

Reflecting the Special Autonomy of Papua Province in the Perspective of Law and Human Rights

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Abstract: The practice of administering the particular autonomy government of the Papua Province seems to be centralized even though the state's policy has given the Special Autonomy status to the Papua Province. It can be proven that the authority regulated in the Special Autonomy Law cannot be adequately implemented because central government intervention is very dominant in carrying out certain authorities. Even though the changes in the legislation from Law No. 21 of 2001 to Law No. 2 of 2021 regarding special autonomy for Papua Province also cannot provide many changes regarding the achievement of special autonomy. The birth of Law No. 2 of 2021 concerning the second amendment to Law No. 21 of 2001 concerning special autonomy for the province of Papua. Provide at least 20 amendments to articles regarding the authority of local government, MRP, DPRK, increase in Papua special autonomy funds, expansion of Papua provinces and districts, and establishment of implementing regional regulations of the Special Autonomy Law. The formation of this regulatory change has not provided a concept for protecting indigenous Papuans, considering the potential for centralization of authority to occur still. In addition, this regulatory change also does not provide an overview of the cultural aspects of the indigenous Papuans themselves, and this can be seen by not involving the MRP, which is a representation of the Papuan people. For example, in article 76, paragraphs 1 and 2 regarding the division of the province and district without involving the MRP as a representative of the indigenous Papuans.

Keywords: Reflection; Special Autonomy; Papua, Law; Human Rights.

1. Introduction

The regulation governing the expansion of the Papua Province is a regulation contained in the first Law given to the province of Papua after the change of leadership from the New Order to the Reform Order at the time of the fall of Suharto in 1998. and the inauguration of BJ. Habibie, as the president who was the beginning of the reform era in Indonesia. Learning from history, initially, the new order began on 26 September, 1999, BJ Habibie received a Papuan delegation of 100 people, who officially asked for independence for the Papua Province from the territory of the Republic of Indonesia. The government responded to this request by seeking alternative strategies in order to accommodate this desire in order to accommodate this desire, while still maintaining the integrity of the Unitary State of the Republic of Indonesia as a unified whole.

The strategic steps and efforts were carried out by providing a division policy that found its formal legal form through Law no. 45 of 1999 concerning the establishment of Central Irian Jaya Province, West Irian Jaya Province, Paniai Regency, Mimika Regency,

Puncak Jaya Regency and Sorong City, and was officially issued on 4 October, 1999¹. On 31 December, 1999, The central government through President Abdurrahman Wahid changed the naming of the province of Irian Jaya to the province of Papua. And in 2001, Irian Jaya Province changed its status to Papua Province with special autonomy status based on Law no. 21 of 2001 concerning special autonomy for Papua Province. Until finally the birth of Law No. 21 of 2001 concerning Special Autonomy for Papua which is the commitment of the government and all Indonesian people to adopt new perspectives in dealing with various problems that characterize the life of the Papua Province. The new perspective is to change the approach to handling problems in Papua from a security/stability approach to a social/welfare approach.²

The Special Autonomy granted by the Papua Province gives the provincial government the authority to regulate regional government in Papua which is then set forth in Law Number 21 of 2001 concerning Otsus Papua Article 4 which explains that the authority of the Papua Province includes authority in all areas of government except for the authority in the field of foreign policy, defense and security, monetary and fiscal, religion, judiciary and certain authorities in other fields stipulated in accordance with the laws and regulations.³ In 2008, this Law was amended through the stipulation of Government Regulation in Lieu of Law No. 1 of 2008 concerning amendments to Law No. 21 of 2001 concerning special autonomy for the Papua Province. In addition, the regulation of the Special Autonomy Law for Papua has changed to Law Number 2 of 2021 which is the government's response to the unstable operation of Law No. 21 of 2001. Basically, the purpose of the establishment of special autonomy is to improve public services which ultimately can realize the welfare of the community. This makes it easier for regions to organize and realize their regional goals⁴

¹Winarno Yudho et al, Socio Juridical and Political Aspects of the Implementation of Special Autonomy for Papua after the Constitutional Court Decision, published in collaboration with Konrad Adenauer Stiftung with the Secretary General and the Registrar of the Republic of Indonesia, Jakarta, 2006, page. 33

²Mohammad A. Musa'ad, "Contextualization of the Implementation of Special Autonomy in Papua Province: Perspectives on Government Structure and Authority", Journal of Studies, Vol. 16, No.2, June 2011, (Jakarta: Secretariat General of the DPR RI, 2011), page. 359

³Roni sulistyanto luhukay, Interpreting Forest Utilization in Ensuring Environmental Sustainability in Papua Province, SELISIK Journal - Volume 7, Number 1, June 2021 ISSN:2460-4798 (PRINT) & 2685-6816 (ONLINE), page. 3

⁴Raska, Ripta Rarung. 2014. "Special Autonomy for the Special Region of Yogyakarta" Journal of Umy. Accessed From Www.Academia.Edu/8193771/Otonomi_Khusus_Yogyakarta

Special autonomy was born for the province of Papua based on Article 18B The 1945 Constitution of the Republic of Indonesia is the constitutional basis of the Republic of Indonesia which explains that: "The state recognizes and respects special or special regional government units that are regulated by law." The provisions of Article 18B of the 1945 Constitution of the Republic of Indonesia imply that the Republic of Indonesia provides opportunities for regions to carry out special autonomy, special regions and special regions. After the amendment (amendment) to the 1945 Constitution, the first phase in 1999 to the fourth phase in 2002, carried out by the MPR brought implications for changes to the Indonesian constitutional structure, including in Article 18 of the 1945 Constitution regarding regional government.⁵

Philipus M Hadjo states that the principle contained in Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia is the state's recognition of special autonomy and the principle of the existence of respect for the rights of indigenous peoples⁶. Special autonomy has officially become part of the state administration system through the Second Amendment to the 1945 Constitution. The existence of special autonomy is one part of the political reversal of state administration which was originally centralized and uniform towards decentralization and respect for diversity. This is in line with democratization which is the main stream of reform. The democratization of government administration requires decentralization and respect for regional diversity, as Article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "The state recognizes and respects special or special regional government units that are regulated by law".⁷ Papua Province special autonomy is a special authority recognized by the state and granted by the state to the Papua Province, including the provinces resulting from the expansion of the Papua Province. The expansion is carried out as a form or effort by the central government to the Papuan provincial government 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.⁸

⁵Saldi Isra, Amendments to the 1945 Constitution and Its Implications for the Indonesian Constitutional System, in the Journal of Hukum Republikca Faculty of Law, Lancang Kuning University No.3 Vol.2, (Pekanbaru: October 2002), page.18

⁶ Philipus M Hadjo, The Position of the Law on Regional Government in the Government System, Surabaya, Legal Paper on the Indonesian Government System Before the Amendment of the 1945 Constitution, 2014. page 9.

⁷Rindang Mustikawati, Papua Province Before and After 18 Years of Granting Special Autonomy Funds, Journal of Public Policy, Journal of Public Policy - Vol. 6 No. 2 (2020), page, 82

⁸Papuan People's Assembly, Papua's Golden Gate, Jayapura, MRP Directory, 2016. page 5

Special autonomy was given to Papua after the violation of human rights as part of the conflict in Papua which was very high and the secession movement. Even human rights violations in Papua include violations of civil and political rights such as freedom of expression, torture, and extrajudicial killings. Other human rights violations are violations of economic, social and cultural rights. The granting of special autonomy in Papua coincides with the granting of special autonomy for Aceh. Special autonomy is granted through Law No. 21 of 2001 concerning Special Autonomy for the Province of Papua.⁹ The integration of Papua into the Unitary State of the Republic of Indonesia in addition to having a political historical meaning, is also directly related to the existence of the Unitary State of the Republic of Indonesia. In the implementation of special autonomy for Papua Province, many have become problems from the Implementation of the Special Autonomy Law in the Field of Human Rights issues include enforcement and reconciliation for victims and their families of victims of human rights violations have never taken place, because up to 11 (eleven) years of Special Autonomy in force there has never been a Truth and Reconciliation Commission (TRC) nor a human rights court. In the absence of the various indicators above, it invites the public to react with various views regarding The failure of Special Autonomy for the province of Papua, this was voiced by various levels of Papuan society, the emergence of the movement after seeing that there was no benefit from special autonomy which was originally a road which could be a bridge between the Central Government and the Provincial Government of Papua did not run smoothly or run as it should.¹⁰

Otsus policy is also given by looking at the side of law enforcement on basic rights in Papua. This means that the implementation of special policies is based on basic values that include the protection and respect for ethics and morals, the basic rights of indigenous peoples. The granting of special autonomy for Papua Province is the protection of human rights, the enforcement of the rule of Law, building democracy, pluralism, and equal status,

⁹Rusdianto, Principles of National Legal Unity in Formation of Legal Products for Special Autonomous Regional Governments, dissertation from the Faculty of Law, Airlangga University in 2016. page. 92.

¹⁰Included in the Academic Manuscript of the Special Autonomy Law for the Province of Papua in the introduction The living conditions of human rights in Papua are getting worse day by day, due to ongoing violations and violence against human rights from time to time. Various voices of defense have been conveyed, that human rights violations are very strong in the Land of Papua. But every struggle for the defense and enforcement of human rights is ignored, not listened to, and simply ignored. However, the memory of the violence that is carried out continuously has another impact, namely the movement to fight violence in peace and through dialogue. Because the Papuan people realize that Papuan people are also human beings such as Malay humans, European humans, Arab humans, and so on. Humans are humans, and animals are animals. When humans are considered animals, human rights violations will always occur in Papua. because in fact it is not Papuan natives who are loved by the state, on the contrary the Papuan universe is loved by this country

rights and obligations as citizens. The granting of special autonomy is thus also placed on the belief that a new awareness has been born among the Papuan people to fight in a peaceful, just and constitutional manner for the recognition of the basic rights of the indigenous Papuan people as well as the demands for solving problems related to violations and protection of the human rights of the population. Papuan native.the challenge faced by the government is to find a short-term strategy that can reduce violence while continuing to seek policies that can bring long-term social, economic and political benefits and address the long-standing discontent of the Papuan people.¹¹

In addition to human rights violations, specificity is given in Papua after the development gap. With Otsus, Papua can overcome the problem of backwardness and poverty. This situation causes Papua to experience conditions which are commonly referred to as problems of plenty or problems from the abundance of natural resources but the people feel poor.This is a very sad and ironic phenomenon regarding people who remain poor in the midst of the abundance of natural resources they have. For this reason, special autonomy is given in the context of reducing the gap between Papua Province and other provinces, and improving the standard of living of the people in Papua Province, as well as providing equal opportunities to indigenous Papuans.

The implementation of Otsus is supported by the community and the Papuan elite, especially to respond to poverty in Papua. In 2002, the Governor of Papua at the time said that around 75% of Papuans were estimated to still live below the poverty line due to the limited means and infrastructure of sea, land and air transportation in the area. Limited transportation facilities and infrastructure hinder government development programs that will be implemented for the benefit of the people throughout Papua¹².

History records that optimism with the enactment of Law no. 21 of 2001 on Special Autonomy. With Otsus, Papua can overcome the problem of backwardness and poverty. This is very dependent on the performance of the Papuan government. The occurrence of discrepancies between what is desired by the community and the regulation of Papua's special autonomy can be seen by the existence of restrictions on each performance which is a strong reason for the non-operation of this special autonomy because Law No. 21 of 2001 concerning Special Autonomy for Papua Province has a tendency to be more centralized

¹¹Rohim, Nur. 2015. "Optimizing Papua's Special Autonomy in Raising Community Legal Awareness to Defuse Conflict and Violence". *Fiat Justisia: Journal of Legal Studies* 8 (1), page. 98.

¹²See, Jacobus Pervidya Solossa, *Special Autonomy for Papua Raising the Dignity of the Papuan People Within the Unitary State of the Republic of Indonesia*, Sinar Harapan Pustaka Jakarta, 2006, page. 78.

with gives many restrictions to local governments in organizing and managing their own households.

Tri Ratnawati, quoting Jacques Bertrand's opinion, asymmetric decentralization and broad (special) autonomy are not the only 'panacea' or panacea for the fundamental solution to the problem of separatism or 'ethnic nationalism', unless combined with other appropriate measures. :¹³

“Autonomy could redistribute political power, representation, and control over the state's resources to provincial or district levels. As such, it gave political elites in these territorial units more power to direct resources to their specific needs and to adopt regulations or laws that could enhance the specific cultural or religious identities of ethnic groups represented in the area. Autonomy could not, however, address the problems of national integration faced by Aceh Ultimately, autonomy would reduce ethnonationalist demands only if combined with other measures that would reinvent the Indonesian national model.”

Referring to what was stated by Jacques Bertrand, the asymmetric decentralization policy and special autonomy need to be complemented by a human security approach which has actually been accommodated in the points of the Helsinki MoU.¹⁴This “plus decentralization approach” (plus building the economy, 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 the regions. other areas in Indonesia (and possibly other countries as well). In addition, the decentralized plus approach is likely to be useful in accommodating socio-political and cultural heterogeneity as well as overcoming various inequalities at the local level in a country.¹⁵

Hannum concludes that at least two benefits can be obtained from the approach and implementation of asymmetric decentralization or special autonomy (which he calls territorial autonomy) as follows:¹⁶As a solution to the possibility of ethnic conflict, or other physical conflicts. And As a democratic and peaceful response to the complaints/problems of minorities whose rights have been violated/lack of attention.

¹³Jacques Bertrand, Nationalism And Ethnic Conflict In Indonesia, University Of Toronto Canada, Cambridge University Pers, 2014, Pg 185. Quoted Again By Tri Ratnawati, The Expansion of Local Political Regions And Some Selected Issues, Yogyakarta, Pustaka Pelajar, 2009, page .158.

¹⁴Dewi fortuna anwar, human security, an intractable problem in asia, 2001, Quoted Again by Tri Ratnawati, The Expansion of Local Political Regions and Some Selected Issues, Yogyakarta, Student Library, 2009, Page 159.

¹⁵Ibid., page 159.

¹⁶Jakobus Perviddya Solosa, Special Autonomy for Papua Elevates the Dignity of Papuans Within the Unitary State of the Republic of Indonesia, Jakarta, Sinar Harapan, 2005, page. 55

It was emphasized that both theoretically and at the empirical level, asymmetric decentralization or special autonomy has the potential to cause problems if a number of conditions are not met, this can be seen in the regulations that solve legal problems, where Law No. In addition to that, the issue of authority in Law Number 21 of 2001 which is still centralized¹⁷.

The centralistic polemic that has occurred to this day is considered a violation of the principles of constitutionalism. The implementation that tends to be centralized in this Law is considered to violate the principle of constitutionalism, because it violates the spirit of legal harmony, in the sense of triggering conflicts between laws and regulations.¹⁸. In addition, it is considered contrary to various basic principles regulated in the constitution itself regarding asymmetrical decentralization which is contained in Article 18 B of the 1945 Constitution of the Republic of Indonesia. Where the state recognizes and respects and gives the widest authority to the regions in providing wider authority for the province and the people of Papua to regulate and manage themselves within the framework of the Unitary State of the Republic of Indonesia.

The practice of administering the Papua Province special autonomy administration seems centralized even though the state's policy has given the Papua Province Special Autonomy status. It can be proven that the authority regulated in the Special Autonomy Law cannot be implemented properly because central government intervention is very dominant in carrying out certain authorities. This intervention is in stark contrast to the 1945 Constitution of the Republic of Indonesia, which is a solid foundation for This implies that the Republic of Indonesia provides opportunities for regions to carry out special autonomy, special regions and special regions.

Even though the changes in the legislation from Law No. 21 of 2001 to Law No. 2 of 2021 regarding special autonomy for Papua Province also cannot provide many changes regarding the achievement of special autonomy. the birth of Law No. 2 of 2021 concerning

¹⁷The Academic Manuscript of the Special Autonomy Law for Papua Province explains that the Papua Special Autonomy Administration Bill is needed as a basis for solving development problems within the framework of Special Autonomy in Papua because the administration and development must be based on legal rules that are binding and in accordance with the culture of the people, so that the indigenous people of Papua feel comfortable in the Unitary State of the Republic of Indonesia. As long as Otsus is in effect in Papua Province, the center has always limited the authority granted as stated in Law No. 21 of 2001, so that so far Otsus has not worked as expected. With the Papua Special Autonomy Government Bill, it is hoped that it will bind the government to carry out development in the Land of Papua for the welfare of the community

¹⁸ Roni Sulistyanto Luhukay, Rachma Dewi, Centralization of the Central Government Business Licensing Authority in the Mineral and Coal Bill, Al Adl Kendari Journal, Faculty of Sharia IAIN, Volume 13 No 2 July 2020, page. 273

the second amendment to Law No. 21 of 2001 concerning special autonomy for the province of Papua. Provide at least 20 amendments to articles regarding the authority of local government, MRP, DPRK, increase in Papua special autonomy funds, expansion of Papua provinces and districts and establishment of implementing regional regulations of the Special Autonomy Law. The formation of this regulatory change has not provided a concept for the protection of indigenous Papuans, considering the potential for centralization of authority to still occur.

In addition, this regulatory change also does not provide an overview of the cultural aspects of the indigenous Papuans themselves, this can be seen by not involving the MRP which is a representation of the Papuan people. For example, in article 76 paragraphs 1 and 2 regarding the division of the province and district without involving the MRP as a representative of the native Papuans.

2. Method

This research is a normative legal research by digging deeper in various literatures. Philipus M Hadjon and Tatiek Sri Djatmiati normative legal research departs from the nature of legal scholarship which is the main component¹⁹. In line with that, Peter Mahmud Marzuki argues that Legal Research is legal research that uses various approaches. In approach, this research uses a statutory approach (Statute Approach), a conceptual approach (Conceptual Approach) and a historical approach (historical approach).²⁰

3. Results and Discussion

3.1 Reflection on the Special Autonomy of Papua Province on the protection of human rights and the development of accelerating inequality.

Basically, special autonomy in the constitutional system in Indonesia is the authority given to local governments to regulate and manage their own government affairs and the interests of the community in accordance with applicable laws and regulations.²¹ Papua Province then received special rights in the form of special autonomy with the introduction

¹⁹Philipus M Hadjon and Tatiek Sri Djatmiati, *Legal Arguments*, Surabaya, Gadjah Mada University Press, 7th Printing, 2016, page. 3.

²⁰Johnny Ibrahim, *Theory and Methodology of Normative Legal Research*, Malang, Banyumedia, 2010, page. 93.

²¹Roy Marthen Moonti, *The Nature of Regional Autonomy in the State Administration System in Indonesia*, *Al-Ishlah Journal: Legal Scientific Journal*, Vol. 19 No. 2 november 2017, page. 36.

of Law no. 21 of 2001 concerning Special Autonomy for Papua Province. In general, the Papua Special Autonomy Law provides a number of freedoms for Papua to regulate its own territory, such as in the election of governors, the involvement of the MRP in government.²²

Legal rights are distinguished from rights that arise from norms and rights that are brought from birth. In line with this, Paton argues that legal rights are usually defined as rights that are recognized and protected by Law. In line with this, Jeremy Bentham, argues that rights are an inseparable part of Law. From real Law comes real rights. On the other hand, from imaginary Law, namely natural Law, imaginary rights arise. Natural rights really don't make sense. Prior to Bentham, David Hume also argued that natural Law and natural rights were meta-physical and unreal. Therefore, Bentham argues that the real Law is not natural Law, but the Law made by the legislature.²³

Ihering argues that the purpose of Law is not to protect individual wills, but to protect certain interests. Therefore he defines rights as interests protected by Law. These interests are not created by the state because they already exist in social life and the state only chooses which ones to protect.²⁴ For this reason, the birth of special autonomy for the Papua province is part of the role of the state in protecting every interest that exists in the Papuan community.

In examining the concept of protecting the Papuan people against an interest, Paton argues that the essence of rights is not the power to guarantee the Law, but the power guaranteed by Law to realize an interest, especially the interests of the Papuan people. This means that the human will does not work without any purpose but reminds certain goals, namely interests. Therefore, interests are objects of human desire guaranteed by the Law itself²⁵

Rights can be viewed from several aspects, namely original rights and derivative rights, basic rights, political rights, private rights, and constitutional rights. According to Prof. Jimly Asshiddiqie, Constitutional rights are rights guaranteed in and by the 1945 Constitution of the Republic of Indonesia. The guarantee of these rights is either stated explicitly or

²²Mutiara Fahmi, et al, Chaotic Patterns of Relations between Election Organizing Institutions in Special Autonomous Regions, *Al-Daulah Journal*, Vol. 10, No. 1, April 2020, page. 19

²³Peter Mahmud Marzuki, *Introduction to Law*, Kencana, Jakarta, 2016, page. 142.

²⁴GW Paton, *Textbook of Jurisprudence*, English language book Society, Oxford University Press, London, 1972. Quoted from Peter Mahmud Marzuki I, *Ibid.*, page. 151.

²⁵*Ibid.*, page. 290.

implicitly contained in the constitution.²⁶ Constitutional rights are related to the rights of citizens. This is what is guaranteed by a special state by providing special autonomy in the concept of asymmetric decentralization, this is given by various phenomena that occur and the form of public distrust of protection guarantees. The arrangement of these rights is regulated in a regulation of Law No. 21 of 2001 concerning special autonomy for the province of Papua which is made into a law. The protection of human rights needs to be regulated by Law in line with this Famous Effendi argues that human rights and Law cannot be separated. Thus the recognition and inauguration of the rule of Law one of the objectives is to protect human rights, which means that a person's rights and freedoms are recognized, respected and upheld.²⁷ This shows that human rights cannot be separated from the 1945 Constitution of the Republic of Indonesia, as stated by Soedjono Dirdjosisworo as follows:

- a. Human rights are rights that do not conflict with the 1945 Constitution of the Republic of Indonesia and Pancasila, even the birth of the Republic of Indonesia is based on the recognition of human rights as stated in the preamble to the 1945 Constitution of the Republic of Indonesia.
- b. Human rights are rights that are inseparable from and are the protection of dignity values, so that they must be upheld by the nation and state of the Republic of Indonesia, which has a Pancasila philosophy.²⁸

Based on the concept of human rights mentioned above, it can be explained that everyone has the same rights before the Law and these rights are guaranteed by Law, but in exercising these rights they are limited by Law, these restrictions are the implementation of Indonesia as a state of Law. John P. Humphrey argues that the Universal Declaration of Human Rights has permeated the world's constitutional Law, so that in many countries the Bill of Rights has been embedded in their constitutions. Thus, the Universal Declaration has become the world's Magna Charta²⁹. This means that the human rights of the Papuan people are basic rights that must be protected by the state and the international community.

²⁶Jimly Asshiddiqie, Indonesian Constitution & Constitutionalism, Revised Edition, Constitution Press, Jakarta, 2005, page. 343

²⁷Masyhur Effendi, Human Rights in National and International Law, Jakarta, Ghali Indonesia, 1994, page 27.

²⁸Soedjono Dirdjosisworo, Indonesian Court of Human Rights, Bandung, Citra Aditya Bakti, 2002, page 20

²⁹John p humphrey, magna charta of mankind, peter davies, human rights, translation, jakarta, indonesian oboe foundation, 1994, page 59

Human rights issues today have become a global issue because they are universal and transparent. Human rights are universal because they exist in all places and times. This universal nature is seen through human dignity, freedom, equality and justice which is owned by every human being. Human rights apply to all people regardless of race, status, gender or other differences. The universal nature of human rights is emphasized in Chapter I Paragraph (5) of the 1993 Vienna Declaration as follows:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural system, to promote and protect all human rights and fundamental freedoms.

The view that human rights are universal is refuted by the theory of cultural relativism (cultural relativism). The essence of this theory is that human rights differ from one another in various places in the world according to local cultures that have developed from time to time. According to Boer Mauna, not only cultural aspects but various other aspects such as history, social, political background, religion, and economic growth have caused human rights not to be implemented effectively in various countries. Human rights are transparent because if there is a violation of one aspect of human rights, especially civil and political rights in a country or in a certain world region, then other countries or the whole world will speak or criticize it as if it happened in their respective countries.

The responsibility for basic human rights is basically given to the state. The forms of responsibility are grouped into: to respect, to protect, to fulfill, to promote and to enforce human rights. This is guided by the international human rights legal system which places the state as the main actor who has obligations and responsibilities (duty holders), while individuals, groups, and people are the right holders. The state is given an obligation or responsibility to carry out the rights of its people regulated by Law.

The above statement is supported by presenting an example in the table below by displaying the provisions of the UDHR and Law Number 39 of 1999 concerning Human Rights as follows:

NO	TERMS/ CONTENT/MATERIAL	ARTICLES	
		UDHR	UU/39/1999
I.	Equality of Dignity, Dignity, and Human Degrees	1-2	2-3
II.	Civil Rights		
	1. Right to life, liberty and equality	3	3-4,9
	2. Free from slavery and slavery	4	20
	3. Free from torture or cruel, inhuman or degrading treatment or punishment	5	33
	4. The right to equal recognition and treatment before the Law	6-11	17
	5. The right to guarantee the safety and security of personal, family, residence, correspondence, protection of good name	12	29-32
	6. The right to obtain political asylum and freedom to choose nationality	13-15	26-28
	7. The right to have a family and have property rights	16-17	10-11
	8. The right to religion, belief and worship	18-19	22
III.	Political Rights		
	1. The right to political belief and expression		23
	2. Right of association and association, establishing political parties	20	24
	3. The right to take part in government and equal access to public services	21	43-44
IV.	Economic Rights		
	1. Right to social security	22	41
	2. Right to work, right to equal pay for equal work, right to join trade unions	23	38-39
	3. The right to rest and leisure	24	-
	4. The right to housing and an adequate standard of living	25:1	40.42
	5. Economic protection for children and mothers	25:2	49.62
V.	Social Rights		
	1. Right to education	26	12,48,60
	2. Right to health	25:1	42
VI.	Cultural Rights		

	1. The right to participate in the cultural life of the community	27	6
VII	Human Rights Obligations (KAM)		
	A COUNTRY OR SOCIETY IS ORDERLY, SAFE, PEACEFUL, IF ALL CITIZENS (THE STATE) RESPECT EACH OTHER'S HUMAN RIGHTS	29-30	67-70

The description above shows that human rights are universal and transparent so that the legal form is different, but the content or material of human rights is the same. Every country has the responsibility and obligation to respect, protect, fulfill, promote and enforce human rights.

If you look at the various descriptions above, it shows that human rights are the main component that must be protected both by the state and the international community, but in its implementation the human rights violations that have occurred in Papua are still very strong even though various regulations have been issued. Various voices of defense have been conveyed, even very strong human rights violations have occurred in the Land of Papua. Various efforts and struggles continue to be made against efforts to defend and enforce human rights, which are ignored, and ignored. However, the violence carried out on an ongoing basis has another impact, namely the movement to fight violence in peace or through dialogue. Because the people of Papua are aware that the people of Papua are human beings like the Malay race, the European race, the Arab race, and so on who have the same rights in the eyes of the Law and the constitution. Papuan people are human beings who have rights that must be guaranteed and protected by Law, both legally and constitutionally and in their implementation. It is the state's obligation to treat the Papuan people as human beings and to love the Papuan people. because the assumption that has emerged to this day is that the state does not really love Papuans, but rather the nature of Papua which is loved by this country. Thus, the impulses that motivate the birth of problems or the expectations of humanity that arise are described as follows:³⁰.

³⁰The Academic Paper of the Special Autonomy Law for Papua Province explains the Papuan Special Autonomy Administration Bill for human rights violations The history of Papua records that human rights violations in the Land of Papua occur in rhythm with the passage of time together between the Indigenous Papuans and the Government of Indonesia. There are so many historical pages of human rights violations that have been closed without resolution, but there is always the possibility to open new pages for human rights violations in the Land of Papua.

1. There is no representative of the national human rights commission yet; human rights courts, and truth and reconciliation commissions.
2. The existence of violence and violations of human rights in all aspects of the lives of Indigenous Papuans in a systematic, sustainable and unstoppable manner.
3. There is no special allocation of funds in the field of human rights in the context of implementing the Law on Special Autonomy in the Land of Papua.

The reflection on the handling of Human Rights against Indigenous Papuans continues to increase, it can be seen by the existence of violence and violations of human rights in all aspects of the lives of Indigenous Papuans in a systematic, sustainable, and increasingly unstoppable manner. The problem of handling human rights does not end because of the lack of representation of indigenous Papuans guaranteeing political rights where the more indigenous Papuans are involved in politics, the faster the resolution of human rights in Papua is due to the large number of representatives who are fighting for the liberation of the Papuan people. Papua In the National Legislative Body need to get support.³¹

This Law states that the implementation of special policies is based on basic values which include protection and respect for ethics and morals, basic rights of indigenous people, human rights, rule of Law, democracy, pluralism, as well as equality, rights and obligations. as a citizen. The granting of special autonomy is thus also placed on the belief that a new awareness has been born among the Papuan people to peacefully and constitutionally fight for the recognition of basic rights as well as demands for resolution of problems related to violations and protection of the Human Rights of the indigenous Papuans.

In addition, various implications arise with the various regulations issued which in pursuing economic disparities in the practice of administering the government seem centralized even though the State policy has given the status of Special Autonomy to Papua. This can be seen from the authority that has been regulated in the Special Autonomy Law that cannot be implemented properly because of central intervention in carrying out certain authorities that are not the authority of the center. If it is broken down it is as follows³²:

³¹Roni Sulistyanto Luhukay, . (2021). Reflection on the Protection of Human Rights in Papua Province. *Pro Patria: Journal of Education, Citizenship, Law, Social and Politics*, 4 (2)Page 228.

³²As it is known that the granting of special autonomy for Papua Province is intended to achieve justice, uphold the rule of Law, respect for human rights, accelerate economic development, improve the welfare and progress of the Papuan people, in framework of equality and balance with the progress of other provinces. This Law places indigenous Papuans and the Papuan population in general as the main subjects of

- a. Implications of the issuance of Law Number 21 of 2001 concerning Special Autonomy for the Papua Province as amended by Law Number 35 of 2008 concerning the Stipulation of Perpu Number 1 of 2008 concerning Amendments to Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua As a law, Presidential Instruction Number 5 of 2007 concerning the Acceleration of Development in Papua and West Papua has given more authority to the province. Like two sides of a coin, behind this authority, of course, there are various responsibilities that must be carried out to achieve the expected goals. The implementation of the special autonomy must produce significant performance in encouraging the acceleration of development in Papua and West Papua. Based on the findings of various previous studies, a general conclusion can be drawn that special autonomy has not been able to achieve the expected goals. The most visible thing is the condition of the backwardness of the provinces of Papua and West Papua which is still very striking. Performances that are influenced by the dynamics that occur in these two provinces need to be monitored as current as possible.
- b. the logical consequence of the reasons for the implementation of special autonomy above has implications for policy, institutional, resource, and development program arrangements, which not only require appropriate special

development. The existence of the Government, Provincial Government, Regency/City Government, as well as the apparatus under it, are all directed to provide the best service and empower the people. This Law also contains the spirit of problem solving and reconciliation, among others by establishing a Truth and Reconciliation Commission. The establishment of this commission is intended to resolve various problems that occurred in the past with the aim of strengthening Indonesian national unity and integrity in the Papua Province. When reviewed in Law Number 21 of 2001, it is also stated that the agendas that underlie its publication are related to the ideals and objectives of the Unitary State of the Republic of Indonesia as stated in the 1945 Constitution, namely to build a just, prosperous, and fair Indonesian society. prosperous based on Pancasila and the 1945 Constitution. In the big agenda of the policy set, what is understood is that the Papuan people have the right to enjoy the results of development fairly. The establishment of this commission is intended to resolve various problems that occurred in the past with the aim of strengthening Indonesian national unity and integrity in the Papua Province. When reviewed in Law Number 21 of 2001, it is also stated that the agendas that underlie its publication are related to the ideals and objectives of the Unitary State of the Republic of Indonesia as stated in the 1945 Constitution, namely to build a just, prosperous, and fair Indonesian society. prosperous based on Pancasila and the 1945 Constitution. In the big agenda of the policy set, what is understood is that the Papuan people have the right to enjoy the results of development fairly. The establishment of this commission is intended to resolve various problems that occurred in the past with the aim of strengthening Indonesian national unity and integrity in the Papua Province. When reviewed in Law Number 21 of 2001, it is also stated that the agendas that underlie its publication are related to the ideals and objectives of the Unitary State of the Republic of Indonesia as stated in the 1945 Constitution, namely to build a just, prosperous, and fair Indonesian society. prosperous based on Pancasila and the 1945 Constitution. In the big agenda of the policy set, what is understood is that the Papuan people have the right to enjoy the results of development fairly.

arrangements, but how they interact with other general policies are crucial aspects for the implementation of special autonomy with good.

- c. The implementation of policies cannot be separated from various problems and challenges that must be faced. A comprehensive understanding of the problems and challenges faced along the dynamic journey of implementing special autonomy is required.
- d. Special autonomy for Papua and West Papua is an option that still needs to be implemented, in particular to strengthen the integration of the nation within the unitary State of the Republic of Indonesia by respecting the equality and diversity of the social and cultural life of the Papuan people. However, in the future there needs to be appropriate and sustainable efforts to improve the implementation of Special Autonomy and accelerate the development of Papua and West Papua³³.

Special autonomy policies in the administration of government and implementation of development in the Papua Province have not yet fully fulfilled the sense of justice, have not fully enabled the achievement of people's welfare, have not fully supported the establishment of law enforcement, and have not fully shown respect for human rights in the Papua Province, especially the Papuan people., including that the management and utilization of the natural resources of the Papua Province have not been used optimally to improve the standard of living of the indigenous people, so that it has resulted in a gap between the Papua Province and other regions, and is a neglect of the basic rights of the indigenous Papuans.

On the other hand, the main thing is that special autonomy is given in the context of reducing the gap between Papua Province and other provinces, and improving the standard of living of the people in Papua Province, as well as providing opportunities for indigenous Papuans. rememberThe government's intention to support the special autonomy agenda in Papua and West Papua Provinces is strongly indicated by the increasing number of Special Autonomy funds being channeled to the two provinces. Since the Special Autonomy fund was rolled out in 2002 amounting to Rp. 1.38 T, increased sharply in 2010 by Rp. 2.69 T for Papua. Meanwhile, West Papua has started to receive Special Autonomy funds since 2009

³³This is in line with the system of government of the Unitary State of the Republic of Indonesia according to the 1945 Constitution which explicitly recognizes and respects special or special regional government units regulated by Law. From a political perspective, the government considers that the integration of the nation within the unitary state of the Republic of Indonesia must be maintained by respecting the equality and diversity of the socio-cultural life of the Papuan people, through the establishment of a Special Autonomy Region, quoted in the Academic Paper on the Draft Special Autonomy Law for the Province of Papua explaining the Government Bill. Papua Special Autonomy

after it was officially split from the Papua Province. The increase in special autonomy funds from year to year should encourage increased implementation of special autonomy in the two provinces. There are at least four priority programs implemented to spur the development of the Papuan people and regional development, namely education, health, people's economic empowerment, and infrastructure development. However, the story about Papua is still largely dominated by the concerns felt over the results of the implementation of special autonomy for Papua and West Papua. Papuans are estimated to still live below the poverty line due to limited facilities and infrastructure for sea, land and air transportation in the area. Limited transportation facilities and infrastructure hinder government development programs that will be implemented for the benefit of the people throughout Papua.

Even though the changes in the legislation from Law No. 21 of 2001 to Law No. 2 of 2021 regarding special autonomy for Papua Province also cannot provide many changes regarding the achievement of special autonomy. the birth of Law No. 2 of 2021 concerning the second amendment to Law No. 21 of 2001 concerning special autonomy for the province of Papua. Provide at least 20 amendments to articles regarding the authority of local government, MRP, DPRK, increase in Papua special autonomy funds, expansion of Papua provinces and districts and establishment of implementing regional regulations of the Special Autonomy Law. The formation of this regulatory change has not provided a concept for the protection of indigenous Papuans, considering the potential for centralization of authority to still occur. In addition, this regulatory change also does not provide an overview of the cultural aspects of the indigenous Papuans themselves, this can be seen by not involving the MRP which is a representation of the Papuan people. For example, in article 76 paragraphs 1 and 2 regarding the division of the province and district without involving the MRP as a representative of the native Papuans. In addition, in the amendments to the new Special Autonomy Law, there is no concept regarding the assistance of representatives of the National Human Rights Commission and the Truth and Reconciliation Commission. Considering that the living conditions of human rights in Papua are getting worse day by day, due to ongoing violations and violence against human rights from time to time.

The history of Papua records that human rights violations in the Land of Papua occur in rhythm with the passage of time together between the Indigenous Papuans and the Government of Indonesia. There are so many historical pages of human rights violations

that have been closed without resolution, but there is always the possibility to open new pages for human rights violations in the Land of Papua.

3.2 The existence of the implementation of Special Autonomy regulations for Papua Province.

In the context of conflict resolution that occurred in Papua ranging from human rights violations, development gaps to the Free Papua Movement Organization which made Papua always volatile with conflicts demanding independence, it is very important to accommodate the aspirations of the people in the local government forum amid their distrust of Central government.³⁴

Special Autonomy for the Province of Papua is basically the granting of wider authority for the province and the people of Papua to regulate and manage themselves within the framework of the Unitary State of the Republic of Indonesia. Wider authority also means greater responsibility for the province and the Papuan people to administer the government and regulate the utilization of natural resources in the Papua Province for the maximum benefit of the Papuan people as part of the Indonesian people in accordance with the laws and regulations. This authority also means the authority to empower the socio-cultural and economic potential of the Papuan people, including providing an adequate role for indigenous Papuans through representatives of adat, religion and women. The role played is participating in formulating regional policies, determining development strategies while respecting the equality and diversity of Papuan people's lives, preserving Papuan culture and natural environment, which is reflected in the change of the name Irian Jaya to Papua, regional symbols in the form of regional flags and regional anthems as a form of actualizing the identity of the Papuan people and acknowledging the existence of ulayat rights, customs, indigenous peoples and customary law". However, if we look more deeply at the authority given, it still tends to be centralized.

Examining the preamble and general explanation of the special autonomy law, it can be stated about the factors that are considered in granting special autonomy to the Papua Province, namely: (1) The gap factor that occurs in almost all sectors of life in the Papuan

³⁴Ahmad Murodi, Special Autonomy for Local Political Parties; Policy Analysis of Aceh Government Law Number 11 of 2006 concerning Local Political Parties, PELITA; Journal of Scientific Research, Vol. 19, No. 1, January-June 2019, page. 79

people, especially in the fields of education, health, economy, culture and socio-political, (2) Human rights factors, neglect of the basic rights of indigenous people, and differences of opinion regarding the history of the integration of Papua into the Unitary State of the Republic of Indonesia. Therefore, through the stipulation of a special autonomy law for the Province of Irian Jaya, taking into account the aspirations of the people, is a positive first step in order to build people's trust in the government.

Special autonomy for Papua Province is a strategic policy in improving services and accelerating development as well as empowering all Papuan people through this policy to provide protection and reduce disparities between Papua Province and other provinces.³⁵For this reason, the granting of special autonomy for the Papua Province remains based on the framework of the Unitary State of the Republic of Indonesia. Sir William O Hart and JF Garner stated that if local autonomy is not produce a state of affairs bordering anarchy, it must be subordinated to national interest by means devised to keep its action within bounds,³⁶the freedom to apply special autonomy may not deviate or contradict the legal principles of a unitary state. The principle of a unitary state is the main framework that must be used as a guide in granting regional autonomy, including special autonomy.³⁷Moh.Kusnadi and Bintan R Saragih also argue that: "It is called a unitary state if the authority of the central government and the government is not the same and not equal.

The authority of the central government is the highest authority in the concept of a unitary state. The government's authority in the regions is indirect so that the regions do not have original authority.³⁸**Ramlan Surbaktias** follows: "The unitary state is a state that has one state with one central government which has full authority over the state, so that local governments are obliged to follow and account for everything to the central government"³⁹. Soehino⁴⁰also argues that the concept of a unitary state is a state consisting of only one state, which means that in one state it is not composed of several countries. In line with that, Edie Hedratno explained that: "The concept of a unitary state is a state that has independence and

³⁵Legal journal, Azmi Muttaqin, Special Autonomy for Papua An Effort to Respond to Conflicts and Aspirations for Independence, 2015, page. 10.

³⁶Sir William O Hart And JF Garner, Introduction To The Law Of The Local Government And Administration, London, Butterworths, 1973, p 297.

³⁷Rusdianto.,Principles of National Legal Unity in Formation of Legal Products for Special Autonomous Regional Governments, Surabaya, Law Dissertation at the Faculty of Law, Airlangga University, 2016, page. 8.

³⁸Moh.Kusnadi and Bintan R Saragih, State Science, Jakarta, Gaya Media Pratama, 1995, page 195

³⁹Ramlan Surbakti, Understanding Political Science, 7th Edition, Jakarta, 2010, page. 216.

⁴⁰Soehino, Legal Studies, Yogyakarta, Liberty Publishers, 3rd Printing, 2000, page. 224.

sovereignty over the entire territory consisting of regional areas where the authority of each region and its regions is fully held by one central government. Sovereignty rests entirely with the central government, this is because in a unitary state there may not be states that have their own sovereignty, even though in a unitary state the territory of the state is divided into several parts and some of these parts cannot have original authority."⁴¹This means that the concept of a unitary state allows decentralization as long as the regions do not have original authority and the authority is not the same and not equal to the central government. The granting of special autonomy to the Papua Province is a revolutionary step.

The Papua Special Autonomy Law provides wider authority for the Papua Province (later including the West Papua Province) and the Papuan Orang Asli to regulate and manage themselves within the framework of a unitary state to create prosperity for the Papuan Indigenous People, to be able to regulate the utilization of natural resources, and the utilization of the socio-cultural and economic potential of the Indigenous Papuans.

However, normatively several articles, paragraphs and letters in the Papua Special Autonomy Law give rise to various problems due to haphazard conditions and collisions between the Papua Special Autonomy Law and other sectoral laws. In addition, various problems arise in implementing the Special Autonomy Law in Papua due to the lack of clarity and limited authority referred to in the Special Autonomy Law, especially the legal term that has become viral in the Papua Special Autonomy Law is the term "Law". Such conditions are followed by actors implementing the Papua Special Autonomy Law who do not understand the Papua Special Autonomy Law properly and correctly. The conditions in question from the implementation of the Special Autonomy Law in Indonesia are as follows:

- a. There is still uncertainty about the meaning, relationship, and purpose of the norms contained in the Papua Special Autonomy Law.
- b. It is not clear yet and the specific authority is limited in the Special Autonomy Law for Papua.
- c. The boundaries of the authority between the Central Government and Regional Governments in the administration of regional government in various fields of government are still unclear.

⁴¹Eddie Hedratno, *Unitary State, Decentralization and Federalism*, Jakarta, Graha Ilmu and Pancasila University Press, 2009, page. 46.

- d. It is still unclear and unclear regarding the pattern of authority relations between Provinces and Regencies/Cities and the clarity of special powers between Provinces and Regencies/Cities in Papua in the implementation of Special Autonomy.
- e. The lack of clarity regarding the existence of the Regional Head Election and its organizing institutions in Papua.
- f. There is a lack of clarity on the authority of customary institutions and the existence of indigenous Papuan villages with a structural hierarchy of state village government that enters Papuan native villages.
- g. There is no protection for the existence of indigenous peoples in Papua and their basic rights.
- h. There has been no clarity and strengthening of the duties, authorities, and functions of the Papuan People's Representative Council and the Papuan People's Assembly.
- i. There is no clear regulation regarding the duties, authorities, and functions of the Papuan People's Assembly and the pattern of its relationship with the provincial government and the City/Regency government in the administration of regional government.
- j. There is no clear regulation regarding the duties, powers, and functions of the Papuan People's Representative Council and the pattern of its relationship with the Regency/City Regional People's Representative Council in the implementation of special autonomy.
- k. There is no special fund to manage the field of customary Law in Papua and other legal institutions in Papua.
- l. There are still legal terms that give birth to ambiguous conditions, namely the term "laws".
- m. The existence of the Papuan People's Council of West Papua Province is not based on the policy of the Special Autonomy Law and has caused a lot of polemics.

In the Papua Special Autonomy Law, there are unclear norms and limited authority, which has a direct impact on the implementation level that is not in accordance with the norms and regulations of the Special Autonomy Law, uncertainty regarding the extent and

narrowness of the authority granted to the Papuan People through the Special Autonomy Law. The Papua Special Autonomy Law⁴². So that its existence has not run as expected by the community because in its implementation it gets a lot of central government intervention in carrying out certain authorities that are not the authority of the center. the authority that has been given in the Special Autonomy Law for the Province of Papua. Even though the changes in the legislation from Law No. 21 of 2001 to Law No. 2 of 2021 regarding special autonomy for Papua Province also cannot provide many changes regarding the achievement of special autonomy. the birth of Law No. 2 of 2021 concerning the second amendment to Law No. 21 of 2001 concerning special autonomy for the province of Papua. Provide at least 20 amendments to articles regarding the authority of local government, MRP, DPRK, increase in Papua special autonomy funds, expansion of Papua provinces and districts and establishment of implementing regional regulations of the Special Autonomy Law. The formation of this regulatory change has not provided a concept for the protection of indigenous Papuans, considering the potential for centralization of authority to still occur. In addition, this regulatory change also does not provide an overview of the cultural aspects of the indigenous Papuans themselves, this can be seen by not involving the MRP which is a representation of the Papuan people. For example, in article 76 paragraphs 1 and 2 regarding the division of the province and district without involving the MRP as a representative of the native Papuans.

4. Conclusion

The condition of the special autonomy of the Papua province by looking at the human rights aspect and the development gap that has occurred to this day is a phenomenon of the failure of the government system that was built through Law No. 21 of 2001. Even though there has been a change in the regulation of Law No. 2 of 2021, the potential for the above phenomenon is still possible. this can be proven by the absence of representatives of the national human rights commission; human rights courts, and truth and reconciliation commissions. In addition to the absence of a special allocation of funds in the field of human rights in the context of implementing the Special Autonomy Law in Papua, the Papuan

⁴²The Academic Manuscript of the Special Autonomy Law for the Province of Papua explains the bill for the Papuan Special Autonomy Administration, which explains the normative conditions and the implementation conditions of the Papua Special Autonomy Law, from the beginning it was clear that the unclear norms and uncertainty of authority in the Papua Special Autonomy Law would have a bad impact. , so it was clearly proven that in 2005 the Indigenous Papuans had returned the Papuan Special Autonomy Law in the “coffin of the dead” (Special Autonomy corpses)

people have not yet experienced the welfare of Papuans, it is estimated that they still live below the poverty line due to limited facilities and infrastructure for sea, land and air transportation. The birth of Law No. 2 of 2021 concerning the second amendment to Law No. 21 of 2001 concerning special autonomy for the province of Papua. Provide at least 20 amendments to articles regarding the authority of local government, MRP, DPRK, increase in Papua special autonomy funds, expansion of Papua provinces and districts and establishment of implementing regional regulations of the Special Autonomy Law. The formation of this regulatory change has not provided a concept for the protection of indigenous Papuans, considering the potential for centralization of authority to still occur. In addition, this regulatory change also does not provide an overview of the cultural aspects of the indigenous Papuans themselves, this can be seen by not involving the MRP which is a representation of the Papuan people.

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