemented various development and security approaches to resolve the problems in Papua, special autonomy was granted in 2001 with the issuance of Law Number 21 of 2001.

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