

Customary criminal law in the Eastern of Indonesia: the special autonomy Province of Papua

Salsabila Rahadatul' Aisy¹, Hary Abdul Hakim^{2✉}, Johny Krisnan³, Try Hardyanthi⁴, Mutia Qori Dewi Masithoh⁵

^{1,2,3,5} Faculty of Law, Universitas Muhammadiyah Magelang, Jawa Tengah, Indonesia

⁴Department of Financial and Economic Law, Asia University, Taiwan

✉ haryabdulhakim@unimma.ac.id

Article info

Submitted:
2020-08-03

Reviewed:
2021-08-12

Accepted:
2021-08-16



This work is licensed under
a Creative Commons
Attribution-NonCommercial
4.0 International License

Publisher

Universitas Muhammadiyah
Magelang

Kata Kunci: Papua,
Otonomi Khusus, Hukum
Adat

ABSTRACT

Autonomy is often seen as an institutional instrument to manage sub state nationalist conflict. Its implementation is also a key in determining its impact on conflict. After the reform period 1999 "Autonomy and Decentralization" in Indonesia are widely welcomed. While Papua is an inseparable part of special autonomy in Indonesia. Papua as a former Dutch territory which was later handed over to Indonesia has many advantages, both in terms of culture, customary law and natural resources. But on the other hand, the fact is that the indigenous Papuan people does not agree to join as part of Indonesian territory. This rejection was accompanied by separatist actions based on their interest mentioned in the memorandum for Papuan independence. This research is the first to aim to measure whether the special autonomy given to Papua has been effectively carried out in an effort to defend Papua as a part of Indonesia. Second, in the application of this special autonomy related to the existent of customary criminal law in papua. The research used normative legal research by statute approach, the data collected through library research and also analysed used descriptive qualitative. So it is concluded that the application of the special autonomy given to Papua has a big impact on democracy in Indonesia, as well as the Papua regional government given specialization in managing its regional potential. Although there are still problems in its implementation.

Keyword: Papua, Special Autonomy, Adat Law

ABSTRAK

Otonomi sering dilihat sebagai instrumen kelembagaan untuk mengelola konflik nasionalis di suatu negara. Implementasinya juga menjadi kunci dalam menentukan dampak terhadap konflik tersebut. Setelah masa reformasi tahun 1999 "Otonomi dan Desentralisasi" di Indonesia disambut secara luas. Sedangkan, Papua merupakan bagian yang tidak terpisahkan dari otonomi khusus di Indonesia. Papua yang sebelumnya merupakan wilayah kekuasaan Belanda, yang kemudian diserahkan kepada Indonesia memiliki banyak keunggulan baik dari segi budaya, hukum adat maupun sumber daya alamnya. Namun di sisi lain, faktanya masyarakat asli Papua

tidak setuju untuk bergabung sebagai bagian dari wilayah Indonesia. Penolakan ini disertai dengan aksi separatis berdasarkan kepentingan mereka yang disebutkan dalam nota kemerdekaan Papua. Penelitian ini adalah yang pertama bertujuan untuk mengukur apakah otonomi khusus yang diberikan kepada Papua telah efektif dilakukan dalam upaya mempertahankan Papua sebagai bagian dari Indonesia. Kedua, dalam penerapan otonomi khusus ini terkait dengan keberadaan hukum pidana adat di Papua. Penelitian ini menggunakan penelitian hukum normatif dengan pendekatan undang-undang, kemudian, data dikumpulkan melalui penelitian kepustakaan dan juga dianalisis menggunakan deskriptif kualitatif. Sehingga disimpulkan bahwa pemberlakuan otonomi khusus yang diberikan kepada Papua berdampak besar terhadap demokrasi di Indonesia, begitu juga dengan Pemerintah Daerah Papua memberikan spesialisasi dalam mengelola potensi daerahnya. Meskipun masih terdapat kendala dalam pelaksanaannya.

I. INTRODUCTION

The government's discourse in implementing the decentralized system, as echoed in the reform era, is still not fully implemented. The aspiration to create a democracy that guarantees the freedom of every citizen has been hurt by the actions of the anti-democratic rulers themselves. In fact, the moments from 1998 to 2000 were the hope of all Indonesian citizens in realizing a democratic country. Several major agendas at that time had been well organized, including giving each region authority to run its governmental system independently. In other words, the central government has implemented a decentralized system so that each region can administer everything in its territory more freely based on the prevailing laws.

In August and November 2001, the Indonesian government adopted special autonomy legislation for Aceh and Papua, respectively. Since the fall of President Suharto in 1998, movements for independence have been gaining steam, leading to a violent confrontation between security forces and independence activists. As violence increased, in an attempt to divert secessionist demands, the government provided special autonomy (McGibbon, 2004).

Autonomy is also seen as a significant institutional method for resolving ethnic disputes. In particular, the extension of some sort of decentralized control over that territory, when a territorial concentrated ethnic group mobilizes against the state, is a popular prescription to eradicate violent conflict. Whether autonomy is an effective instrument for ending or preventing civil war has been the subject of much of the discussion. Proponents highlight its virtues as a response to stopping war and welcoming nationalist sub-state parties. Detractors contend that autonomy promotes secession. Although several scholars recognize that autonomy takes many forms, the controversy focuses on the implications or not of allocating autonomy.

These processes are explained by the case of Papua. The Indonesian government gave wide-ranging autonomy after decades of low-level violent conflict, in the year 2001. Law no. 21, 2001 offered special autonomy (Otonomi Khusus/Otsus) for Papua, the easternmost province of Indonesia at that time. The legislation gave the territory enormous new powers to administer, as well as a considerably large new pool of funds. The legislation was part of a larger plan to resolve many Indonesian conflicts. After the collapse of President Suharto's authoritarian government, wide-ranging autonomy was given to East Timor via a referendum in which the Timorese defeated the offer and opted for independence instead. The loss of East Timor forced the government, with a different policy, to resolve secessionist demands in Aceh and Papua. It acknowledged the need for some accommodation and therefore moved forward creating autonomy packages, albeit without a referendum, for both regions. "Special autonomy" was applied concurrently to both Aceh and Papua, even though the substance of the respective laws differed somewhat (Bertrand, 2014).

Special Autonomy based on the provisions of Law No.21 of 2001 is a special authority recognized and given to the Papua Province to regulate and manage the interests of the local community according to its own initiative based on the aspirations and basic rights of the Papuan people. This means that the authority of the Papua provincial government is essentially obtained through the legitimacy of a rule of law (Musa'ad, 2011).

The implementation of Special Autonomy for Papua Province as regulated in Law No. 21 / Year 2001 more or less has been able to make a sedative for the people of Papua. For nearly 27 years, the Papuan people have lived under pressure from the central government restraints using a security approach in maintaining the integration of this region full of natural resources. During the reign of President Abdurahman Wahid, the draft of the Special Autonomy Law for Papua was drafted, and during President Megawati's time the law was passed, despite the fact that implementation in the field was still not optimal (Lefaan et al., 2012).

II. RESEARCH METHOD

The research method used is normative legal research, based on the secondary data, divided into primary, secondary and tertiary legal material. Primary legal material covers the related Laws and Regulations, while secondary legal material such as the book, scientific journals, and other legal documents related to the issue, trusted sites internet and other non-legal documents associated with this research. Furthermore, the study also used the statute approach. Finally, data were analyzed systematically through a qualitative juridical process. It would connect with the principle of Law and other regulations.

III. ANALYSIS AND DISCUSSION

3.1. Special Autonomy of Papua

When there was a change in the national political constellation which was marked by the end of the New Order government regime, there was also significant local political dynamics in Papua. The central government then granted Special Autonomy as a political compromise on the demands of the Free Papua movement. However, its implementation, Special Autonomy has not run optimally until now. Various obstacles faced his journey including unclear distribution of authority and flow of funds, inconsistency of the central government and the Papuan regional government, to conflicts of interest and power among local Papuan elites, which ultimately results in a decline in the trust of the Papuan people.

Special Autonomy has been considered by various groups to be an important key point in determining the political status of both the government and the people of Papua. As is known, through Law Number 21 of 2001 concerning Special Autonomy, Papua has been given the authority to regulate its own government based on statutory regulations. With special autonomy, the central government wants the separatist movement to immediately stop its activities, and Papua remains part of the Unitary State of the Republic of Indonesia (NKRI). A further implication is that peace in Papua will continue to be maintained, without any political upheaval for independence.

The special Autonomy legislation for Papua also allowed the provincial government authority over decision in all sectors except international affairs, defense, monetary and fiscal policy, religion and justice, as well as a far higher share of revenue originating in Papua than applies to other provinces .

Historically, through a long and bitter process that took place between 1963 and 1969, Papua officially became part of Indonesia which equal to other provinces. First and the area was called West Irian (Irian Barat) and became part of the Indonesian province, with Jayapura as its capital. In 1973, it changed its name to Irian Jaya. The contentious history contributed to the immense campaign of local elites pushing for an independent state for Papua.

Over the following decades, by allocating a higher level of funding to Irian Jaya than to other Indonesian provinces, the Indonesian government attempted to reduce the Papua independence movement. The 1998-2001 period was the most important time in the relationship between Jakarta and Jayapura. In Irian Jaya, the resignation of President Soeharto in mid-1998 and the successful demand for East Timor for a referendum on independence strengthened separatist ambitions.

The special autonomy policy promote by Indonesian People Representative Assembly (Majelis Permusyawaratan Rakyat/MPR). It was stated that the MPR will preserve the NKRI by creating special autonomous regions governed by law while respecting the

diversity of the social and cultural life of the Irian Jaya people. Through an honest and dignified judicial procedure, the MPR will also settle cases of human rights abuses in the province. Furthermore, Irian Jaya MPR representatives suggested that Special Autonomy be given to the region as the best way to enable the local government and the citizens of Irian Jaya to develop themselves in accordance with their specific cultural and special circumstances. The government, on the contrary, responded to the TAP MPR by immediately drafting the Bill on Special District Government in Irian Jaya and submitted it to the House of Representative (Dewan Perwakilan Rakyat/DPR) (Katharina, 2017).

Furthermore, when Aburrahman Wahid became president at the end of 1999, by changing the name of the province to Papua, he adopted a more accommodative and culturally sensitive approach to the issue of ethnic conflict and separatist demands (Resosudarmo et al., 2014). The President also supported the creation of a draft bill on special autonomy for Papua for the preservation of good relations with provincial elites. In late 2001, after a lengthy series of debates, the national parliament eventually passed Law No. 21 of 2001 on special autonomy for Papua (Chauvel & Bhakti, 2004).

After the enactment of Special Autonomy Law one of the strongest demands of the aspirations that developed in Papua in 2003, as we can follow through the mass media, is the urgent need for an MRP. As stipulated in the Papua Special Autonomy Law, Article 19 states: (1) the MRP consists of indigenous Papuans consisting of representatives of adat, representatives of religion, and representatives of women who each constitute one-third of the total members of the MRP; (2) The membership period for the MRP is 5 (five) years; (3) Membership and number of MRP members are stipulated by Perdasus; and (4) The financial position of the MRP is stipulated by a Government Regulation.

Despite the effort of central government to calm separatist tensions by providing special autonomy and increased funding, there is a widespread perception that development in Papua is a failed process. Critics argue that the benefits of development have been concentrated in resource-rich enclaves and urban areas, bypassing most indigenous Papuans.

There are at least three basic things revealed from Law no. 21/2001 concerning Otsus, namely (Stepanus & Nugraha, 2012):

- a. The arrangement of authority between the central government and the Papua Province, as well as the implementation of said authority in the Papua Province, shall be carried out with particularity.
- b. Recognition and respect for the basic rights of indigenous people in Papua as well as strategic and basic empowerment.
- c. Realizing good governance, characterized by:
 - 1) The maximum participation of the indigenous Papuan people in planning, monitoring and implementation in government administration.

- 2) (b) The implementation of development as large as possible is directed at meeting the basic needs of the indigenous Papuan population.
- 3) (c) Implementation of development that is transparent and accountable to the provincial community.

Other provisions that are interesting and need to be put forward are provisions related to the existence of indigenous peoples and efforts to protect and empower, as well as to give roles to indigenous peoples to participate in regional development. Also Article 43 of the Papua Special Autonomy Law includes provisions regarding the obligations of the Regional Government and the rights of Papuan indigenous peoples.

3.2. The Impact of Special Autonomy on the Implementation of the Government System in Papua

In addition to great authority, provincial-level government bodies are also designed differently from other provinces in Indonesia, as specified in Act No. 21 of 2001, which is institutional in addition to the Governor's institution and the Regional Representative Council (DPRD), the Papua People's Assembly (MRP or Majelis Rakyat Papua). At the provincial level, the MRP is a cultural entity with a certain authority. As expressed in the General Elucidation of Act No. 21 of 2001, the existence of this institution is to give the Papuans an adequate role in participating in the formulation of regional policies and in defining the development strategy (Bauw, 2016). The presence of the MRP in Papua is supposed to solve numerous problems. Therefore, in the governance of the Papua Region, MRP has a broad and very strategic power, it can be said that the effective implementation of Act No. 21 of 2001 is contingent on the duties and authority of MRP.

As a logical consequence of the implementation of the special autonomy policy, in Papua Province two forms of Regional Regulation are enforced, namely the Special Regional Regulation (Peraturan Daerah Khusus/Perdapus) and the Provincial Regulation (Peraturan Daerah Provinsi/Perdasi). In this context the position of Perdapus and Perdasi is the same, meaning that one is not higher than the other. The Perdapus is made by the DPRP together with the governor, which in its determination must receive consideration and approval from the MRP. Meanwhile, the Perdasi is made and stipulated by the DPRP together with the governor. Both Perdapus and Perdasi are Papua Provincial Regulations with different domains. To follow up the provisions in the Perdapus and Perdasi at the implementation stage, a Governor Decree was formed.

However, so far, the existence of Special Autonomy has also had a serious impact on the increasingly prominent practice of identity politics which refers to ethnocentrism. For some of the Papuan elite, Special Autonomy is interpreted as the freedom to self-determination based on ethnic sentiments. The entire political elite in Papua has recently determined that the Governor and Deputy Governor as well as the Regent and Deputy Regent in Papua must come from indigenous Papuan descent. At the time of Special Autonomy and regional expansion, local sons emerged as leaders, both as regents, *Borobudur Law Review, Vol.3 No.2 (2021)*

legislators, and heads of offices. Mass mobilization carried out by local elites often occurs using ethnocentrism politics. Which also inflicts conflicts ethnic background.

3.3. Special Autonomy Disadvantages

The disagreement between the Government of the Republic of Indonesia and the Papuan people regarding the existence of the Papua Province as part of the Unitary State of the Republic of Indonesia remain up to now. In Papua, competing actors were complex involving central and provincial government and parliament actors, pro-autonomy, pro-independence, churches of NGOs, and leaders of tribes.

Also since the handover of the Papua Province from the Dutch Government through UNTEA (United Nations Temporary Executives Authority) to the Government of the Republic of Indonesia; however, the Papuan people have never felt free from suffering. All forms of abuse of power are actually carried out not only by the central government in Jakarta but also by regional governments which further aggravate the economic, social and cultural conditions of the Papuan people through attitudes and behaviors that deeply injure the Papuan people, namely corruption.

The conflict that occurred in Papua was rooted in an injustice stemming from the unequal distribution of the results of economic development carried out by the New Order. The process of unequal distribution of the results of economic development is eventually institutionalized into a structured and permanent impoverishment effort whether it is intentional or automatic. The concept of economic development that is carried out and at the same time functions as a state ideology, inevitably must pay more attention to the needs of the center than the regions as a source of strength for development funds.

Several types of complex problem categories that occur in Papua are summarized as follows. First, the desire of the Papuan people to become an independent country. This desire has occurred even during the colonial period by the Dutch, this is reflected in the struggle of the Papuan people to be free from colonialism. When the New Order regime ended in mid-1998, this conflict became more manifest and efforts to become independent also intensified. This problem led the entire post-New Order regime to strive to think of an alternative solution for resolving the conflict that occurred in Papua. International pressure has influenced all the political policies of the Indonesian government towards Papua. In the Papuan perception, Papuan independence was first declared with the raising of the Morning Star (Bintang Kejora) flag on December 1, 1961. However, this declaration of independence was ignored or "canceled" by the agreement between the Netherlands and Indonesia which was signed in New York in 1962, in which the Netherlands agreed to transfer governance in Papua to Indonesia under the supervision of the United Nations (known as the UNTEA-United Nations Temporary Executive Authority mission) (Muttaqin, 2013). Papuans who do not feel involved in the treaty process perceive Papua as merely the object of international disputes.

Second, Problems the separatist conflict that occurred in Papua cannot be avoided between Indonesian government and Free Papua Movement (Organiasi Papua Merdeka/OPM). This is the desire of the Papuan people to become an independent region. When democratization took place, Habibie initially tried to solve the Papuan issue via dialogue. In February 1999, Habibie met representatives of Papuans demanding independence. After that, however, police started to pressure pro-independence activists by detention and arrest. Meanwhile, the government enacted Law 45/1999 to divide the Papuan province into three, although it was not implemented because of strong opposition from Papuans (Fujikawa, 2017). During the New Order era, Papua became a military operation area controlled by the Army (Rahab, 2006).

The target of OPM is a referendum on Papuan independence. OPM was inspired by East Timor, whose independence began with the success of the country's freedom fighters, urging Indonesia to hold a referendum which was finally held in 1999. OPM organized several armed resistances against transmigrants from outside Papua from civil society, began in Manokwari on July 26, 1965, and several gunshots of Trans Papua project employees, PT Istaka Karya workers, members of the Indonesian Police Mobile Brigade Corps (known as Brimob), and teacher and medical staff detention were carried out in 2018.

Rebellions by OPM are divided into physical and non-physical rebellions. Physical uprising uses weapons in resistance; Non-physical rebellion raises flags and other statements (Febrianti et al., 2019). Apart from acting through gunfire, the OPM also carried out many campaigns and actions to get public attention and sympathy, especially international citizens. One of them is through the Free West Papua Campaign (FWPC), OPM presents issues related to the Papuan independence struggle through news on the freewestpapua.org website. Which was launched in 2004. The site always depicts Indonesia with an image as a sadistic, brutal, cunning, and inhuman invader of the Papuan homeland.

Third, Weak consistency in the protection and enforcement of human rights. It must be admitted that the implementation of the Special Autonomy Law is not automatically able to bring about significant changes in the process of upholding human rights in Papua. During the implementation of the Special Autonomy Law a number of cases of human rights violations in Papua have not been resolved. In fact, this law is expected to be able to answer problems or minimize human rights violations that have occurred so far in Papua. Regardless of all the shortcomings and weaknesses. At least Otsus Papua is still seen as a strategic opportunity or an entry point for resolving violations and human rights in Papua, both in the past and today. Although this is not the justification accepted by various parties in Papua.

Fourth, Territorial expansion conflict. This emerged as a result of the government's haste in implementing the expansion policy which was actually intended to streamline the

function of government services and equitable development in the Papua region. However, the expansion policy as intended by the government actually triggers conflict.

The conflicts that occurred either as a result of regional expansion or the process of changing power involving local elites in Papua disrupted the effectiveness of government administration in several regions in Papua and ultimately affected the implementation of Special Autonomy. As implied in the Papua Special Autonomy Law which emphasizes that the successful implementation of the Special Autonomy Law is very dependent on the extent to which good governance runs effectively and efficiently in the framework of serving the public interest that is more just, democratic and accountable.

3.4. The Existent of Customary Criminal Law

Indonesia is a multicultural country with a variety of ethnic groups, traditions, races, and religions spreads in cities and villages. These diversity existed for a long time, even before the Indonesia independence. According to the 2010 census of the Central Statistics Agency (BPS), there are 1,340 ethnic groups in Indonesia (Farid, 2019). Even one tribe in Indonesia can have many types, such as Papua. The Papuan tribe has other ethnic divisions into smaller groups such as the Abau, Abra, Adora, Aikwakai and 22 other ethnic groups.

Customary law communities are territorial or genealogical community units that have their own wealth, they have citizens who can be distinguished from other legal community members and can act internally or externally as a legal entity (legal subject) that is independent and governs themselves (Syarifuddin et al., 2021). Customary law communities live with their own wealth and are governed by customary law that they believe in. According to Koen Cakraningrat, Adat is a form of embodiment of culture, then custom is described as a code of conduct. From this, customs can be called norms or unwritten rules that have existed in society for a long time which have become hereditary (Ragawino, 2008).

Like a country that has positive state laws, indigenous people lives are also governed by customary rules. Based on Article 1 Paragraph 1 of Law Number 21 of 2001 concerning on Special Autonomy for the Province of Papua (Diana Indramaya, 2019), what is meant by customary law is an unwritten rule that lives in communities, regulates, binds and has sanctions. Customary law as unwritten law has an influence on the development of law in Indonesia (Siregar, 2018). But if no written law exists, a judge is required to investigate the values that exist and evolve in the community in order to decide the issue, implying that the judge must know customary law in carrying out his duties and authorities (Nur Iftitah Isnantiana, 2017).

In some parts of Indonesia, customary law used to resolve various issues. Papua is one of the few places in the world where customary law is still widely used, therefore living in Papua is also quite traditional, especially among the tribes. They are very protective of their tribe from the outside world, and some native tribes believe that the outside world is a threat for them (Gatot Suprasetya, 2021).

Papua customary laws that are only enforced in their own region. For example, there is the implementation of special autonomy for Papua, both at the provincial and district or city levels in choosing its leader candidates. As well as the implementation of General Elections in the regions must be carried out in a "Direct, General, Free and Secret" manner, then there are some areas in Papua are still using the general election with the "Noken system" and/or tie system (Ronsumbre, 2019). This noken system is carried out because there are several areas in Papua that are in border areas or inland, so it is very difficult to provide explanations to the public considering the limitations of communication and education. Therefore, people in the area tend to follow the choice of their tribal leader to make choices. Noken in Papuan language means bag or pouch. Named noken because the election used a bag hung on a tree instead of a ballot box. This noken system uses the principle of representation, which means that one community is represented by one person, namely the tribal chief or (Big a Man). The voting is based on an agreement between the community itself and the tribal chief. Actually, there are two types of noken system, the first is voice can represented to the tribal chief and the second, the hanging noken, where the community can see the voice that has been agreed to be put in a bag or bag hanging on a tree (Achbar Madya Persada, Jayus, 2020).

Actually the noken system is contrary to the General Election Law, namely Article 1 which explains that elections are a means to implement people's sovereignty which is carried out directly, publicly, free of secrets, honest, and fair (*luber jurdil*) based on the 1945 Constitution of the Republic of Indonesia (Nainggolan & Marzuki, 2021). The one man one vote principle in the Election Law does not seem to work optimally if the noken system is used in the electoral system (Zairudin, 2021). Then in essence the noken system is considered to be able to injure democratic institutions and damage the legitimacy of the constitutional system in Indonesia, because people who do not hold general elections formally and are represented by tribal leaders.

Although the noken system in one side considered not in accordance with Indonesian law, while the Constitutional Court gave a decision which basically stated that there was no problem with the voting system used by indigenous Papuans because the essence of the General Election process is that everyone can exercise their right to vote directly, freely and secret (Waluyo, 2019). This is reinforced by the statement of the Constitutional Justice, Prof. Achmad Sodik, who said that "...the Court can understand and appreciate the cultural values that live among the Papuan people which are unique in holding general elections by means and systems of citizen agreement or acclamation, because if forced to use general election procedures in accordance with applicable laws and regulations, it is feared that conflicts will arise between local community groups. The Court is of the opinion that they should not be involved or brought into a system of competition and divisions within and between groups that can disrupt the harmony they have lived so far" (Lubbi, 2021).

Customary courts in Papua regulated based on Papua Province Special Regulation Number 20 of 2008 concerning Papuan Customary Courts (hereinafter referred to as *Borobudur Law Review*, Vol.3 No.2 (2021)

Perdasus Adat Courts). This Perdasus is the implementation of Law Number 21 of 2001 concerning the Granting of Special Autonomy for the Province of Papua (hereinafter referred to as the Special Autonomy Law) (Papua.go.id, 2014). This recognition and respect is not only for socio-cultural identity, but also for its existence as a legal subject. This is confirmed in Article 18B Paragraph (2) of the 1945 Constitution which states that the state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia (hereinafter referred to as the Unitary State of the Republic of Indonesia). , which is regulated by law (Lubis et al., 2019). In fact, the life of indigenous peoples in Papua continues to enforce, maintain, and submit to their respective customary courts, especially in the settlement of customary cases that occur among fellow members of the customary law community. This fact is further strengthened by its regulation in the Perdasus of Customary Courts. One of the specialties of autonomy for Papua Province is the existence of customary courts as stated in Article 50 paragraph (2) and Article 51 paragraph (1) to paragraph (8) of the Special Autonomy Law. There are also several kinds of customary law that applies in Papua Province.

Niki paleg is a tradition of cutting fingers by someone from the Dani's tribe as a sign of loyalty and the loss of a family member. Finger cutting in Papua is a tradition that has been passed down from generation to generation. A mother who has lost her child will cut off one of their fingers as a sign of sadness. There are various ways to perform this cutting ritual. Cutting can be done using sharp objects such as knives, machetes and axes. Another effort can be to tie the finger using a rope until the finger becomes numb and then cut. Doing activities with fingers that are no longer complete will be difficult in itself. The difficulty in question is a deep sense of sadness ([Aiza, nd](#)).

The part of the finger that has been decapitated will later be dried and burned. The meaning behind the Niki Paleg ritual can be interpreted as an effort to avoid disasters and calamities that are considered to have been a factor in the death of their relatives so that they do not come back to befall the others. Consciously based on their form of thought, a Dani tribe who has completed his obligation to undergo the Niki Paleg tradition will carry a sense of pride and be more accepted in the surrounding environment because he has fulfilled the customary obligations that they have as a symbol of sorrow for the departure of loved ones. It is different with a Dani who refuses and does not want to sacrifice his fingers to be cut. They will indirectly be judged by social sanctions from the surrounding community ([Putro, 2019](#))

IV. CONCLUSION

This research concludes that, the implementation of the special autonomy policy has resulted in changes to the structure and authority of government in Papua province. This is stated in Law No. 21 of 2001 on Papua's Special Autonomy. The provision stated about

the Special autonomy of Papua authority over decision in all sectors except international affairs, defense, monetary and fiscal policy, religion and justice. However, a long period of time since the implementation of special autonomy, there are still many problems in Papua. The issue of separation of Papua from parts of Indonesian territory, separatist conflicts, and economic issues are still a topic of discussion that is often discussed. Until it raises a perspective in society that the special autonomy that has been granted has not been implemented properly, this is of course contrary to the objective of equality for each region in Indonesia.

Author Declaration

Author contributions and responsibilities - The authors contributed substantially to the conception and design of the study. The author is responsible for data analysis, interpretation, and discussion of the results. The authors read and approved the final manuscript.

Funding – No funding information from the author

Availability of data and materials - All data are available from the authors.

Conflict of interest - The authors declare no conflict of interest.

Additional information - No additional information from the author.

Reference

- Achbar Madya Persada, Jayus, I. R. S. (2020). Sistem Noken dalam Pemilihan Kepala Daerah di Papua (Studi Putusan Mahkamah Konstitusi Nomor: 35/Php.Bup-XVI/2018). *Interdisciplinary Journal on Law, Social Sciences and Humanities*, 01(2 (2021)), 54–66. <https://doi.org/10.19184/ijl.v1i1.22179>
- Aiza, N. (n.d.). *Tindakan Niki Paleg Suku*.
- Bauw, L. (2016). Special Autonomy of Papua : A Review from the Perspective of the Unitary State of the Republic of Indonesia. *Papua Law Journal*, 1(1), 1–26.
- Bertrand, J. (2014). Nationalism and Ethnic Politics Autonomy and Stability : The Perils of Implementation and “ Divide-and-Rule ” Tactics in Papua , Indonesia. *Nationalism and Ethnic Politics*, 20(2), 174–199. <https://doi.org/10.1080/13537113.2014.909157>
- Chauvel, R., & Bhakti, I. N. (2004). *The Papua Conflict : Jakarta ' s Perceptions and Policies* (P. Studies (ed.); 5th ed.). East-West Center Washington's Project.
- Diana Indramaya. (2019). Eksistensi Undang-Undang Nomor 21 Tahun 2001 Tentang Otonomi Khusus Bagi Provinsi Papua (Existence of The Act Number 21/2001 On Special Authonomy of Papua Province). *Jurnal Penelitian Hukum De Jure*, 19(10), 517–538.
- Farid, A. H. (2019). Masyarakat Hukum Adat: Ada Atau Tiada? 6(11), 951–952.
- Febrianti, S. W., Arum, A. S., Dermawan, W., & Akim. (2019). Internal Conflict Resolution between Government of Indonesia and Separatist Movement in Papua using Horse-Trading Mechanism. *Society*, 7(2), 83–100.
- Fujikawa, K. (2017). Drifting between accommodation and repression: explaining Indonesia ' s policies toward its separatists. *The Pacific Review*, 30(5), 1–19. <https://doi.org/10.1080/09512748.2017.1293713>

- Gatot Suprasetya. (2021). Kajian Yuridis Terhadap Penerapan Hukum Adat Dalam Menyelesaikan Kasus Tindak Pidana Di Papua. *6(11)*, 951–952., 2, 12.
- Katharina, R. (2017). Deliberative Formulation of Papua Special Autonomy Policy. *International Journal of Administrative Science & Organizing*, *24(2)*, 69–77.
- Lefaan, A., Nugroho, H., & Mudiono. (2012). Etnosentrisme Dan Politik Representasi Di Era Otonomi Khusus Papua. *Jurnal Majalah Ilmiah Pembelajaran Edisi Khusus*, 1–18.
- Lubbi, M. M. (2021). Analisis Sistem Pemilihan Umum Noken Di Provinsi Papua Dalam Prinsip Demokrasi Dan Sistem Hukum Nasional. 1(July).
- Lubis, S., Hutabarat, M., & Nasution, M. R. (2019). Undang Undang Dasar 1945. *4(1)*, 1–12. <https://doi.org/10.31227/osf.io/498dh>
- McGibbon, R. (2004). *Secessionist Challenges in Aceh and Papua: Is Special Autonomy the Solution ?* (P. Studies (ed.); 10th ed.). East-West Center Washington.
- Musa'ad, M. A. (2011). Kontektualisasi Pelaksanaan Otonomi Khusus di Provinsi Papua: Perspektif Struktur dan Kewenangan Pemerintah. *Journal Kajian*, *16(2)*, 357–385.
- Muttaqin, A. (2013). Otonomi Khusus Papua Sebuah Upaya Merespon Konflik Dan Aspirasi Kemerdekaan Papua Azmi Muttaqin. *Politika: Jurnal Ilmu Politik*, *4(1)*, 5–18.
- Nainggolan, N. A. F. B., & Marzuki. (2021). Peran Badan Pengawas Pemilu Dalam Menyelesaikan Sengketa Pemilu Berdasarkan Undang-undang Nomor 7 Tahun 2017 (Studi Pada Bawaslu Kabupaten Deli Serdang). *2(1)*, 160–170.
- Nur Iftitah Isnantiana. (2017). Legal Reasoning Hakim dalam Pengambilan Putusan Perkara di Pengadilan. *Islamadina*, *18(2)*, 53.
- Papua.go.id. (2014). *Pemerintah Provinsi Papua - Arti Lambang Papua*.
- Putro, B. B. (2019). N Makna Dibalik Tradisi Niki Paleg Suku Dani di Papua. *Commed : Jurnal Komunikasi Dan Media*, *3(2)*, 159. <https://doi.org/10.33884/commed.v3i2.1257>
- Ragawino, B. (2008). *Pengantar dan Asas-asas Hukum Adat Indonesia*. 65.
- Rahab, A. al. (2006). Operasi-operasi Militer di Papua: Pagar Makan Tanaman? *Jurnal Penelitian Politik*, *3(1)*, 3–23.
- Resosudarmo, B. P., Mollet, J. A., Raya, U. R., & Kaiwai, H. (2014). *Development in Papua after special autonomy*. ISEAS.
- Ronsumbre, N. (2019). Sistem Noken Papua: Manifestasi Demokrasi Berbasis Kearifan Lokal. *Jurnal Sosial Politik*, *5(2)*, 261. <https://doi.org/10.22219/sosopol.v5i2.7388>
- Siregar, F. A. (2018). Ciri Hukum Adat Dan Karakteristiknya. *Jurnal Al-Maqasid : Jurnal Ilmu Kesyariahan Dan Keperdataan*, *4(2)*, 1–14.
- Stepanus, M., & Nugraha, N. (2012). *Otonomi Khusus Papua* (Nugraha (ed.)). Ar Raafi.
- Syarifuddin, L., Hukum, F., & Mulawarman, U. (2021). Kedudukan Hukum Terhadap Upaya Penyelesaian Syattar. *1(2)*, 84–93.
- Waluyo, W. (2019). Model Pemilu Dengan Sistem Noken Berbasis Budaya dan Kearifan Lokal. *Jurnal Hukum Samudra Keadilan*, *13(2)*, 295–308. <https://doi.org/10.33059/jhsk.v13i2.1065>
- Zairudin, A. (2021). Mekanisme Penetapan Daftar Pemilih dalam Perspektif Hukum. *Legal Studies Journal*, *7*, 18–36.