

Restructurisation Special Autonomy Policy The Province Of Equity Papua According To Indonesian Constitution

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Abstract

In addition, this conception on the one hand confirms the region's existence as a national part, but on the other hand provides a stimulant for local communities to articulate all their interests, including the issue of regional autonomy in the legal system and national policy. 21 of 2001 concerning Special Autonomy for the Province of Papua. 18 of 2001 concerning Special Autonomy for the Special Region of Aceh as a Province of Nanggroe Aceh Darussalam. Although the Law on Regional Special Autonomy has been enacted, the critical movement towards various problems in the area such as violations of Human Rights, and injustice does not necessarily stop. The essence of the concept of implementing regional autonomy is an effort to maximize the results to be achieved while avoiding complexities and things that hinder the implementation of regional autonomy.

This research aims to analyze the Papua Province Special Autonomy policy based on the Indonesian constitution. To explore the role of the government in supervising the implementation of the Special Autonomy for the Papua Province, the Law on Special Autonomy for the Papua Province.

The research method used is normative law, namely examining a collection of legal materials related to autonomy policy.

The results of this study are expected to provide a useful understanding of the development of legal science and constitutional law and become a reference and reference for researchers in terms of restructuring, and special autonomy policy Papua Province fair.

this research limits itself to Papuan autonomy, the role of the government in supervising the implementation of the Special Autonomy for the Papua Province, the Law on Special Autonomy for the Papua Province

no research on Papuan autonomy has been carried out with the aim of expected to provide input and information to the legislature and can increase insight into the development of knowledge in the field of Legal Science.

Keywords: *RESTRUCTURATION, AUTONOMY POLICY, PAPUA*

I. INTRODUCTION

The State of Indonesia is a unitary state in the form of a republic which means that when this state is proclaimed, its form is a unified state, this can be seen in the 1945 Constitution of the Republic of Indonesia (UUD 1945). This conception is a basic principle in the administration of the Government of Indonesia. In addition, this conception on the one hand confirms the existence of the region as a national part, but on

the other hand provides a stimulant for local communities to articulate all their interests, including the issue of regional autonomy in the legal system and national policy. Therefore, P from 18 of the 1945 Constitution before the amendment stated :

"The division of Indonesia's regions into large and small regions, with the form of government structure determined by law, taking into account and remembering the basis of deliberation in the state government system, and the rights of origin in special regions".

In Article 18 of the 1945 Constitution, the second amendment provides clarity regarding the division of regions, from the results of the amendment there are Articles 18A and 18B. This amendment to Article 18 of the 1945 Constitution clarifies the division of Indonesia's regions into provincial regions and the provincial regions are divided into regencies and cities, where each province, district and city has a regional government, which is regulated by law.

During the New Order era, through Law Number 5 of 1974 concerning the Principles of Government in the Regions (Law No. 5 of 1974 concerning Regional Government) , it was stated that government was carried out on the basis of centralization. Currently the government is of the opinion that if the regions are given the freedom to carry out their own government, this will affect the loss of a sense of nationalism and the disintegration of the nation. So the practice of local governments in Indonesia is to practice government with diversity. This is evidenced by the omission and acknowledgment of institutions in Indonesia that have long lived and developed and are obeyed by the local community. Another form of centralization that can be seen in the administration of government during the New Order era is the existence of very tight supervision and domination by the central government to the regions.

The impact is that there is no other way for the government, namely by granting autonomy status to the regions. The juridical basis in administering regional government is distributed to carry out autonomy, namely by the existence of Law Number 22 of 1999 concerning Regional Government (Law No. 22 of 1999 concerning Regional Government) , which has now been refined by Law Number 32 of 2004 concerning Regional Government. (Law No. 32 of 2004 concerning Local Government) . The existence of Law no. 32 of 2004 concerning Regional Government has created a new meaning in the development of democracy in Indonesia. Regions, especially regencies/cities, are given a great opportunity to carry out their interests.

In the decentralized Unitary State of the Republic of Indonesia (NKRI) , the regional government system is not always the same, the central government also enforces a special autonomy policy. or often called asymmetric decentralization , which is where the central government gives great authority in the political, economic, and socio-cultural fields to local governments. Special autonomy (Otsus) is the government's acknowledgment of the realities and political needs which because of their position and circumstances require that a region be given a special status that cannot be equated with other regions.

Regions in Indonesia that receive special treatment in autonomy, both special autonomy, special capital areas and special regions include:

- a. Irian Jaya Province which was given Otsus within the framework of the Unitary State of the Republic of Indonesia . This autonomy is granted by the Republic of Indonesia through Law no. 21 of 2001 concerning Special Autonomy for the Province of Papua (UU Otsus Papua).
- b. The State Recognition of the Privileges and Specialties of the Aceh Region given through Law no. 11 of 2006 concerning Aceh Government . and Law no. 18 of 2001 concerning Special Autonomy for the Special Region of Aceh as a Province of Nanggroe Aceh Darussalam.
- c. The specificity of DKI Jakarta Province as the State Capital is given through Law no. 29 of 2007 concerning Provincial Government Special Capital Region of Jakarta as the capital city of the Unitary State of the Republic of Indonesia .

- d. The Special Region of Yogyakarta within the Unitary State of the Republic of Indonesia is given special privileges. This is regulated in Law no. 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta.

Normative ideas is ideal. This should be able to respond to the demands for independence and the spirit of nationalism in a special regional autonomy. The gap between normative ideas and reality may arise due to implementation that has not been running effectively. Although the Law on Regional Special Autonomy has been enacted, the critical movement towards various problems in the area such as violations of Human Rights (HAM), injustice does not necessarily stop at all. Some people see that special autonomy is not the answer to satisfy their problems and desires. This critical attitude is carried out by various groups with diverse backgrounds, including indigenous peoples, intellectuals and other sectors, including student elements.

According to Van Vollenhoven, there are 19 (nineteen) circles of customary law communities in Indonesia with their respective customary laws based on legal ethnography. Based on the distribution of customary law communities and cultural ecology, although some areas are close to each other. Van Vollehoven further did not show these differences in detail.

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Based on the description of the background above, researchers are interested in researching these problems with the title: " Restructuring " Special Autonomy Policy A Just Papua Province According to Indonesian Constitution" .

A. Formulation of the problem

Based on the background above, the writer formulates the main problems as follows:

- 1.Papua Province Special Autonomy policy based on the Indonesian constitution. ?
- 2.What is the role of the government in supervising the implementation of the Special Autonomy for the Papua Province, the Law on Special Autonomy for the Papua Province ? ?
- 3.What are the problems that influence the policy of the Papuan Provincial Government in protecting the customary rights of the Papuan customary law community ? ?

B. Research Objectives and Benefits

1.Research purposes

In accordance with the problems to be discussed in this study, the objectives of this research are:

- a. To analyze the Papua Province Special Autonomy policy based on the Indonesian constitution.
- b. To analyze the role of the government in supervising the implementation of the Special Autonomy for the Papua Province, the Law on Special Autonomy for the Papua Province .
- c. To analyze the problems that affect the policies of the Papuan Provincial Government in protecting the customary rights of the indigenous peoples of Papua.

2.Benefits of research

2.1 Theoretical Benefits

The results of this study are expected to provide a useful understanding of the development of legal science and constitutional law and become a reference and reference for researchers in terms of restructuring special autonomy policy Papua Province fair.

2.2 Practical Benefits

The results of this study are expected to provide input and information to the legislature and can increase insight in the development of knowledge in the field of Legal Science. State the objectives of the work and provide an adequate background, avoiding a detailed literature survey or a summary of the results. Explain how you addressed the problem and clearly state the aims of your study.

II. LITERATURE REVIEW

1. Theoretical framework

a. Rule of Law theory

The State of Indonesia is a state of law (1945 Constitution of the Republic of Indonesia, Article 1 paragraph 3), thus every implementation of community activities and state government must be based on applicable law. According to Abdul Mukthie Fadjar : The rule of law is a country whose structure is regulated as well as possible in the law so that all powers of the government's tools are based on law. People should not act independently according to everything that is against the law. The state of law is a state that is not governed by people, but by law (*state the not governed by men, but by laws*). Therefore, in a state of law, the rights of the people are fully guaranteed by the state and against the state, on the contrary by submitting and obeying all government regulations and state laws. (Abdul Mukthie Fadjar , 2016).

b. Special Autonomy Theory

In Article 1 paragraph (6) UU no. 32 of 2004 concerning Regional Governments states that autonomous regions are legal community units that have territorial boundaries that are authorized to regulate and manage government affairs and interests. Public local according to initiative alone based on aspirations community and have the right to manage their government affairs.

The enactment of autonomy gives broad authority to local governments at the district/city level in carrying out all government affairs starting from planning, implementation, supervision, control and evaluation. As a consequence of the broad autonomy authority, local governments have an obligation to improve services and welfare in a democratic, fair, equitable and sustainable manner. Because basically regional autonomy is applied to improve people's welfare and create efficiency and effectiveness in the administration of government and regional development and accountability of the public sector in Indonesia.

Hatta in Bastian stated that: (Indra Bastian, 2006) Autonomy does not only mean implementing democracy, but also encouraging the development of own initiatives to make decisions related to the interests of the local community. With the development of their own initiatives, it is possible for the people not only to determine their own destiny, but above all, the people can improve their own destiny. Regarding special autonomy, special autonomy is the development of regional autonomy which is granted by the central government only to certain regions because these regions have privileges that other regions in Indonesia do not have.

a. Theory of 3 (three) Elements of the Legal System

According to Lawrence M. Friedman, there are three factors that influence the implementation of the law, namely (Lawrence M. Friedman in Ahmad Ali, 2002) :

1. “ *The structure of a system is its skeletal frame work; it is the permanent shape, the institutional body of the system, the touch, rigid bones that keep the process flowing within bounds* ”. (Structure is the framework or framework, the part that persists, the part that gives some form and limitation to the whole).
2. “ *The substance is composed of substantive rules and rules about how institutions should be have* ”. (Rules, norms, and real human behavior patterns that are in the system).
3. “ *The legal culture, system-their beliefs, values, ideas, and expectations* ”. (Legal culture is human attitude towards law and the legal system – beliefs, values, thoughts, and expectations).

The three factors that influence the implementation of the Papua Province special autonomy law , as stated by Lawrence M. Friedman, will be used as a theoretical reference for further analysis in restructuring special autonomy policy The just province of Papua according to Indonesian constitution . _

1. Conceptual framework

a. Restructurisation

Restructuring according to the Big Indonesian Dictionary, which means doing realignment (so that the structure or order is good) (<https://kbbi.web.id/restructuring>, 2021) so that the legal provisions relating to the special autonomy of the Papua Province can be implemented properly and realized in accordance with the planning based on the applicable provisions.

b. Policy

Policy is a series of concepts and principles that become a line of implementation in a job . According to Lasswell and Kaplan (Said Zainal Abidin, 2012) policy as a means to an end, policy as a “projected program with respect to goals, values, and practices.

c. Regional autonomy

Regional Autonomy is (Law Number 23 of 2014 concerning Regional Changes, Article 1 point 6) : the rights, powers, and obligations of autonomous regions to regulate and manage their own government affairs and the interests of local communities in the system of the Unitary State of the Republic of Indonesia.

d. Papua Special Autonomy

Special Autonomy is a special authority that is recognized and granted to the Papua Province to regulate and manage the interests of the local community according to its own initiative based on the aspirations and basic rights of the Papuan people (Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua, Article 1 letter b)

c. fair

In the Big Indonesian Dictionary , the word justice comes from the word "fair" plus the prefix "ber" and the suffix "an" which means siding with the right; hold on to the truth; duly; not arbitrary or “have justice” (<https://kbbi.web.id/adil> , downloaded on September 30, 2021)

III. METHODOLOGY

The research method used is normative law, namely examining a collection of legal materials related to autonomy policy

IV. RESULT AND DISCUSSION

The existence of the local customary law community which has ethnic and cultural diversity, needs to be studied normatively and empirically as input, in the context of protecting and developing indigenous peoples in the field of culture and customary law. The goal is that customary law and state law coexist in order to support the development of national and regional laws. This study is particularly concerned with

the implementation steps of the Papua Special Autonomy Law, such as protection, respect and alignment with the basic rights of local legal communities in the life of the nation and state. What can be told and said by heterogeneous customary law communities with cultural ecological zones and social structures, which are reflected in their existing legal provisions and have meanings, must be translated as a whole and integrated (holistic).

By normative nor empirical, need there is identification the customary law community in an integrative manner according to their culture and customary law, identification of the implementation of their customary law as a guide in efforts to maintain the life that is the ideal in various dimensions of the social life of the customary law community concerned. Customary law institutions are original systems and or rules that have long been obeyed by customary law communities as a means of social control.

In customary law institutions, the status of the rights and obligations of customary law communities has traditionally been regulated from generation to generation and is inherited based on social structures and organizations. The local customary law community is categorized as a community that adheres to genealogical territorial principles; namely a society that has a division of social structure and organization according to customary territorial areas and blood relations (kinship legal system) among its community members. For example, the customary government legal system based on territory and the customary kinship legal system based on genealogy, as customary law institutions that are still maintained in the local customary law community, to show rights and obligations as well as regulatory norms for the leadership and management system of members. customary law communities, regional regulation, natural resources, inheritance and marriage.

One of the important aspects of regional autonomy is community empowerment so that they can participate in the process of planning, implementing, mobilizing, and supervising the management of local government in the use of management resources and providing excellent service to the public. The essence of the concept of implementing regional autonomy is an effort to maximize the results to be achieved while avoiding complexities and things that hinder the implementation of regional autonomy. Thus, the demands of the community can be realized in real terms with the implementation of broad regional autonomy and the continuity of public services is not neglected, as well as maintaining fiscal sustainability nationally.

The granting of special autonomy to a region is intended to achieve justice, uphold the rule of law, respect for human rights, accelerate economic development, improve the welfare and progress of the local community in the context of equality and balance with the progress of other provinces. The Law on Regional Special Autonomy (UU Otsusda) contains the spirit of problem solving and reconciliation, including the establishment of a Truth and Reconciliation Commission. The establishment of this Commission is intended to resolve various problems that occurred in the past. The elaboration and implementation of the Otsusda Law is carried out proportionally in accordance with the spirit and spirit of the nation and state that live in the noble values of the regional community, which are regulated in Special Regional Regulations (Perdasus) and Provincial Regulations (Perdapro). These regions obtained special autonomy status because of the privileges that occurred in the area and in the end the Central Government granted special autonomy status to the five provinces which was stipulated by the Special Autonomy Law on the aforementioned Regions which was expected to be a spirit for the Regional Provinces of Papua, Aceh, Yogyakarta. and Jakarta to participate in the development and development of the State by improving public services, increasing development in all fields, as well as empowering all communities and customary law communities as well as government officials, both at the Provincial, Regency/City, District and Village levels in the Special Autonomous Region.

The granting of special autonomy to provinces and receiving special treatment in autonomy, both special autonomy, special regions for the capital and special regions, tends to be ambiguous in its implementation and tends to be inconsistent with the state constitution of the 1945 Constitution. This can be seen from the determination of the state budget and revenues allocated to 4 (four) regions with different names.

The constitutional basis for Papua's Special Autonomy is Article 18B of the Constitution 1945 which states that the state recognizes and respects regional government units that are special and special in nature regulated by law. In addition, Article 18A of the 1945 Constitution also determine that the relationship of authority between the central government and the provincial, district, and city governments or between provinces and regencies and cities, shall be regulated by law with due observance of regional specificity and diversity.

The autonomy granted to Papua is special and different from the autonomy imposed in other regions In addition, the specifics of autonomy in Papua are in accordance with Law No The year 2001 can be seen from three things. First, the existence of a representative institution culture of indigenous Papuans, namely the Papuan People's Assembly (MRP), which has 5 certain authorities in the context of protecting the rights of indigenous Papuans based on respect for customs and culture, empowering women, and strengthening religious harmony. In practice, Papua, which is still plagued by conflict armed and often viole.

Thus the establishment of the Papua Special Autonomy Law It can be seen that the purpose of granting special Autonomy is to resolve the root cause of the Papuan problem in accordance with the aspirations of the Papuan people. However, the substance of the Papua Special Autonomy Law itself does not includes efforts to solve all the root problems in Papua. Autonomy Law Specifically for Papua, it can only be used as a normative instrument for solve the root problems in the form of "gaps, equality of opportunity, and protection of basic rights and human rights."

Ulayat rights are ownership rights communal land based on clans or based on a combination of several clans. The Papua Special Autonomy Law regulates all development issues in all fields,such as economic, social, political, and cultural, so that as a whole can it is said that the Special Autonomy Law for Papua restores the basic rights of indigenous Papuans.

In the explanation of the Special Autonomy Law for Papua, the province is also given authority Papua and the Papuan people to organize and manage themselves within the framework of The Unitary State of the Republic of Indonesia. There is also this local regulation on customary rights, the role of the community Papuan customs in development in Papua are increasingly being taken into account and involved However, in reality, the contents of this Perda on Ulayat Rights have a lot irregularities related to the existence of indigenous Papuans and the existence of rights the ulayat of the community in the Perda Ulayat rights seem to position the existence of indigenous Papuans and their rights as something that must receive recognition from the Provincial Government Papuans .

V. CONCLUSION

The performance Special Autonomy during the five years of implementation has not yet achieved maximum results because in its implementation, the implementation of special autonomy is not balanced with efforts peaceful settlement of political conflicts. This security approach at the same time shows that in the implementation of special autonomy has been uprooted from the basic values that has been set i.e protection and respect for ethics and morals, basic rights indigenous peoples, human rights, rule of law, democracy, pluralism, as well as equal status, rights, and obligations as citizens there is a tendency to

undermine the special autonomy which provided by reinforcing a centralized pattern of government. There is still a lack of necessary institutional capacity to exercise special autonomy either because of its formal legal status or because of the special political conditions there is a tendency to slow down the implementation of special autonomy by delaying the formation of the necessary implementing regulations. The policy of the Papuan Provincial Government in protecting the customary rights of the Papuan customary law community already exists, namely through the Papua Special Autonomy Law to restore the basic rights of indigenous Papuans. and it is also listed in the regional regulation, but in its implementation it is not sustainable so that there are still violations of the customary rights of the Papuan people

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