

The Urgency of Recognition the Rights of Indigenous Peoples in Asymmetric Decentralization in Papua and Papua Barat

Author:

Anifa Aprilia Sejati¹, Drajat Tri Kartono²

Affiliation:

Faculty of Social and Political Sciences, Sebelas Maret University Surakarta, Jl. Ir. Sutami No. 36 Ketingan, Jebres, Surakarta, Central Java 57126 **Indonesia**^{1,2}

e-Mail:

anifasejati@gmail.com¹, drajattri@staff.uns.ac.id²

***Corresponding author**

Drajat Tri Kartono
Sebelas Maret University, Surakarta
Email: drajattri@staff.uns.ac.id

Received: Nov 10, 2023

Revised: Jan 13, 2024

Accepted: Apr 15, 2024

Available Online: Jul 09, 2024

ABSTRACT

Asymmetric decentralization is a special method given to certain provinces in Indonesia amidst the diversity of cultures, customs and specialties of certain regions. The central government's policy in the form of regional autonomy apparently has an impact on indigenous communities, resulting in frequent conflicts and unclear recognition of customary rights, especially in Tanah Papua. The aim of the research is to determine the importance of recognizing indigenous communities in asymmetric decentralization in Papua and West Papua. The research method used is qualitative, data was obtained by searching the literature and presented with descriptive analysis. The results of this research are that Indonesia does not yet have regulations at the "law" level that recognize the existence and rights of indigenous peoples, especially in Papua and West Papua. One of the government's admissions is that through Asymmetric Decentralization with special autonomy it still causes public dissatisfaction. Therefore, recognition of people's rights through draft laws or "laws" is very important to implement. According to the research, ratifying the Indigenous Peoples Bill is essential for strengthening the legal and policy foundation for indigenous peoples' rights fulfillment.

Keywords: *indigenous peoples, asymmetric decentralization, autonomy.*

ABSTRAK

Desentralisasi asimetris merupakan salah satu metode khusus yang diberikan kepada provinsi tertentu di Indonesia di tengah keragaman budaya, adat dan keistimewaan daerah tertentu. Kebijakan pemerintah pusat berupa otonomi daerah rupanya berdampak pada masyarakat adat sehingga sering terjadi konflik

dan tidak jelasnya pengakuan hak adat terutama di Tanah Papua. Tujuan penelitian adalah untuk mengetahui pentingnya pengakuan terhadap masyarakat adat dalam desentralisasi asimetris di Papua dan Papua Barat. Metode penelitian yang digunakan adalah kualitatif, data diperoleh dengan penelusuran literatur dan disajikan dengan analisis deskriptif. Hasil dari penelitian ini Indonesia belum memiliki peraturan pada tingkat “Undang-undang” yang mengakui keberadaan dan hak-hak masyarakat adat khususnya di Papua dan Papua Barat. Salah satu pengakuan pemerintah melalui Desentralisasi Asimetris dengan otonomi khusus masih menimbulkan ketidakpuasan masyarakat. Maka pengakuan terhadap hak-hak masyarakat melalui rancangan undang-undang atau “Undang-undang sangat penting untuk dilaksanakan. Pada penelitian ini, pengesahan RUU Masyarakat Adat sangat diperlukan untuk menguatkan landasan hukum dan kebijakan bagi pemenuhan hak-hak masyarakat adat.

Kata kunci: masyarakat adat, desentralisasi asimetris, otonomi.

INTRODUCTION

The ideals and goals of the Indonesian nation are to create a prosperous society and equitable justice in accordance with Pancasila and the Undang-undang Dasar 1945. Indonesia with various cultures and customs is one of the characteristics of the diversity of the country which is divided into 38 provinces. Indonesia with the Undang-undang Dasar 1945 acknowledges, and respects unique or unique local authority's devices regulated withinside the regulation. In addition to spotting and respecting unique local authority's devices, the country additionally acknowledges and respects the commonplace regulation that applies to commonplace network devices. Although this reputation have to be if it's miles nonetheless alive and according with the improvement of society and the standards of the Unitary State of the Republic of Indonesia (Mulyono, 2014).

In general, local autonomy as a manifestation of the decentralization of strength is interpreted as the authority to adjust and control local families, that is inherent in each the unitary nation and the union country. The authority to adjust and

control local families consists of all authorities, besides for a few subjects held through the primary authorities (A.Tauda, 2018). The decentralization mentioned withinside the Undang-undang Dasar 1945 implies the need of implementing "asymmetric decentralization" which emphasizes specificity, privileges, local diversity, in addition to commonplace network devices and conventional rights which can be in addition regulated through law. Asymmetric decentralization is the implementation/switch of unique authority this is best given to sure areas inside a country, that is taken into consideration as an opportunity to fixing the hassle of family members among the principal authorities and neighborhood governments, withinside the context of Indonesia to preserve the life of areas in the Unitary State of the Republic of Indonesia (A.Tauda, 2018). Asymmetric decentralization consists of political, economic, fiscal, and administrative decentralization, however no longer should be uniform for all areas of the country, thinking about the specificities of every region. The implementation of an asymmetric decentralization coverage is a

manifestation of an attempt to implement privileges.

One of Indonesia's principles in organizing government is the principle of decentralization. The decentralization aims to provide rights and authority to regional governments to implement a regional autonomy system (Bratakusumah & Solihin, 2022). Meanwhile, the implementation of the Decentralization system has caused a shift or transfer of management authority from the center to regional governments at the provincial, district and city levels. (Ilmar, 2014). Decentralization is a way to reflect democratic values in a country, due to the fact a number of the authority of the imperative authorities has been passed over to local governments, a good way to reply to subjects which can be intently associated with the lives of the humans withinside the areas (Alfauzi, 2022). With the existence of decentralization, the sources of people's power can be accounted for (source of authority for government), facilitating services to the community (purposes by authority) and mechanisms that are regulated legally and constitutionally on the best way to serve the needs of the people (Prosedure for constituting government) (D.Juliantara, 2006). Regions that are given the title of special autonomy by law may have the character of asymmetrical decentralization, not symmetrical or those whose authority by the central government is carried out in an extraordinary manner. In the sense of the word, these regions can be more and different from other regions, both in terms of authority in the political, economic, social, cultural, fiscal, and administrative fields, and including party matters (Djohan, 2019).

The people living in the Land of Papua are creatures created by God who are part of civilized humanity, respecting human rights, based on religious norms, democracy,

law and cultural values of indigenous peoples, as well as equitable justice in enjoying the results of development. Therefore, national security must be maintained with equal justice and various kinds of socio-cultural life of the Papuan people, through the establishment of a Special Autonomous Region.

In implementing this special policy, it must be based on basic values which consist of protecting and respecting the rights and obligations of citizens, equality, pluralism, democracy, supremacy of law, ethics and morals, basic rights of indigenous peoples and human rights. The difficulty in recognizing the rights of indigenous peoples in the Land of Papua is inversely proportional to the government's policy regarding the addition of new autonomous regions, better known as regional divisions. Expansion of districts and provinces in the Land of Papua, which although it often receives resistance from indigenous peoples and must be supported by a good feasibility study, is easier to ratify. Even though the existence of indigenous peoples is real and can be proven. This situation is substantially contrary to the spirit of special autonomy in the Land of Papua, namely the spirit of protection and empowerment (affirmation) of the rights of indigenous peoples or what are called indigenous Papuans in the terminology of the Special Autonomy Law for the Province of Papua (Wamafma, 2022)

Undang-undang Document No. 21/2001 on the Special Autonomy of Papua Province stated that to date, the implementation of governance and development in Papua Province has not been fully consistent with the sense of justice and has not fully achieved the autonomy of Papua Province. The goal of people's well-being does not fully support the implementation of law enforcement and does not fully respect human rights on

Papuan soil, especially the human rights of the Papuan people. Part of the consideration mentioned in the law is the sub-optimal use of natural resources in order to improve community welfare, thereby giving rise to social jealousy between regions in Papua and other regions. This also includes ignoring the enforcement of basic rights for indigenous peoples living in Papua.

The other regions in Indonesia that have special autonomy is Aceh, Aceh has successful management of regional autonomy, and this is very different from Papua. The Aceh Regional Government has proven to be able to reduce conflict and armed fighting. Aceh can also manage its regional government well even though there are still several separatist acts. This is in contrast to Papua, where there are still many cases of armed violence and conflict (Syafaat, 2014). Conflict resolution in Aceh was resolved before Special Autonomy. Meanwhile, in Tanah Papua, special autonomy is not used to reduce conflict and armed violence because this is not a collective agreement but is a product of the government.

Figure 1. Graph of the Number of Victims Due to Armed Conflict and Cases of Violence in Papua in 2022



(source: ALDP 2022)

The Papuan Democratic Alliance (ALDP) reported that in 2022 there would be 53 cases of violence and armed conflict in Papua. This occurred in Papua Province, there were 47 cases, while in West Papua Province there were 6 cases (Santika, 2023). The aim of the government providing special autonomy is a concrete manifestation of reducing conflict. However, for the Papuan people, special autonomy is the

government's strategy to stop their resistance. Therefore, legal regulations are very necessary to accommodate the rights of the Papuan indigenous people, which aims to reduce conflict and make the Papuan people have more trust in the government (Syafaat, 2014).

In previous research, Kusumaryati V. (2019) argued that discussions of customs and traditional institutions in West Papua must be understood not in terms of their traditional discourse in Indonesia, but also in terms of their relationship with the Indonesian state. This means that the indigenous peoples in West Papua institutionally require attention and legal recognition as part of the Indonesian nation.

Adrianto (2023) stated that the existence of regulations through Regional Regulations related to Customary Law Communities is actually an important aspect to guarantee the customary rights of Customary Law Communities. Provisions regarding the protection and recognition of customary law community customary rights have an important orientation in the special autonomy of Papua Province. Nurita (2022) also stated that discussion of the Draft Law on Indigenous Peoples had stopped for more than a decade in parliament. The presence of this bill is very urgent to protect indigenous communities from confiscation of customary territories in the name of development, plantation permits, mining or other land-based investments.

The relevance of previous research Kusumaryati V. (2019) discusses the context of West Papua and Adrianto (2023) examines the importance of protecting and recognizing rights in Papua. And Nurita (2022) discusses the existence of a Draft Law but there has been no further action from the government. Meanwhile, this research will examine the extent to which the government recognizes the rights of

indigenous peoples in Papua and West Papua amidst the dynamics of asymmetric decentralization contained in special autonomy. This is closely related to the government's role in fulfilling the rights of indigenous peoples and the importance of recognition in the form of a strong legal basis for these communities. This research has a context in the Papua and West Papua regions, where traditional communities and local wisdom play an important role in both governance processes and community interactions.

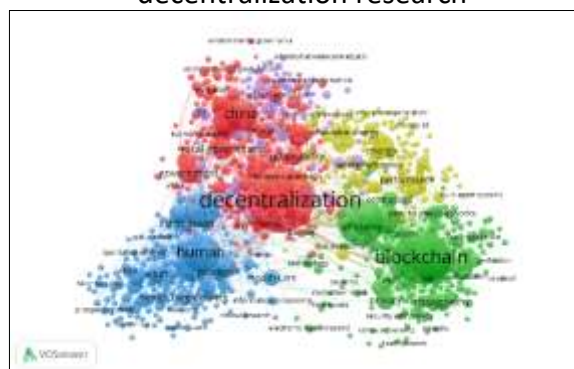
The difficulty of obtaining a legal basis and recognition of the rights of indigenous peoples in Papua and Papua Barat in asymmetric decentralization is a problem that deserves to be studied in a research. The special status of Papua and West Papua itself comes from various problems that exist in Papua, especially problems related to its people. This recognition is aimed at reducing disparities in the Provinces of Papua and Papua Barat. Beside that, the regional government administration system in Papua is considered to be unable to carry out its functions and unable to fulfill and improve the development and standard of living of the Papuan people, resulting in a feeling of injustice towards the Papuan people (Sumule, 2003).

This research will analyze the government's recognition of the rights of indigenous peoples in Papua and West Papua in the dynamics of asymmetric decentralization contained in special autonomy. This is closely related to the government's role in fulfilling the rights of indigenous peoples and the importance of recognition in the form of a strong legal basis for these communities. This research has a context in the Papua and West Papua regions, where traditional communities and local wisdom have an important role in both

governance processes and community interactions.

To get novelty in research, the authors analyze previous studies using the Scopus database and VOSViewer *bibliometric analysis*. Based on a literature review from the scopus.com database and entering the keyword "decentralization" on June 12, 2023, the results obtained were 32,653 documents from previous research. The results will be analyzed using a statistical approach that can help transform publication metadata into maps or visualizations. The output results of the VOSViewer application for research with the theme of *decentralization* can be seen in the image below:

Figure 2. VOSViewer output on decentralization research



As shown in Figure 2, there are 5 clusters of issues related to *decentralization*. The first cluster, the red area shows major issues related to *decentralization, local government, China, government environmental regulation law* and so on. The second cluster of green areas shows *blockchain issues, privacy, decentralization, healthcare and so on*. The third cluster of blue areas shows issues related to *human beings, healthcare delivery, retrospective studies, women and so on*. The fourth cluster in the yellow area shows issues on *energy, microgrid, optimization, power market, and so on*. The fifth cluster of purple areas shows issues regarding *administrative*

decentralization, procedures, rain, water resources and so on.

In the first cluster with the theme of *decentralization*, there are 225 keyword items related to decentralization, but there are no keywords about asymmetrical decentralization or indigenous people. Which means that no previous researchers or very few have conducted studies on the importance of recognizing the rights of indigenous peoples in asymmetric decentralization.

Therefore, this research deserves to be studied based on its novel methods and focuses on three things there are weak recognition of the rights of Indigenous Peoples, Asymmetric Decentralization in the form of Special Autonomy, and the urgency of ratifying the Indigenous Peoples Bill.

METHOD

The method of this research is a qualitative method and a narrative approach, the aim is to provide an empirical study regarding the importance of recognizing the rights of indigenous peoples in Papua and West Papua. Data collection techniques through documentation studies in the form of literature reviews. A literature review is research that examines or critically examines knowledge, ideas, or findings contained in a collection of academically oriented literature, and formulates theoretical and methodological contributions (Cooper, 2010). For data analysis, the data analysis model from Miles & Huberman (1992) was used, which was carried out in 4 (four) stages, including data collection, data reduction, data presentation and conclusions.

On the data collection, data obtained from literature documentation and then recorded in field notes. Data collection keyword are about decentralization, special autonomy, and indigenous rights. After data

is collected, reducing data to determine relevant data and focus on data that leads to problem solving, discovery, meaning or to answer research questions. In the data reduction process, only data findings related to the research problem are reduced. Meanwhile, data that has nothing to do with the research problem is discarded. Presenting data is to combine information about the keywords and research problems so it can provide a general picture of the situation that occurred. Data displays on this research are considered as part of data analysis. Conclusion are drawn by researcher during process, a temporary conclusion will be obtained, and after data is complete, a final conclusion can be obtained.

RESULTS AND DISCUSSION

A. Weak Recognition of the Rights of Indigenous Peoples

The United Nations General Assembly (UN) went through several long stages in 2007 to adopt the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (Soetjipto, 2022). This is the first universal instrument to record the protection of the rights of indigenous peoples and the right to regulate their lives (Isa, 2019). Although the UN's 'Decade of Indigenous Peoples' officially ended in 2004, the ongoing series of activities in support of specific 'indigenous peoples' rights' indicates that the movement has not lost momentum (Bedner & Huis, 2008). Despite criticism of its foundations and the consequences of granting special rights to 'indigenous peoples' (Kuper, 2003) support for them remains strong – among NGOs, international organizations, governments, and scholars who disagree with the criticism.

Internationally, the legal recognition of customary land is explained in the Convention on Indigenous Peoples by the

ILO (27 June 1989). Indonesia recognizes the customary lands of indigenous peoples through Article 18B paragraph (2) of the Undang-undang Dasar 1945 and Article 3 of the Basic Agrarian Law No. 5 of 1960 (Citrawan, 2021). State control over land has also been regulated in the provisions of Article 33 paragraph (3). Soil is part of the earth; thus, is under the authority of the State (Hayati, 2019). The statement, 'Under the rule of the state,' means the State governs it. The state has the power to manage and manage land for the greatest possible welfare of the community (Rejekiningsih, 2016). The recognition and determination of communal land is contained in the following laws and regulations in Article 18B paragraph (2) of the Undang-undang Dasar 1945 of the Republic of Indonesia (Atmaja, 2018):

"The state recognizes and respects indigenous peoples and their traditional rights throughout life and in accordance with the development of society and its principles."

In accordance with the order of the Papua Special Autonomy Law No. 21 of 2001 Chapter XI Article 43 concerning Protection of the Rights of Indigenous Peoples, the Provincial Government of Papua is obliged to recognize, respect, protect, empower and develop the rights of indigenous peoples based on the provisions of the applicable legal regulations (Wamafma, 2022). The return of natives in Indonesian law (Bedner & Huis, 2008). The main point for creating development that contains a peaceful and inclusive society is the recognition of the rights of indigenous peoples. However, in reality, more complex social problems arise due to special autonomy and regional expansion in the Papua region. Problems such as horizontal conflicts occur because of technical and administrative problems that

have not been adapted to the social conditions in Papua (Soetjipto, 2022).

An indication of inconsistent recognition of customary rights and customary law communities according to developments and principles in Indonesia is the existence of limitations that cause the weak position of customary law communities as subjects of customary law and customary land (Nasir & Saptomo, 2022).

Other restrictions are stated in Article 3 of the Basic Agrarian Law Number 5 of 1960 (Laturette 2017). Bearing in mind the provisions of Points 1 and Point 2, the implementation of customary land and related customary law community rights, if they still exist, must be implemented in the interests of the nation and state, based on national unity. This means that the application of customary law can still be implemented as long as it does not conflict with higher laws and regulations. Limited actualization of constitutional rights because they must be based on the interests of the nation and state, based on national unity, and must not conflict with higher laws and regulations (Fransisco 2021)

Recognition and appreciate for indigenous peoples regulated withinside the Undang-undang Dasar 1945 is still general in nature and does not explain the form of recognition and respect by the State for indigenous people's units. Therefore, more detailed arrangements regarding recognition and respect for indigenous peoples are regulated in other laws such as the UUPA which was prepared since 1948 (Rahman, *et al* 2011). However, the recognition of the rights of indigenous peoples is not implemented consistently due to three reasons, namely (KomnasHAM, 2006):

a) The first is the central government's ignorance of the cultural diversity of

Indonesian society and its implications. This can be seen in Law No. 5 of 1979 concerning Village Administration which equates village governance according to the model of village governance on the island of Java.

b) Second, the need for investors for land since 1967, especially in the mining, plantation, and forestry sectors, which caused the Government together with the DPR to issue a law which in concreto negates the rights of indigenous peoples to ulayat lands. Our country does not yet have data regarding the number, location, and extent of customary land owned by these indigenous peoples.

c) Third, the growing tendency of very strong centralization of government, which has led to a decline in the study of customary law and indigenous peoples, partly because of the notion that customary law and indigenous peoples are incompatible with the spirit of nationalism and that customary law issues are seen as part of the SARA (ethnicity) problem, religion, race, and inter-group) which is a threat to national security.

These three reasons have resulted in the unity of indigenous peoples from time to time becoming increasingly marginalized. Indigenous peoples are a pre-state phenomenon, so that in every construction and making of positive law by the state, indigenous peoples should be positioned as subjects of positive law. As a modern-egalitarian society that is free to regulate its community, social and economic environment, and indigenous peoples are in the same position and have guarantees and certainty to be able to regulate their community, forest, and customary land, as well as access to the constitution (Mazi, 2021).

Indigenous Papuans are increasingly marginalized because their customary councils are weakened by the government. The Indonesian government only recognizes

the Papua Indigenous People's Body (Lembaga Masyarakat Adat Papua), a government-controlled institution, and has rejected the Papuan Customary Council (Kusumaryati V. , 2020). This triggers horizontal conflict between Papuan people in the struggle for natural resources, positions, and funds (Soetjipto, 2022).

From the information above it can be seen that community rights in general have received international recognition, namely through the UN Declaration on the Rights of Indigenous Peoples and the Convention on Indigenous Peoples by the ILO. Nationally, recognition of customary land rights has also become part of the 1945 Constitution and the Basic Agrarian Law. However, the weaknesses and limitations of legal recognition of the rights of indigenous peoples are as follows:

a) Recognition of indigenous peoples is only reflected in general terms in the 1945 Constitution, so that up to now there are no regulations equivalent to laws that recognize and respect customary rights in detail, such as land ownership and management of natural resources owned by the community. Rights regarding education, health, employment opportunities and physical facilities in the region. Even though these rights have been accommodated in various regional and government regulations, the existence of laws to regulate these matters is urgently needed to strengthen the recognition of rights for indigenous peoples.

b) The implementation of recognition of indigenous peoples has not been fully implemented consistently by the government, this is because there is still a large diversity of cultures and indigenous peoples that have not been detected by the government. This means that there are still very few investors who can enter, especially into the Land of Papua. The assumption that

positive law is superior to customary law causes the existence of customary law, especially in Papua, to become increasingly weakened.

c) Specifically in the basic agrarian law, it is stated that the implementation of customary law remains valid as long as it does not conflict with higher regulations. This is what limits the application of customary law in its entirety, customary law cannot be fully implemented and cannot be actualized in real terms. Therefore, it is difficult for indigenous peoples in Papua and West Papua to gain recognition of their rights. This weak government recognition is inversely proportional to the emergence of new autonomous regions due to asymmetric decentralization policies. Even though the existence of this society exists and can be proven. In substance, this is contrary to the spirit contained in the special autonomy of Papua and West Papua, namely the protection and empowerment of the rights of indigenous peoples called Orang Asli Papua (OAP) in the terminology of the Special Autonomy Law for Papua.

From the things above, it can be seen that the rights of indigenous peoples, especially in Papua, have received international and national recognition, there are still weaknesses and limitations so that a draft law concept is needed that can recognize and protect the rights of the people and can be passed into law.

B. Asymmetric Decentralization in the form of Special Autonomy

In research conducted by JPP Fisipol UGM (JPP-UGM 2010) shows the reasons why asymmetric decentralization must be carried out in Indonesia, especially in Papua (Kurniadi, 2023). The main reason is the existence of conflict and demands for separatism. Two regions in Indonesia that have conflict and must be given special

autonomy are Aceh and Papua Provinces. One of the causes is the struggle for resources. The principles contained in special autonomy are as follows:

a) The Republic of Indonesia allocates Special Autonomy Funds to regions that receive special treatment in the form of special autonomy.

b) The embodiment of political institutions is given to customs and churches as a form of recognition of local identity.

c) Symbols from local areas such as flags, language and so on are further introduced. .

d) Space for local political parties is available, but in Papua no local political parties have been formed.

e) Leaders in Papua must be native Papuans who have received approval from the Papuan People's Council. This is an affirmative action against local leaders.

f) The most important thing is the regulation of resources. The amount of special Autonomy Funds provided is so large that managing them can cause problems.

The background to the state's recognition of special autonomy in Papua in accordance with the General Explanation of Law Number 21 of 2001, there are two things to pay attention to (Syafaat, 2014). The first thing is that the government admits that until this law is promulgated, several problems in Papua have not yet been resolved. The problems that occur are problems in the political, governmental, economic and socio-cultural fields. Second, in resolving the problems in Papua the government admitted that there were errors in the policies taken and implemented. Among other things, there is no sense of justice, welfare has not been realized, law enforcement and respect for human rights, especially for the Papuan people.

The results of research from Djojosoekarto (2008) regarding the Performance of Special Autonomy for Papua

(2008) illustrate how much the public is dissatisfied with the implementation of Special Autonomy for Papua. Several cases regarding Special Autonomy mention an increase in distrust towards the government. The causes of the failure of Special Autonomy in Papua are identified as follows:

- a) The Special Autonomy Law contains several substances in the Special Autonomy Law which have created conflict between the Papuan people and the Government which has not been resolved such as the issue of regional symbols and flags. In Article 2 paragraph (2) of Law no. 21 of 2001 has acknowledged the existence of symbols and flags but has not received any further follow-up by the government and is considered an obstacle by the government. An example of a case that often occurs is the case of raising the Morning Star flag, which was rejected by the Indonesian Army and police.
- b) Solving problems in Papua in the political realm takes priority over accelerating development to increase welfare. Regional expansion, community demonstrations, the return of special autonomy and regional head elections are things that often happen. So that programs to improve the living standards of the Papuan people are limited. This is what causes gaps between the central and regional governments, between regions related to Papua and between indigenous Papuan people and immigrants.
- c) The speed at which Special Autonomy management regulations are being formulated lags behind the rapid disbursement of Special Autonomy funds. It took a mere three years to complete the government regulations pertaining to MRP under Special Autonomy, whereas

the first Special Regional Regulations were not established until six years into the program. Despite the substantial allocation of Special Autonomy funds since 2002, there remains a lack of comprehensive guidelines to ensure that these funds are utilized for development projects aimed at enhancing the quality of life for the people. Meanwhile, corruption and misappropriation of funds for the benefit of the elite persist in Papua.

- d) Following the special autonomy law, an annual evaluation of special autonomy is conducted, starting from the third year. However, this evaluation lacks depth and comprehensiveness, leading to a lack of understanding among the public regarding the implementation of Special Autonomy in terms of fulfilling their fundamental rights. The general perception is that the government has misappropriated the special autonomy funds.
- e) Within the wider community (in this case the city and district of Jayapura), special autonomy has been informed, but there is still a lack of information. Due to the continued lack of public understanding, special autonomy is considered a non-participatory policy. Policies are implemented within a single government perspective.

The background for special autonomy for Papua and West Papua is to reduce conflict as well as to manage natural resources in Papua and West Papua. This region is rich in natural resources but has not been managed optimally. So special autonomy is given with the aim of helping citizens improve their standard of living. However, in the implementation of special autonomy over the last two decades, community empowerment has not been implemented well enough, indicated by the

existence of community dissatisfaction regarding the implementation of special autonomy in terms of equality. The rights of Papuan indigenous people in education, health and the economy are still far from expectations.

The existence of new autonomy in Papua and West Papua will actually become a serious problem for the existence of traditional territories and the rights of indigenous peoples. The development of new areas in the form of infrastructure will indirectly invite investment that can threaten the sustainability of indigenous people's territories in the form of forests, seas and biodiversity.

C. The Urgency of Ratifying the Indigenous Peoples Bill

The challenge that occurs in the current practice of decentralization and regional autonomy is how to implement uniform administrative practices amid diversity, both variations in socio-cultural backgrounds, economic capabilities, and administrative abilities (Jaweng, 2011). The emergence of politically laden autonomy practices in the regions complicates the issue of decentralization (Hayati & Ifansyah, 2019).

Nicodemus Wamafma, a Greenpeace Indonesia Forest Campaigner in 2022 stated that the presence of the new autonomous region in Papua today is a serious threat to the existence of customary territories and the existence (rights) of indigenous peoples. Infrastructure development for new cities or districts invites investments that will erode indigenous peoples and threaten the sustainability of customary territories which contain indigenous forests and mega-biodiversity, all the way to the coasts and waters around the island of Papua. Indonesia has been independent for 77 years, but indigenous peoples, especially in

the Land of Papua, still must continue to struggle to voice their existence and rights to land, forests and waters within their customary territories. Recognition of rights by the Government (central, provincial and district) is very important so that it becomes a legal basis for indigenous Papuans to independently organize, plan and manage their customary territories, while protecting their cultural identity and planning.

Recognition and protection of Indigenous Peoples' Rights, on the other hand, will become a fence preventing land greedy corporations from coming and seizing land and forests belonging to indigenous peoples in the Land of Papua. The existence of Indigenous Peoples in Papua long before Indonesia was founded. Papua is a region that still applies customary rights in the status of land rights. The existence of customary territories in Papua is very wide, most of the vacant areas in Papua belong to the indigenous Papuan people and these territories were defined long ago. Customary law has regulated ownership of land, forests, mountains, and everything in it throughout the land of Papua and this is absolute for the Indigenous Peoples of Papua.

Hanafi (2022) explained that the DPR passed three New Autonomous Region Laws (UU DOB) in Papua, namely the South Papua Province, Central Papua Province, and the Central Highlands Papua Province. The three new autonomous regions were formed following the ratification of the revision of the Papua Special Autonomy Law. New autonomous regions in Papua as a form of embodiment of the welfare political approach in Papua. Bearing in mind, in 2022 the Papua Human Development Index is at the lowest level nationally, namely, Papua Barat Province (65.26%) and Papua Province (60.62%) (BPS: 2022). Meanwhile, the average allocation of funds for education in

Papua is below 30 percent (Bappenas: 2021). Therefore, welfare politics is an approach that is considered appropriate to the needs of the Papuan people. The basic issue that needs to be a priority for the DPR after the passage of the three Provincial DOB Laws is Indigenous Peoples.

In Hanafi's view (2022), there are three consequences of the passage of 3 Laws on Indigenous Peoples that must become the attention of the DPR to make it a strategic agenda, both oversight, legislation, and budget.

a) First, the transition to legal recognition of customary territories. In the records of the Customary Territory Registration Agency (BRWA) there are 16 registered Indigenous Territories based on 38 Presidential Instruction policies, Governor Regulations, Provincial Perda, Regency/City Perda and Decree of Regent/Regional Head. Meanwhile in Papua Barat there are 10 Indigenous Territories based on 15 Presidential Instruction policies, Joint Decrees, Provincial Regional Regulations, Regency/City Regional Regulations, Provincial Regional Regulations and Decrees of the Regent/Regional Head. Some of the customary territories that have been registered, the boundaries of which will be included in the boundaries of the three new autonomous regions of the province. There is a transitional period in the formation of legal instruments from old regions to new regions. Don't let customary territories that have been recognized in the old area, not be recognized in the new regional legal framework.

b) Second, changes in the number of provinces, regencies and sub-districts brought about by the new autonomous regions will have consequences for changes in electoral districts in the 2024 elections which will ultimately affect the level of representation of indigenous peoples. At the

national level, there are 13 seats from Papua and Papua Barat in the DPR RI. The proportional distribution of seats to the 3 DOB Provinces is necessary to build equality of representation. Other than that, in the formation of new electoral districts in 3 new autonomous regions the province must consider the cultural factors and social cohesiveness of the existing Indigenous Peoples. Ignoring the above factors in determining electoral districts can position certain indigenous communities apart from the larger group so that they are not significant. This can lead to low representation of Indigenous Peoples' voices at the national level.

c) Third, the ratification of the Indigenous Peoples Bill absolutely must be carried out by the DPR. This is a form of embodiment of the most basic welfare political approach. Considering that the number of Indigenous Peoples in Indonesia is quite large, namely 2,371 communities with 70 million members. In Papua and Papua Barat there are 59 indigenous communities living in 7 customary territories.

Amid asymmetrical decentralization, recognition for indigenous peoples in the form of the existence of a legal basis such as the ratification of a bill that recognizes indigenous peoples is needed and is important because,

a) As a basis for law and policy at the regional level to strengthen the fulfillment of the rights of indigenous peoples. Customary territories in Papua, for example, the need for guarantees of protection from usurpation of customary territories is not limited to registration, but up to the issuance of certificates. One of these things might happen if the Indigenous Peoples Bill is passed by the DPR. The existence of the Indigenous Peoples of Papua is guaranteed by the Undang-undang Dasar 1945, so it is only fitting for the DPR RI to continue to

stand up to fight for the fulfillment of the rights of indigenous peoples.

b) This is the fulfillment of constitutional rights for indigenous peoples.

c) Can improve the quality of natural resource governance in Indonesia. This has proven that the Indigenous Peoples of Papua have been able to preserve the environment with the values of wisdom.

d) It can be used as a legal policy for protection for customary law communities so that cases of violence and armed conflict do not occur again which can result in loss of life.

e) Can prevent illegal practices that can cause environmental damage to natural resources, because environmental damage will continue to occur if the government does not protect indigenous peoples. Expropriation of customary forests/land has so far been carried out without notification and without the consent of the indigenous peoples concerned. This has resulted in indigenous peoples not knowing that their customary territories have been recognized (claimed) by the State as State Forest areas and designated for "certain functions" and their management rights have been transferred to other parties.

The draft law on communities which has been discussed but has stalled at this time needs to be continued in the hope that the rights of indigenous communities, especially in the Papua and West Papua regions, will be fulfilled and biodiversity will stay protected. Therefore, the implication of the results of this research is that it can provide recommendations to the government to consider the sustainability of ratifying the draft law as a legal product for the legality of indigenous communities. And it can be used as a further reference for future researchers to learn more about strategies for ratifying draft laws into law regarding the rights of indigenous peoples.

CONCLUSION

Special Autonomy is seen in Papua and West Papua as a government initiative to reduce conflict rather than as a collective agreement. Although some Papuans believe that Special Autonomy was established by the central government to put an end to their opposition, Special Autonomy is actually a tangible representation of efforts to resolve conflicts. In order to decrease violence and raise Papuan people's trust in the government, legal products that can uphold the rights of indigenous Papuans are still needed. In the midst of asymmetrical decentralization, the existence of a legal basis in the form of passing a draft law that recognizes indigenous peoples is very necessary and important. This draft law is in the form of a policy that can accommodate basic rights as citizens, ownership and management of natural resources and protection against conflict. Therefore, issues about strategies for enacting draft legislation protecting indigenous peoples' rights can be the subject of future research.

REFERENCE

1. A.Tauda, G. (2018). Desain Desentralisasi Asimetris Dalam Sistem Ketatanegaraan Republik Indonesia. *Administrative Law & Governance Journal*, 1(4), 413-435.
2. Adrianto, R. R. (2023). Tinjauan Yuridis dan perlindungan dan Pengakuan Hak Ulayat Masyarakat Hukum Adat di Papua. *Novum: Jurnal Hukum*, 127-138. doi:<https://doi.org/10.2674/novum.v0i0.51368>
3. Alfauzi, R. (2022). Desentralisasi dan Keistimewaan Praktik Otonomi Daerah Khusus Ibukota Jakarta. *In Right Jurnal Agama dan Hak Asasi Manusia*, 11(1), 22-38.

4. Arizona, Y. (2009). Hak Ulayat: Pendekatan hak asasi manusia dan konstitusionalisme Indonesia. *Jurnal Konstitusi*, 6(2), 105.
5. Atmaja, G. M. (2018). Legal Pluralism Politics towards Recognition of Social Unity in Customary Law and Local Regulation. *International Journal of Social Sciences and Humanities*, 2(2), 124-140. doi:10.29332/ijssh.v2n2.152
6. Bedner, A., & Huis, S. V. (2008). The return of the native in Indonesian law. *Bijdragen tot de Taal-, Land- en Volkenkunde*, 164(2-3), 165-193. doi:10.1163/22134379-90003655
7. Bratakusumah, D. S., & Solihin, D. (2022). *Otonomi Penyelenggaraan Pemerintahan Daerah*. Jakarta: PT. Gramedia Pustaka Utama.
8. Citrawan, F. A. (2021). Konsep Kepemilikan Tanah Ulayat Masyarakat Adat Minangkabau. *Jurnal Hukum & Pembangunan*, 50(3), 586-602. doi:10.21143/jhp.vol50.no3.2766
9. Cooper, H. (2010). *Research Synthesis and Meta-Analysis: A Step-by-Step Approach*. Sage: Thousand Oaks.
10. D. Juliantara, d. (2006). *Desentralisasi Kerakyatan Gagasan dan Praksis*. Bantul: Pondik Edukasi.
11. Djohan, D. (2019, Desember 17). *Daerah Otonomi Khusus Boleh Bersifat Desentralisasi Asimetris*. From MAHKAMAH KONSTITUSI REPUBLIK INDONESIA: <https://www.mkri.id/index.php?page=web.Berita&id=16130>
12. Djojosoekarto, A. (2008). *Kinerja Otonomi Khusus Papua*. Jakarta: Kemitraan Bagi Pembarun Tata Pemerintahan di Indonesia.
13. Fransisco, W. (2021). Perlindungan Hukum Terhadap Hak Konstitusional Masyarakat Hukum Adat Suku Anak Dalam (sad) Di Kabupaten Musi Rawas Utara Provinsi Sumatera Selatan. *Lajour (Law Journal)*, 2(2), 42-60.
14. Hanafi, A. (2022, Juli 1). *Konsekuensi Tiga DOB Provinsi Papua terhadap Masyarakat Adat*. From Publika: <https://publika.rmol.id/read/2022/07/01/538840/konsekuensi-tiga-dob-provinsi-papua-terhadap-masyarakat-adat>
15. Hayati, R., & Ifansyah, M. N. (2019). ASYMMETRIC DECENTRALIZATION PRACTICES IN INDONESIA. *PubBis : Jurnal Ilmu Administrasi Publik & Bisnis*, 3(2), 133-140.
16. Hayati, T. (2019). Hak Penguasaan Negara Terhadap Sumber Daya Alam Dan Implikasinya Terhadap Bentuk Pengusahaan Pertambangan. *Jurnal Hukum & Pembangunan*, 49(3), 768-787. doi:10.21143/jhp.vol49.no3.2199
17. Ilmar, A. (2014). *Hukum Tata Pemerintahan*. Jakarta: Prenadamedia Group.
18. Isa, F. G. (2019). The UNDRIP: An increasingly robust legal parameter. *The International Journal*, 23(1-2), 7-21. doi:10.1080/13642987.2019.1568994
19. Jaweng, R. E. (2011). Kritik Terhadap Desentralisasi Di Indonesia. *Analisis CSIS*, 20(2), 160-176.
20. KomnasHAM. (2006). *Mewujudkan Hak Konstitusional Masyarakat Hukum Adat*. Jakarta: Komisi Nasional Hak Asasi Manusia.
21. Kountur, R. (2009). *Metode Penelitian. Edisi Revisi*. Jakarta: Buana Printing.
22. Kuper, A. (2003). CA forum on anthropology in public: The return of the native. *Current Anthropology*, 44(3), 389 - 402. doi:10.1086/368120
23. Kurniadi, B. D. (2023, March 25). *DESENTRALISASI ASIMETRIS DI INDONESIA*. From [ugm.ac.id: https://bdardias.staff.ugm.ac.id/wp-content/uploads/2008/06/Desentralisasi-Asimetris-di-Indonesia-LAN-Bdg-26112012.pdf](https://bdardias.staff.ugm.ac.id/wp-content/uploads/2008/06/Desentralisasi-Asimetris-di-Indonesia-LAN-Bdg-26112012.pdf)
24. Kusumaryati, V. (2019). Adat Institutionalisation, the State and the Quest for Self-Determination in West Papua. *The Asia Pacific Journal of Anthropology*, 1-16. doi:10.1080/14442213.2019.1670238
25. Kusumaryati, V. (2020). Adat institutionalisation, the state and the quest for selfdetermination in West Papua. *Asia*

- Pacific Journal of Anthropology*, 2(1), 1-16.
doi:10.1080/14442213.2019.1670238
26. Laturette, A. (2017). Ulayat Right of Customary Law Community. *Pattimura Law Journal*, 1(2), 131-144.
doi:10.47268/palau.v1i2.93
 27. Manusia, K. N. (2006). *Mewujudkan Hak Konstitusional Masyarakat Hukum Adat*. Jakarta: Komisi Nasional Hak Asasi Manusia.
 28. Mazi, A. (2021). Masyarakat Adat dalam Implementasi Otonomi Daerah. *Jurnal Gubernur Sulawesi Selatan*.
 29. Miles, B. M., & Huberman, M. (1992). *Analisis Data Kualitatif Buku Sumber Tentang Metode-metode Baru*. Jakarta: UIP.
 30. Mulyono, S. P. (2014). KEBIJAKAN SINOPTIK PENERAPAN HUKUM ADAT. *Yustisia*, 3(2), 68-76.
 31. Nasir, G. A., & Saptomo, A. (2022). Customary Land Tenure Values in Nagari Kayu Tanam, West Sumatra. *Cosmopolitan Civil Societies: An Interdisciplinary Journal*, 14(3), 31-45.
doi:10.5130/ccs.v14.i3.8099
 32. Nurita, D. (2022, Februari 25). *interaktif*. Retrieved November 13, 2023 from <https://interaktif.tempo.co/>:
<https://interaktif.tempo.co/proyek/rencana-undang-undang-masyarakat-adat/>
 33. Rahman, I. N., Triningsih, A., W, A. H., & Kurniawan, N. (2011). Dasar Pertimbangan Yuridis Keududukan Hukum (Legal Standing) Kesatuan Masyarakat Hukum Adat dalam Proses Pengujian Undang-undang di Mahkamah Konstitusi. *Jurnal Konstitusi*, 8(5), 767-802.
 34. Rejekiingsih, T. (2016). Asas Fungsi Sosial Hak Atas Tanah Pada Negara Hukum (suatu Tinjauan Dari Teori, Yuridis Asas Fungsi Sosial Hak Atas Tanah Pada Negara Hukum (suatu Tinjauan Dari Teori, Yuridis. *Yusticia Jurnnal Hukum*, 5(2), 298-325.
doi:10.20961/yustisia.v5i2.8744
 35. Saiba, H. (2019). MUATAN KEPENTINGAN ORANG ASLI PAPUA DALAM PERATURAN DAERAH DI PROVINSI PAPUA DAN PAPUA BARAT. *Jurnal Ilmu Hukum Alethea*, 2(2), 79-96.
 36. Santika, E. F. (2023, Maret 02). *Ini Jumlah Korban Jiwa Akibat Kasus kekerasan hingga Konflik Bersenjata di Papua Sepanjang 2022*. From [databoks.katadata.co.id: https://databoks.katadata.co.id/datapublish/2023/03/02/ini-jumlah-korban-jiwa-akibat-kasus-kekerasan-hingga-konflik-bersenjata-di-papua-sepanjang-2022](https://databoks.katadata.co.id/databoks.katadata.co.id/datapublish/2023/03/02/ini-jumlah-korban-jiwa-akibat-kasus-kekerasan-hingga-konflik-bersenjata-di-papua-sepanjang-2022)
 37. Soetjipto, A. W. (2022). Journey to Justice: The United Nations Declaration on the Rights of Indigenous Peoples in the Context of West Papua. *Jurnal Studi ASEAN*, 10(1), 129-149.
doi:10.21512/jas.v10i1.8491
 38. Sumule, A. (2003). *Mencari Jalan Tengah Otonomi Khusus Provinsi Papua*. Jakarta: Gramedia Pustaka Utama.
 39. Syafaat, M. A. (2014, Maret). *PROBLEM OTONOMI KHUSUS PAPUA*. From [ub.ac.id: http://safaat.lecture.ub.ac.id/files/2014/03/PROBLEM-OTONOMI-KHUSUS-PAPUA.pdf](http://safaat.lecture.ub.ac.id/files/2014/03/PROBLEM-OTONOMI-KHUSUS-PAPUA.pdf)
 40. Wamafma, N. (2022, Agustus 29). *Pengakuan Hak Masyarakat Adat Tak Semulus Pemekaran Wilayah*. From [Greenpeace.org: https://www.greenpeace.org/indonesia/cerita/55230/pengakuan-hak-masyarakat-adat-tak-semulus-pemekaran-wilayah/](https://www.greenpeace.org/indonesia/cerita/55230/pengakuan-hak-masyarakat-adat-tak-semulus-pemekaran-wilayah/)