



THE URGENCY OF ESTABLISHING A TRUTH AND RECONCILIATION COMMISSION FOR THE SETTLEMENT OF HUMAN RIGHTS VIOLATIONS IN PAPUA FROM THE PERSPECTIVE OF SPECIAL AUTONOMY FOR PAPUA

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Abstract

Papua's Special Autonomy provides a legal basis for addressing conflicts and human rights violations through non-judicial mechanisms that are more inclusive and in accordance with the sociocultural context of the local community. In its fourth report covering the period April 2013 to December 2014, the International Coalition for Papua (1CP) documented 653 arrests resulting from 46 separate incidents. The human rights situation in Papua is worsening, as human rights violations and abuses continue to occur. Many organisations advocate for the protection of human rights in Papua; however, these efforts to defend and promote human rights are often unrecognised or poorly received. The research method used in this research is normative legal research method, using statutory approach, conceptual approach, and comparative approach. This study discusses the ratio legis of the Papua Special Autonomy Law regarding the establishment of a TRC (Truth and Reconciliation Commission) based on several main reasons: first, the TRC allows for a more comprehensive and fair settlement compared to formal legal channels; second, the TRC respects local wisdom in the reconciliation process; third, this institution plays an important role in rebuilding trust between the Papuan people and the central government; and fourth, the TRC is expected to prevent the recurrence of human rights violations in the future and support long-term peace in Papua. In addition, the TRC is an important step towards respecting the rights of the Papuan people, improving relations between conflicting parties, and strengthening the implementation of a fair and inclusive Special Autonomy. The problems of resolving human rights violations in Papua from the perspective of Special Autonomy reflect complex challenges that require comprehensive attention. Although the *Papua Special Autonomy Law* provides a legal basis for dealing with human rights violations in an inclusive and peaceful manner, its implementation is far from optimal. This is due to several factors, such as slow implementation, overlapping authority between the central and local governments, and counterproductive militaristic approaches. The Papuan people's lack of trust in the government, both central and local, as well as victims' limited access to justice and redress, exacerbate this problem.

Keywords: TRC, special autonomy, Human Rights

INTRODUCTION

Special Autonomy (Otsus) is given to Papua Province based on Article 18B of the 1945 Constitution of the Republic of Indonesia, which is the basis of the Constitution of the Republic of Indonesia. Whereas “the state recognizes and respects units of regional government that are special or special in nature and are regulated by law.” This provision provides opportunities for regions to organize special autonomy in order to respect special regional units.

In this regard, Philipus M. Hadjon states that ‘the principles contained in Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia are the central government's attitude towards individual sovereignty and the principles that exist in collective bargaining with indigenous peoples. According to the law, every state has an obligation to fulfil the needs of its citizens, and this obligation is fulfilled by the presence of the state in meeting the needs of the Papua Province, including the results of the division of the Papua Province. Expansion was carried out with the aim that Papua Province could develop and oversee the needs of the local community based on self-managed aspirations and the basic rights of the Papuan people.

This specificity was granted to Papua following human rights violations due to the increasing violence in the region. Bahkan in Papua, human rights violations include violations of fundamental and political rights such as freedom of expression, repression and violations of fundamental rights, as well as many other types of violations. Other human rights violations are violations of economic, social and cultural rights. The granting of autonomy to Papua is comparable to the granting of autonomy

to Aceh. The right to special autonomy is granted by law number 21 of 2001 relating to the special autonomy of the province of Papua. Papua's participation in the NKRI has historical and political significance, as it is directly linked to the existence of the NKRI and the promotion of Pancasila values, as well as the promotion of social justice. Moreover, the Bhineka Tunggal Ika refuses to allow any uniformity in construction, given the different reasons for the disparity.

Currently, indigenous Papuans face challenges or conditions commonly referred to as many problems or river problems. Problems concerning the misery of indigenous Papuans, despite the enormous wealth and natural resources of Papua, despite being granted Special Autonomy status. According to Tony Rahail, the granting of special autonomy for Papua is a useful solution to the problems faced by indigenous Papuans since integration with the Republic of Indonesia until now. Therefore, it is hoped that the establishment of special autonomy is the only legal instrument to solve social, economic and political problems. The ‘decentralisation plus approach’ aims to promote economic development, efficient management, justice, affirmative action at any given time, human rights and a vibrant civilisation. This “decentralization plus approach” (plus economic development, good governance, justice, including affirmative action within a certain period of time, human rights, and a vibrant civil society) is expected to improve relations between the central government and the Papuan government and is also expected to solve the problem of separatism in other regions of Indonesia. In addition, the decentralization plus approach is likely to be useful in accommodating socio-

political and cultural heterogeneity and addressing various inequalities at the local level in a country.

Hannum argues that at least two benefits can be obtained from the approach and implementation of asymmetrical decentralization or special autonomy (which he calls territorial autonomy) as follows.

- 1) As a solution to the possibility of ethnic conflict or other physical conflicts.
- 2) As a democratic and peaceful response to the grievances/problems of minorities whose rights have been violated or lack of attention,.

There are several initial conditions for the birth of Otsus Papua, namely (1) the political and security situation in Papua, which continues to be accompanied by various forms of conflict, and (2) Papuan development policies that still create gaps (inequality) so that it appears that poverty and underdevelopment are still shackled. In addition, the problem of identity or self-identity of indigenous Papuans, social problems (health, education, religion, social welfare), economic problems (poverty, human resources, fulfillment of basic needs), culture (copyright, traditional institutions, symbols, flags), infrastructure development, human rights issues, and legal issues.

Seeing the condition of Papua after 20 years of the running of Papua's special autonomy, the central government conducted various evaluations by giving birth to RI Law Number 2 of 2021 concerning the second amendment to Law Number 21 of 2001 concerning Special Autonomy (Otsus) for Papua Province, at least in this new regulation, it provides changes to 20

articles, regarding the authority of the local government, MRP (the Papuan People's Assembly), DPRK (the Regency or City House of Representatives), Increasing Papua's Special Autonomy Fund, Expansion of Provinces and Regencies in Papua and the Formation of Regional Regulations implementing the Special Autonomy (Otsus) Law. This is shown in the 20 years of special autonomy for Papua, the Papuan special autonomy policy has not achieved what the community wants, there are indications that special autonomy is often utilized by certain elites who want to enrich themselves.

The International Coalition for Papua (ICP) noted in its fourth report from April 2013 to December 2014, 653 people were detained from 46 incidents. The living conditions of human rights in the Land of Papua are getting worse every day, as violations and violence against human rights occur continuously from time to time. Many voices in upholding human rights in Papua by several institutions. However, any struggle to defend and uphold human rights is ignored or does not get a positive response. However, the movement to end violence has been influenced by the memory of persistent acts of violence in different ways. Personally, from the implementation of the Special Autonomy Law in the field of human rights. The unresolved issues are influenced by several important factors, including the following:

- a) Truth and reconciliation commissions, human rights judges, and a national human rights commission have not yet been established.
- b) The existence of systematic, continuous, and unstoppable violence and human rights

violations in every aspect of the lives of indigenous Papuans.

- c) In the context of implementing the Special Autonomy Law in the Land of Papua, there has been no special allocation of funds for the field of human rights.

Article 47 of Law 26/2000 on Human Rights Courts specifically mandates the establishment of a TRC. There was a law on TRC called Law 27 of 2004, but it was later annulled by the Constitutional Court after a judicial review process. The pardon granted by the state in some cases of past gross human rights violations was one of the key issues in Law 27 of 2004.

According to Papuan historical records, many pages of history about human rights violations have been closed without resolution, but new pages about human rights violations in Papua can always be opened. Problems arise when this policy creates various problems in Papua that marginalize the local population through the implementation of programs that do not favor indigenous Papuans. The failure of special autonomy includes issues of human rights violations, the budget for special autonomy programs, as well as economic issues and public services, such as those relating to health and education, and the existence of indigenous Papuans, all covered. Pessimism about the success of Special Autonomy in Papua is exacerbated by policies that are detrimental to indigenous Papuans.

Special autonomy in the Land of Papua has always been decorated with the same anxiety, related to the status of special autonomy for the Land of Papua, which has still not been able to boost Papua from the backwardness of human

resource development in competing and many other indicators. The lack of justice is a factor that causes this anxiety. In line with this, Rawls developed a contract-based theory of justice in an attempt to provide some sort of solution to the problem of justice. Rawls argues that in order to create an adequate theory of justice, one must adopt a contractual strategy where the guiding principles of justice are mutually agreed upon by all free, rational, and equal individuals. The only way a theory of justice can ensure that rights are upheld while allocating obligations to all parties equally is through a contractual approach. There are fundamental things that will bring good to the land of Papua through special autonomy if used wisely because special autonomy provides recognition of identity, constitutional guarantees of diversity, and recognition of the existence of indigenous Papuans and their culture.

The implementation of special autonomy in Papua does not eliminate the desire for independence, which means freedom from all forms of discrimination. The history of integration and identity, political violence and marginalization of indigenous Papuans (*Organisasi Orang Papua (OAP)*), making the failure of development in Papua which has not fully fulfilled a sense of justice, enabled the achievement of people's welfare, supported the realization of law enforcement, and there has been no respect for human rights, so the government issued Law of the Republic of Indonesia No. 21 of 2001 concerning Special Autonomy for Papua Province. 21 of 2001 concerning Special Autonomy (Special Law) for Papua Province.[23] Assuming that the idea of prospering the Papuan people through the formalization of development is expected to be one of

the possible ways to achieve people's welfare and fulfill a sense of justice and respect for human rights in the Land of Papua. However, the condition of development in the Land of Papua is still far from what is expected.

The problem behind the prolonged conflict in Papua, apart from issues of political and historical status, violence, and human rights violations, is marginalization and concern, which is a form of failure of the state's development obligations that conflict with what the indigenous Papuans want and the mandate of special autonomy. This can be seen from the various forms of policies carried out by the government that are considered to benefit non-Papuans. Failure to understand the complexity of regional specificities to adapt the values and anthropological methodology of indigenous Papuans into a different instrumental framework and experimentally accelerate Papuan development in locally found institutional and structural forms has an impact on the inability of indigenous Papuans to compete so that they are marginalized.

The problem explored in this research is the failure of the special autonomy for Papua which is expected to solve the problem of human rights violations, considering that even though special autonomy regulations have been made, they have not resolved human rights violations in Papua. History records that special autonomy in Papua was granted in 2001 through Law no. 21 of 2001, but during these 20 years there were still many human rights violations, this was influenced by the non-implementation of the mandate of the special autonomy law regarding the establishment of a TRC institution, for this reason, even though special

autonomy volume 2 is given, it does not guarantee that human rights violations will end, if the TRC institution as a preventive and repressive effort is not established.

MAIN PROBLEM

This research uses normative legal research methods guided by literature studies in line with Philipus M. Hadjon and Tatiek Sri Djatmiati argue that "normative legal research is research that departs from the nature of legal science as the main component of research.". In line with this, Peter Marzuki found normative research, often called "legal research, is legal research that uses approaches, statutory approaches (Statute Approach, Conceptual Approach, and comparative approaches."

METHOD OF RESEARCH

In the first results and discussion, researchers tried to conduct a study from the statutory approach; in this method, researchers tried to understand the hierarchy of legislation and the principles of legal principles in legislation. The statutory approach is one approach that uses the statute function in the form of legislation and regulation. The second discussion of the author explains about the conceptual approach. A conceptual approach is carried out when researchers depart from existing legal rules. This approach is used on the grounds that there is no legal regulation for the problem of legal protection of the rights of indigenous Papuans at hand. In building legal concepts by departing from the views of the doctrines that develop in legal science. The third discussion of the author explains the comparative approach, which is needed to be able to

provide a legal comparison of the form of resolution of human rights violations in Aceh and South Africa. The third discussion of the author explains the comparative approach, which is needed to be able to provide a legal comparison of the form of resolution of human rights violations in Aceh and South Africa.

RESEARCH RESULT AND DISCUSSION

Ratio Legis for the Establishment of the Truth and Reconciliation Commission for the Resolution of Human Rights Violations in Papua from the Perspective of Special Autonomy for Papua.

The starting point of the conflict in Papua began with the proclamation of independence of the State of West Papua on December 1, 1961. The Netherlands handed over West Irian to the United Nations through the New York Agreement on August 15, 1962, and then handed it over to Indonesia on May 1, 1963. Based on Article 18 of the New York Agreement, Indonesia had to conduct an opinion poll to determine the desire of the indigenous Papuan people to integrate with Indonesia or stand as an independent state. In March-August 1969, a People's Opinion Determination (*Penentuan Pendapat Rakyat (Pepera)*) was held, the result of which was that the indigenous Papuans chose to integrate and become part of the Republic of Indonesia. The results of the Act were then ratified by the United Nations on November 19, 1969.

Based on this, many parties are not satisfied with the New York Agreement. As an effort to reject efforts to integrate Papua with Indonesia, one of them is the formation of the Free Papua Organization (*Organisasi Papua*

Merdeka (OPM)). In addition to the OPM, there are also various other organizations, including the OPM National Liberation Army (*Tentara Pembebasan Nasional (TPN)*). The purpose of the formation of the OPM was initially to influence the results of the Act, which was expected to make West Papua a sovereign state as proclaimed on December 1, 1961. After the *Papera* resulted in a decision that West Papua integrate with Indonesia, those who oppose integration consider that the results of the *Papera* are invalid because they are carried out by acclamation and undemocratic. The implementation of the *Pepera* was full of interventions and was carried out under pressure and violated the democratic principle of one man, one vote.

Furthermore, those who were not satisfied with the results of the Act stated that *Papera* did not reflect the wishes of the indigenous Papuan people and carried out continuous resistance carried out by the OPM, and various other separatist movements also began to form. These separatist movements aim to demand the fight for independence, which is claimed to have been proclaimed on December 1, 1961. After the results of the Act, President Soekarno enacted Law No. 12 of 1969 concerning the Establishment of the Autonomous Province of West Irian and Autonomous Regency Districts in West Irian Province on September 10, 1969. Previously, in 1962, Law No. 1/Pnps/1962 on the Establishment of West Irian Province was enacted. The establishment of Law No. 1/Paps/1962 was actually more political in order to respond to the results of the New York Agreement. As explained earlier, in 1962 the Netherlands was willing to release West Irian. To follow up on the

agreement. President Soekarno enacted Law No. 1/Paps/1962. Although formally, the UN had not yet recognized Indonesia's sovereignty over West Irian. At the time Law No. 1/Pops/1962 was enacted, the applicable local government laws were Law No. 1 of 1957 and Presidential Decree No. 6 of 1959.

The previous discussion has described the regulation of special or special autonomous regions in Law No. 1 of 1957 and Presidential Decree No. 6 of 1959. The concept of special autonomy or special regions has not been recognized in these two laws. In addition, West Irian Province, as an autonomous region, has the same position as other regions. The authority of West Irian Province as an autonomous region is the same as the authority of other autonomous regions.

The establishment of West Irian Province, which was formally established through Law No. 12 of 1969, was subject to Provisional People's Consultative Assembly Decree No. XXI/MPRS/1966 on the Granting of Broad Autonomy to the Regions. The MPRS decree tasked the government together with the House of Representatives. In addition, the MPRS Decree also provides for a review of Law No. 18 of 1965. Article 6 of the MPRS Decree states that "the special position of the West Irian Region is eliminated and then adjusted to the position of other Autonomous regions." Based on this provision, it can be understood that previously the state gave a special position to West Irian, which only returned to the bosom of Mother Earth on May 1, 1963, after the process of the struggle for the liberation of West Irian through the *Tri Komando Rakyat (Trikorā)* announced by President Soekarno on December 19, 1961. The special treatment given to West Irian at

that time was because West Irian had just been formed as a new province or region in Indonesia. Based on the MPRS Tap, the special position of West Irian was eliminated and adjusted its position with other autonomous regions. In its journey as part of the Republic of Indonesia, in addition to continuous conflict, development in Papua Province is also felt to be very lame compared to other provinces. Very high poverty rates, high unemployment rates, high prices of goods, high infant mortality rates, more than 75% of indigenous Papuans who do not have access to proper education, and various other sectors of life show the inequality of Papua's development compared to other provinces. In addition, cases of human rights violations as part of the conflict in Papua are also very high. According to reports by Franciscans International and other human rights organizations, human rights violations in Papua include violations of civil and political rights such as violations of freedom of expression, torture, and extrajudicial killings.

Other human rights violations are violations of economic, social, and cultural rights.[35] Special autonomy was granted to Papua in 2001 with the granting of special autonomy to Aceh. Special autonomy was granted under Law No. 21/2001 on Special Autonomy for Papua Province. As in Aceh, the granting of special autonomy to Papua Province under Law No. 21/2001 was a mandate of MPR Decree No. IV/MPR/1999 on GBHN, which mandated the granting of special autonomy to Aceh and Irian Jaya, as well as the resolution of cases of human rights violations in Irian Jaya.

The MPR mandate in MPR Decree No. IV/MPR/1999 to grant special autonomy status to Aceh and Irian Jaya

became one of the considerations in the discussion of the formulation of Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia. In the 30th PAH IBP MPR meeting, April 5, 2000, Syarif Muhammad Alaydrus from the Kebangkita Bangsa Faction submitted 19 proposals. Of the 19 proposals, one of them was about the need for firm explanations of the background of granting special autonomy to certain regions such as Aceh, Maluku, and Irian Jaya. The formulation of the Constitution requires clear indicators or criteria for a region that will be given a special status.

Hatta Mustafa of the Golkar Party Faction raised the consideration of MPR Tap No. IV/MPR/1999 for the formulation of Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Hatta Mustafa stated:

“...But in this Constitution, for example, DIY (Special Region of Yogyakarta) is because of its origin and history, as well as DKI (Special Region of Jakarta), this is because of its speciality to become the capital, and this must be recognized by the Constitution, the Special Region of Aceh now, with the new Tap, we decided to become a special region including Irian, we must acknowledge this because of the wishes of the people and the wishes of all of us.”

In subsequent sessions, the formulators of the amendment to Article 18 of the 1945 Constitution, who were members of PAH I BP MPR, did not discuss further the reasons for granting special status to Papua. Therefore, the ratio legis of granting special status to Papua based on the provisions of Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia is still based on the principle of unity and

diversity, as also confirmed in MPR Tap No. IV/MPR/1999.

To follow up on MPR Decree No. 1V/MPR/1999 and Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, on the same day as the stipulation of the second amendment to the 1945 Constitution, namely on August 18, 2000, the MPR issued a decree regulating policies in the implementation of regional autonomy through MPR Decree No. IV/MPR/2000, which recommended to the government and the DPR to issue a law on special autonomy for DIA and Irian Jaya no later than May 2001 by taking into account the aspirations of the regional communities. The recommendation reads:

“The Law on Special Autonomy for the Special Regions of Aceh and Irian Jaya, in accordance with the mandate of the Decree of the People's Consultative Assembly No. IV/MPR/1999 on the Outlines of State Policy for 1999-2004, should be issued no later than May 1, 2001, taking into account the aspirations of the people of the regions concerned.”

Although a time limit was set for the enactment of the law, it was only on November 21, 2001, that President Megawati Soekarnoputri was able to enact Law No. 18 of 2001. The ratification of Law No. 21 of 2001 was carried out 2 months after Law No. 18 of 2001 was passed. In 2008, Law No. 21 of 2001 was amended based on Law No. 35 of 2008. The amendment of Law No. 21 of 2001 is actually only to recognize or declare that the Province of West Papua, which was formed based on UL/No. 45 of 1999, also applies special autonomy.

In consideration of Law No. 21 of 2001. Implicitly, the state recognizes the existence of a development gap in Papua (including West Papua), in other words, that development in Papua has not been

implemented fairly. The other reasons are:

1. Constitutional recognition of regional government units that are special in nature.
2. Human rights violations.
3. The importance of maintaining the integrity and integration of the nation,
4. Respect for diversity, namely the indigenous Papuan population who are of the Malanesian race.

Based on this description, the ratio legis for granting special autonomy to Papua in Law No. 21 of 2001 is based on 3 principles, namely the principle of unity in diversity, the principle of respect for local government units that are special or special in nature, and the principle of legal protection of human rights. The three principles are implemented through the application of the principle of asymmetrical decentralization in the practice of local governance in Papua Province and West Papua Province.

Seeing the positive changes that occurred in Papua after the issuance and implementation of Law Number 21 of 2001 on January 1, 2002. This policy is expected to reduce the political turmoil that has occurred so far. The policy that asks the government to focus more on Papua's underdevelopment is also considered to be able to answer a number of aspirations.

The disparity in Papua's development has caused various problems. The implementation of special autonomy for Papua is in line with the philosophy of regional expansion as an effort to improve people's welfare. Typically, this special policy is intended to advance a number of key objectives, which include:

First, there is an agenda in the design of increasing or raising the level of life of indigenous Papuans through the management and utilization of the natural resources of Papua and West Papua Provinces that have not previously been used optimally and sustainably for the welfare of indigenous Papuans. With this plan, at least there is a reduction in the gap between Papua and West Papua Provinces and other provinces.

The second is the plan to realize social justice for all the people of Indonesia. In the context of this special policy, it provides the meaning of economic justice in terms of receiving the results of Papua's natural resources, meaning that justice in this context is translated in the aspect of financial balance funds for the central government and the Papua/West Papua regional government, while justice in the broader development context will be seen from the achievements of the first agenda. The third is the enforcement of human rights, rule of law, and democracy.

Third is the enforcement of human rights, the rule of law, and democracy, as well as the recognition and respect for the basic rights of indigenous Papuans and their strategic and fundamental empowerment.

The fourth is the implementation of good governance through a firm and clear division of authority, duties, and responsibilities, as well as institutional and policy support that enables the achievement of the three previous agendas. The government's intention to support the special autonomy agenda in Papua and West Papua Provinces is strongly indicated by the increasing amount of special autonomy funds being channeled to the two provinces.

There are at least four priority programs implemented to spur the

development of the people and regions of Papua, namely education, health, people's economic empowerment, and infrastructure development. However, the problems in Papua are still dominated by the concerns felt by indigenous Papuans over the results of the implementation of Papua's special autonomy to date. However, it is possible that there are positive lessons that can be learned throughout the implementation of special autonomy, which has almost reached a decade. On the other hand, it is important to study the benchmarks for the successful implementation of the special autonomy of the provinces of Papua and West Papua and their ability to catch up or underdeveloped with other provinces in Indonesia, as is the hope and dream of the special autonomy, but the Minister of Foreign Affairs underlines that the existence of a special autonomy policy does not necessarily guarantee the implementation of a better regional government in Papua, but its implementation requires adequate government capacity.

Based on the above, in its development, twenty (20) years of special autonomy in Papua cannot be said to be successful, when measured from the 4 (four) main areas targeted by special autonomy, such as education, health, empowerment of the people's economy, and infrastructure development. In fact, various problems are still found, such as the large number of school dropouts, limited teaching staff, lack of teaching and learning facilities in villages, and the high cost of education in a number of areas in Papua province, which results in the weak figure of the Papua Human Development Index (HDI), which until now still remains in the lower middle rank nationally. 5 Furthermore, in

the health sector, the condition of health services in Papua Province and West Papua Province is also still far from expectations. Cases of maternal and newborn deaths, malaria, leprosy, malnutrition, ispa, HIV/AIDS, tuberculosis, and other diseases still occur in Papua.

Furthermore, in the area of human rights, the implementation and reconciliation of victims and families of victims of human rights violations has never taken place because, after 20 years of special autonomy, no Truth and Reconciliation Commission (TRC) or Human Rights Court has been established. The failure of special autonomy has been exposed by various organisations and indigenous Papuans. The implementation of special autonomy, which was originally a method to bridge the central government and the Papuan provincial government to create peace after major conflicts in the past, has not gone smoothly.

The demand to investigate the special autonomy policy is increasingly prominent, no longer in the form of a review but a thorough and comprehensive evaluation of the implementation of the special autonomy policy development of Papua and West Papua. The government becomes the final responsible for the implementation of the special autonomy of the Papua region by carrying out an evaluation of the special implementation of Papua. to that end, and the State Administration Institute (Center for Regional Autonomy Performance Studies) and the Partnership for Renewal of Indonesian Governance are affiliated to prepare for the implementation of an assessment of the special autonomy of Papua and West Papua. Thus, there are arguments underlying the importance of the Papua

Special Autonomy evaluation, namely as follows:

First, the implications of the issuance of the Special Autonomy Law for the Papua Province have given the province more authority. Like two sides of a coin, behind this authority are various responsibilities that must be carried out to achieve the expected goals.

Secondly, the logical reasons for applying the concept of asymmetric decentralization or special autonomy mentioned above have consequences for development policies, institutions, resources and programmes, which require not only specific synchronous arrangements, but also their interaction with other general policies, which are essential elements or indicators for the proper implementation of special autonomy.

Secondly, the implementation of the policy cannot be dissociated from various types of problems that turn into dilemmas and challenges. Ideally, an in-depth understanding of the conflicts and challenges encountered when applying special autonomy should be continually developed.

Fourthly, the specific autonomy of Papua and West Papua through the concept of asymmetrical decentralisation is an option yet to be considered.

The granting of special autonomy for the province of Papua aims to achieve justice, protect the law, respect human rights, accelerate economic development and improve the well-being and progress of Papuans within a framework of equality and sharing with the development of other provinces. This law places indigenous Papuans and Papuans in general as the main subject of development.

The granting of special autonomy is also based on the conviction that the

indigenous Papuans have acquired a new awareness of the need to fight peacefully and constitutionally for the recognition of their fundamental rights and to demand the resolution of problems relating to the violation and legal protection of the human rights of the indigenous Papuans.

History records that Governor J. P. Solossa once expressed optimism that with the enactment of the Special Autonomy Law, Papua could overcome the problems of underdevelopment and poverty, but underdevelopment and poverty can be realized based on political actors or regimes; therefore, the issue of the abundance of natural resources and all the potential of the Land of Papua, which cannot be fully enjoyed by its inhabitants, especially indigenous Papuans, has reappeared in the current era of special autonomy. This situation has caused Papua to experience a condition commonly referred to as problems of plenty or problems of abundance. A problem regarding a condition of underdevelopment and backwardness of indigenous Papuans in the midst of the abundance of natural wealth they have, even though the determination of the Special Autonomy status has been given, it has not had much impact on the development of values, rules, norms, and morals in fulfillment of the basic rights of indigenous Papuans, fulfillment of human rights, fulfillment of the rule of law, democracy, pluralism, and equality of position, rights, and obligations as citizens before the law.

The establishment of a Papuan Truth and Reconciliation Commission (TRC) is urgent in order to resolve longstanding historical conflicts and human rights violations in the region. Here are some reasons that emphasize

that a TRC from the perspective of Papua's Special Autonomy should ideally be established:

1. Comprehensive and Equitable Resolution of Human Rights

Violations Various human rights violations in Papua, both in the past and in recent years, have not been fully resolved through legal channels. The TRC provides a non-judicial alternative that allows for a comprehensive resolution, with a focus on truth-telling, justice for victims, and restoration of social relations in the community. This is in accordance with the mandate of the Special Autonomy Law for Papua Province, which emphasizes the importance of peaceful and inclusive resolution of human rights issues.[39]

2. Respecting and Accommodating Local Wisdom

In the context of Papua, the reconciliation process is not only legal but also social and cultural. Papuan society has a tradition of conflict resolution based on deliberation and peace. Therefore, the TRC, as an institution that enables reconciliation, provides space for settlement mechanisms based on these local values, which are more acceptable to Papuans than formal judicial approaches.

3. Building Trust between Papuans and the Central Government

The protracted mistrust between Papuans and the central government is due to the long history of marginalization and injustice felt by local communities. The TRC has a strategic role to play in restoring this trust through transparency, acknowledging past wrongs, and providing reparations to victims. This

is expected to pave the way for long-term peace and strengthen the implementation of Special Autonomy.

4. Preventing Future Human Rights Violations

With effective truth seeking and reconciliation, it is hoped that similar human rights violations will not be repeated in the future. The TRC sets a precedent for more sustainable solutions, reminding the government and other actors of the importance of accountability in the protection of human rights in Papua.

5. Supporting Social Integration and Long-term Peace

Papua is a region with high levels of social tension. The TRC can be a conflict resolution mechanism oriented towards long-term peace. With a comprehensive resolution through the TRC, Papuans are expected to live more harmoniously, with respect for individual and collective rights recognized within the framework of Papua's Special Autonomy.

Problems in Resolving Human Rights Violations in Papua in the Perspective of Papua Special Autonomy.

Moving on from the understanding of rights, in some interpretations it has two important moral and political essences, namely honesty and truthfulness. In the sense of honesty, it is interpreted that honesty is an action about "the right thing," about something that is in a state of right (or wrong). When expressed in terms of behavioral measures, such as "it is wrong" or "it is not right," it draws attention to the duty bearer's responsibility to comply with the standard. Rejecting the assertion that the law is measurable to its owner and that

rights should be prioritized to uphold the rights of society.

In this case, the government is in charge of making policy because it indirectly approves the special autonomy law by enacting laws that provide indigenous Papuans with the rights and obligations intended by the special autonomy law for Papua. It is impossible to separate the occurrence of human rights violations in Papua from the failure to develop the concept of autonomy to protect indigenous Papuans in the legal anthropological dimension of indigenous Papuans, the marginalization of indigenous Papuans, the development gap, and the dissatisfaction experienced by indigenous Papuans. impact on human rights violations.

The non-establishment of the National Human Rights Commission (Komnas HAM), the Human Rights Court and the Truth and Reconciliation Commission in Papua province has the potential to result in human rights violations which to this day remain an ongoing problem and require serious attention. Historically, Presidents Megawati and SBY have not supported the establishment of a Human Rights Court. This could be interpreted as a sign of the government's lack of interest in investigating human rights violations. Human Rights Watch and Amnesty International are closely monitoring human rights violations in Papua.

The International Coalition for Papua (ICP) noted in its fourth report from April 2013 to December 2014, 653 people were detained from 46 incidents.[46] The living conditions of human rights in the Land of Papua are getting worse every day, as violations and violence against human rights occur continuously from time to time. Many voices in upholding human rights in

Papua by several institutions. However, any struggle to defend and uphold human rights is ignored or does not get a positive response. However, the movement to end violence has been influenced by the memory of persistent acts of violence in different ways. personally, from the implementation of the Special Autonomy Law in the field of human rights. The unresolved issues are influenced by several important factors, including the following:

- a) Truth and reconciliation commissions, human rights judges and a national human rights commission have not yet been established.
- b) There is systematic, continuous and relentless violence and human rights violations in all aspects of the lives of indigenous Papuans.
- c) In the framework of implementing the right to self-determination specifically in Papua, no funds have been specifically allocated to the field of human rights.

Article 47 of Law 26/2000 on Human Rights Courts specifically mandates the establishment of a TRC. There was a law on TRC called Law 27 of 2004, but it was later annulled by the Constitutional Court after a judicial review process. The pardon granted by the state in some cases of past gross human rights violations was one of the key issues in Law 27 of 2004.

According to Papuan historical records, many pages of history about human rights violations have been closed without resolution, but new pages about human rights violations in Papua can always be opened. Problems arise when this policy creates various problems in Papua that marginalize the local population through the implementation of

programs that do not favor indigenous Papuans. The failure of special autonomy includes issues of human rights violations, the budget for the special autonomy program, as well as economic problems and public services, such as those related to health and education, and the existence of indigenous Papuans, all of which are covered. Pessimism about the success of Special Autonomy in Papua is exacerbated by policies that are detrimental to indigenous Papuans.

Special autonomy in the Land of Papua¹ has always been decorated with the same anxiety. Related to the status of special autonomy for the Land of Papua, it is still unable to boost Papua from the backwardness of human resource development in competing and many other indicators. Lack of justice is a factor that causes this anxiety. In line with this, Rawls developed a contract-based theory of justice in an attempt to provide some sort of solution to the problem of justice. Rawls argues that in order to create an adequate theory of justice, one must adopt a contractual strategy where the guiding principles of justice are mutually agreed upon by all free, rational, and equal individuals. The only way a theory of justice can ensure that rights are upheld while allocating obligations to all parties equally is through a contractual approach. There are fundamental things that will bring good to the land of Papua through special autonomy if used wisely because special autonomy provides recognition of identity, constitutional guarantees of diversity, and recognition of the existence of indigenous Papuans and their culture.

The implementation of special autonomy in the Land of Papua does not also eliminate the desire for independence, which means freedom

from all forms of discrimination. The history of integration and identity, political violence, and marginalization of indigenous Papuans (OAP), making the failure of development in Papua which has not fully fulfilled a sense of justice, enabling the achievement of people's welfare, supporting the realization of law enforcement, and the absence of respect for human rights, the government issued Law of the Republic of Indonesia No. 21 of 2001 concerning Special Autonomy for Papua Province. 21 of 2001 concerning Special Autonomy (Special Law) for the Province of Papua. Assuming that the idea of prospering the Papuan people through the formalization of development is expected to be one of the possible ways to achieve people's welfare and fulfill a sense of justice and respect for human rights in the Land of Papua. However, the condition of development in the Land of Papua is still far from what is expected.

The problem behind the prolonged conflict in Papua, apart from issues of political and historical status, violence, and human rights violations, is marginalization and concern, which is a form of failure of the state's development obligations that conflict with what the indigenous Papuans want and the mandate of special autonomy. This can be seen from the various forms of policies carried out by the government that are considered to benefit non-Papuans. Failure to understand the complexity of regional specificity to adapt the values and anthropological methodology of indigenous Papuans into a different instrumental framework and experimentally accelerate Papuan development in locally found institutional and structural forms has an impact on the inability of indigenous Papuans to compete so that they are marginalized.

To accelerate the development of Papua, it is necessary to develop models of adaptation of anthropological values into various instruments, and building an initial typology of anthropological values of indigenous Papuans can be categorized as a mapping action. The mapping process considers the unique characteristics of each indigenous Papuan group living in various regions, as well as the tribes within each group.

The Papuan government is responsible for creating a framework for its planning forum that is based on the values and traditions of the local community and can present indigenous Papuan actors, ensuring the participation of indigenous Papuans in all decisions made as well as the achievements of local indigenous Papuan actors in participating in activities similar to activities related to development policies for indigenous Papuans in an effort to protect their rights. The government takes political steps and formulates legal norms for the legal protection of the human rights of indigenous Papuans in the Special Autonomy Law. The existence of inequality and marginalization in all areas of life, social structures clearly give birth to social groups. Participating in public life in the form of affirmative action is an option for the state as an answer to discriminatory social conditions in society. Affirmative action is intended to provide more opportunities for indigenous Papuans who are the least advantaged in social structures, political conditions, and economic structures.

Development failure the active involvement of indigenous Papuans in the development process will have the potential to foster a sense of ownership in every development program, which will provide the involvement of indigenous

Papuans in the success of development because, according to indigenous Papuans, development will be successful if there is an increase in the quality of life of indigenous Papuans. Meanwhile, the high level of economic poverty of indigenous Papuans (OAP), the failure to build a special autonomy development design, and weak public involvement have created inequality, and various other conditions also have an impact on the lack of economic growth in Papua.

At least public participation in the discussion of the Papua special autonomy implementation program focuses on the wishes of the people; this is in line with Sirajuddin's opinion, which classifies into 3 things:

- a. Acquire the knowledge, experience, or expertise of the community so that its application reflects the wishes of the population;
- b. By using various affirmative actions, ensuring that each special autonomy program can achieve the realities that already exist in society, foster a sense of togetherness. responsibility (sense of responsibility) and legal accountability (legal responsibility);
- c. Build trust, respect, and recognition of the community.

The above design is an effective step in building a legal paradigm by using the socio-cultural heterogeneity approach of indigenous Papuans; this is in line with Law as a Manifestation of the Soul of the Nation put forward by Savigny's thinking. Savigny argues that all laws initially developed from customs and habits and only then by regulations called laws. For this reason, the development of special autonomy regulations for Papua should ideally be understood as part of aspects of social

life and part of the complex experience and character of the community itself. This design is a step to build the rule of law in the Papua Special Autonomy Law mysteriously born from the spirit of the people or nation (spirit of the people, or *volksgeist*) that already exists.

Although Special Autonomy for Papua is expected to be a solution to solve various problems, including human rights violations, in its implementation there are still a number of problems that hinder the effective resolution process. Some of the main issues are as follows:

1. **Inadequate Implementation of Special Autonomy**

Although Law 21/2001 provides a legal framework for the resolution of human rights violations, implementation has not been optimal. The Truth and Reconciliation Commission (TRC) promised in the Special Autonomy Law has not been effectively established, and many of the mandated instruments have not been realized. Political, administrative, and bureaucratic obstacles are often the main reasons for this slow process, so victims of human rights violations have not received proper justice.

2. **Overlapping Central and Local Authorities**

Special autonomy grants special authority to the Papuan regional government, but in reality, there is often an overlap between the authority of the central and local governments, especially in relation to law enforcement and human rights issues. The central government often takes over the handling of cases of human rights violations in Papua through national mechanisms, while the regional authority mandated by

Special Autonomy is neglected. As a result, the resolution of human rights violations often does not fully involve local elements, so that the solutions produced are not always contextual to the needs of the Papuan people.

3. **Papuans' Lack of Trust in the Government**

Human rights issues in Papua are often linked to people's distrust of the government, both central and local. A long history of injustice, marginalization, and lack of accountability in handling human rights violations has made Papuans skeptical of various resolution efforts. This creates deep psychological and social barriers, where victims or communities tend to be reluctant to engage in formal processes such as courts or mechanisms organized by the state.

4. **Militaristic Approach in Handling Conflict**

Handling conflict in Papua often uses a security or militaristic approach, which exacerbates the situation and causes new human rights violations. This approach is contrary to the spirit of Special Autonomy, which emphasizes peaceful resolution through dialogue. The use of violence by security forces in responding to social tensions is often not accompanied by a clear accountability process, which in turn increases distrust and worsens the human rights situation in the region.

5. **Lack of Victims' Access to Justice and Reparation**

Victims of human rights violations in Papua often face obstacles in accessing justice. Lack of access to law enforcement agencies, social stigma, and lack of psychological and legal support for victims are major

problems. The reparation and recovery mechanisms that are expected to be implemented through the TRC have also not been able to work, so victims do not get their rights adequately.

Implementation of Truth and Reconciliation Commissions for Human Rights Violations in Aceh and South Africa.

1. Aceh TRC

Komisi The Truth and Reconciliation Commission in Aceh was established as part of the Helsinki Peace Agreement in 2005, which ended the prolonged conflict between the Free Aceh Movement (GAM or Gerakan Aceh Merdeka) and the Government of Indonesia. The Aceh TRC aims to uncover human rights violations that occurred during the conflict, particularly from 1976 to 2005, and facilitate reconciliation between victims, perpetrators, and the community.

The Aceh TRC, established under the mandate of Aceh Governance Law No. 11/2006, works to uncover human rights violations that occurred during the conflict between the Government of Indonesia and the Free Aceh Movement (GAM). The working mechanism of the Aceh TRC includes several important stages:

a) Fact Gathering and Investigation:

The Aceh TRC is tasked with gathering facts related to human rights violations during the conflict that occurred between 1976 and 2005. This is done through the collection of testimonies from victims, witnesses, and perpetrators, as well as the

investigation of documents and other evidence. This process involves working with law enforcement agencies, civil society, and human rights organizations.

b) Providing Space for Public Testimony:

One of the functions of the TRC is to provide space for victims and witnesses to present their testimonies in public. This not only serves to reveal the truth but also to give victims recognition for their suffering. In some cases, perpetrators were brought in to confess their actions.

c) Reconciliation:

A key objective of the Aceh TRC is to facilitate reconciliation between communities affected by the conflict. The TRC works to create a space for dialogue that allows victims and perpetrators to engage in the peace process, with an approach that often uses local wisdom in resolving conflicts.

d) Restoration and Reparations Recommendations:

Following the investigation and truth-seeking process, the TRC provides recommendations to the government regarding restitution for victims, including reparations, rehabilitation, and compensation. However, the implementation of these reparations is faced with budget constraints and inadequate implementation mechanisms.

2. South Africa's TRC, or Truth and Reconciliation Commission (TRC)

South Africa's TRC, or Truth and Reconciliation Commission (TRC), is one of the

most famous examples of a post-apartheid reconciliation mechanism. The TRC was established in 1995 after the end of the apartheid regime with the aim of uncovering the truth about human rights violations that occurred between 1960 and 1994. Led by Bishop Desmond Tutu, the TRC gave perpetrators the opportunity for amnesty if they fully confessed their actions in public. On the other hand, victims received official recognition of their suffering and, in some cases, compensation.

The South African Truth and Reconciliation Commission (TRC) was established after the end of the apartheid regime to address human rights violations that occurred from 1960 to 1994. The TRC's working mechanism includes three main committees with different focuses:

a) Human Rights Violations Committee:

This committee is responsible for hearing public testimony from victims of human rights violations. The TRC invites victims and witnesses to testify at nationally broadcast public sessions. This aims to reveal the historical truth, acknowledge the suffering of victims, and provide a full picture of the atrocities during apartheid.

b) Amnesty Committee:

One of the unique elements of the South African TRC is the granting of amnesty to perpetrators of human rights violations,

provided they acknowledge their actions in a full and transparent manner. Perpetrators must prove that their actions were politically motivated and within the context of the struggle against apartheid. The committee evaluates amnesty applications and decides whether perpetrators are eligible to be released from prosecution.

c) Reparation and Rehabilitation Committee:

After truth-telling and evaluation of testimonies, the TRC made reparations recommendations to the government. The committee was tasked with developing compensation packages, both financial and psychosocial, for victims of apartheid. However, the TRC has been criticized because reparations are often considered inadequate compared to the level of suffering of victims.

CONCLUSION

Papua's Special Autonomy provides a legal basis for addressing conflict and human rights violations through non-judicial mechanisms that are more inclusive and appropriate to the socio-cultural context of the local community. The establishment of the TRC was based on several key reasons: first, the TRC allows for a more comprehensive and just resolution than formal legal channels; second, the TRC respects local wisdom in the reconciliation process; third, the institution plays an important role in rebuilding trust between the Papuan

people and the central government; and fourth, the TRC is expected to prevent the recurrence of human rights violations in the future and support long-term peace in Papua. The establishment of the Papua TRC is an important step towards respecting the rights of the Papuan people, improving relations between conflicting parties, and strengthening the implementation of a fair and inclusive Special Autonomy.

The problems of resolving human rights violations in Papua from the perspective of Special Autonomy reflect complex challenges that require comprehensive attention. Although the Papua Special Autonomy Law provides a legal basis for dealing with human rights violations in an inclusive and peaceful manner, its implementation is far from optimal. This is due to several factors, such as slow implementation, overlapping authority between the central and local governments, and counterproductive militaristic approaches. The Papuan people's lack of trust in the government, both central and local, as well as victims' limited access to justice and redress, exacerbate this problem.

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